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WHEN RECORDED, MAIL TO:

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

Assessor's Block 3736, Lot 120
Transbay Block 9

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DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

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

and

Block 9 Transbay, LLC., a Delaware Limited Liability Company

FOR THE SALE AND DEVELOPMENT OF TRANSBAY BLOCK 9
(ASSESSOR'S BLOCK 3736, LOT 120)

Dated as of _____, 2014

TABLE OF CONTENTS

	Page
ARTICLE 1 - CONTRACT TERMS	4
1.01 Successor Agency	4
1.02 Developer	4
1.03 Intentionally Deleted.....	4
1.04 Site	4
1.05 Purchase Price	5
1.06 Good Faith Deposit	5
1.07 Redevelopment Plan and Project Area Declaration of Restrictions	6
1.08 Term of this Agreement/Schedule of Performance	6
1.09 Definitions/Interpretation of Agreement.....	6
ARTICLE 2 - CONVEYANCE TERMS	7
2.01 Purchase and Development.....	7
2.02 Escrow.....	7
2.03 Title.....	7
2.04 Payment of Purchase Price.....	8
2.05 Taxes and Assessments.....	8
2.06 Access and Entry by Developer to the Site/Permit to Enter	9
2.07 Conditions Precedent to Conveyance and Developer Obligations	9
2.08 Submission of Evidence of Financing and Project Commitments.....	10
2.09 Conveyance of Title to the Site and Delivery of Possession	12
ARTICLE 3 - SITE CONDITION; HAZARDOUS MATERIALS INDEMNIFICATION	12
3.01 Prior to Conveyance/Site “As Is”	12
3.02 Hazardous Materials Indemnification.....	14
3.03 Risk of Loss	14
ARTICLE 4 - CONSTRUCTION OF IMPROVEMENTS.....	15
4.01 The Improvements	15
4.02 Developer's Construction Obligations	15
4.03 Compliance with Project Approval Documents and Law.....	16
4.04 Compliance with Redevelopment Requirements/City Requirements.....	16
4.05 Preparation of Project Approval Documents/Approval of Architect.....	16

TABLE OF CONTENTS

(continued)

	Page
4.06 Submission of Project Approval Documents	16
4.07 Scope of Successor Agency Review/Approval of Developer’s Construction	16
4.08 Construction Schedule	17
4.09 Cost of Developer Construction.....	17
4.10 Issuance of Building Permits	17
4.11 Times for Construction	18
4.12 Construction Signs and Barriers	18
4.13 Notice of Termination – Issuance	18
4.14 Right to Reconstruct the Improvements in the Event of Casualty.....	19
4.15 Provisions Surviving Completion of Construction.....	19
4.16 Access to Site – Successor Agency	19
4.17 No Changes Without Approval.....	20
4.18 Off-Site Infrastructure and Improvements Damage	20
4.19 Insurance Requirements.....	20
ARTICLE 5 - COVENANTS AND RESTRICTIONS	24
5.01 Covenants.....	24
5.02 General Restrictions.....	24
5.03 Restrictions Before Completion.....	25
5.04 Nondiscrimination.....	25
5.05 Effect, Duration and Enforcement of Covenants.....	26
5.06 After Agreement Termination.....	27
ARTICLE 6 – ANTI-SPECULATION, ASSIGNMENT, AND TRANSFER PROVISIONS	27
6.01 Representation as to Developer	27
6.02 Prohibition Against Transfer of the Site, the Improvements and the Agreement.....	27
6.03 Effect of Violation	28
ARTICLE 7 - MORTGAGE FINANCING: RIGHTS OF HOLDERS.....	29
7.01 Mortgagee	29
7.02 Required Provisions of Any Mortgage	29
7.03 Address of Mortgagee.....	29

TABLE OF CONTENTS

(continued)

	Page
7.04 Mortgagee's Right to Cure.....	29
7.05 Application of Agreement to Mortgagees Remedies.....	30
7.06 No Obligation to Construct Improvement or Pay Money Damages.....	30
7.07 Accommodation of Mortgagees.....	31
ARTICLE 8 - DEFAULTS AND REMEDIES	31
8.01 Developer Default.....	31
8.02 Remedies of Successor Agency upon the Occurrence of an Event of Default by the Developer	32
8.03 Additional Remedies of Successor Agency.....	33
8.04 Successor Agency Default	34
8.05 Remedies of Developer.....	34
8.06 Rights and Remedies Cumulative.....	34
8.07 Force Majeure/Extensions of Time.....	35
8.08 General.....	36
ARTICLE 9 - SPECIAL TERMS, COVENANTS AND CONDITIONS	36
9.01 Mitigation Measures	36
9.02 Proposed Districts	37
9.03 Affordable Housing Requirements	38
9.04 Streetscape Improvements	40
9.05 Open Space	40
9.06 Underground Parking Garage	40
ARTICLE 10 – SUCCESSOR AGENCY EQUAL OPPORTUNITY PROGRAM.....	40
ARTICLE 11 – INTENTIONALLY DELETED	42
ARTICLE 12 - GENERAL PROVISIONS	42
12.01 Indemnification	42
12.02 Provisions with Respect to Time Generally.....	42
12.03 Notices	43
12.04 Time of Performance	44
12.05 Attachments/Recitals	44
12.06 Non-Merger in Deed.....	44

TABLE OF CONTENTS
(continued)

	Page
12.07 Headings	44
12.08 Successors and Assigns.....	44
12.09 Counterparts/Formal Amendment Required.....	44
12.10 Governing Law	45
12.11 Recordation	45
12.12 Estoppels	45
12.13 Attorneys' Fees	45
12.14 Further Assurances.....	45
12.15 No Personal Liability	45
12.16 Effective Date	45
ARTICLE 13 - REFERENCES AND DEFINITIONS.....	46

ATTACHMENTS TO AGREEMENT

- Attachment 1 Transbay Final and Conclusive Determination
- Attachment 2 Development Program
- Attachment 3 Site Plan
- Attachment 4 Site Legal Description
- Attachment 5 Schedule of Performance
- Attachment 6 Scope of Development
- Attachment 7 Design Review and Document Approval Procedures
- Attachment 8 Form of Permit to Enter
- Attachment 9 Mitigation Measures
- Attachment 10 Agency Equal Opportunity Program
- Attachment 11 Form of Grant Deed
- Attachment 12 Form of Notice of Exclusive Right of Repurchase
- Attachment 13 Form of Notice of Termination
- Attachment 14 Form of Declaration of Site Restrictions
- Attachment 15 Proposed Mello Roos Special Tax District Rate and Method of Apportionment
- Attachment 16 Declaration of Restrictions
- Attachment 17 Pro Forma Title Policy

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the “**Agreement**” or “**DDA**”) is entered into as of _____, 2014, by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California (the “**Successor Agency**”) and BLOCK 9 TRANSBAY LLC, a Delaware limited liability company (the “**Developer**” together, the “**Parties**”). The Parties agree as follows:

RECITALS

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

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

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

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

E. Pursuant to Assembly Bill 812 (“**AB 812**”), and in compliance with Community Redevelopment Law as amended by Redevelopment Dissolution Law, 35 percent of all housing units developed in the Project Area must be affordable to low- or moderate-income households, as defined by AB 812 (the “**Affordable Housing Program**”). As required pursuant to the Implementation Agreement, most of these units will be produced with assistance from the Low- and Moderate-Income Housing Fund (“**LMIHF**”), but the Redevelopment Plan and the San Francisco Planning Code also require contributions from private developers in the form of on-site affordable housing.

F. In 2003, the TJPA, the City, and the State, acting by and through its Department of Transportation (“**Caltrans**”), entered into a Cooperative Agreement, which sets forth the process for the transfer of the State-owned parcels to the City and the TJPA (the “**Cooperative Agreement**”). Also in 2003, the California Legislature enacted Assembly Bill No. 812 (Statutes 2003, chapter 99), codified at Cal. Public Resources Code § 5027.1 (“**AB 812**”), which required that thirty-five percent (35%) of new housing developed in the Project Area shall be affordable to low- and moderate-income households. In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project

Implementation Agreement (the “**Implementation Agreement**”) which requires the Successor Agency, as successor in interest to the Former Agency, to prepare and sell the formerly State-owned parcels and to construct and fund new infrastructure improvements (such as parks and streetscapes) and to meet affordable housing obligations. Subsequently, in 2008, the TJPA, the City and the Former Agency entered into an Option Agreement for the Purchase and Sale of Real Property (the “**Option Agreement**”), which sets forth the process for the transfer of certain of these parcels to the Former Agency, and now to the Successor Agency, to facilitate the sale of the parcels to private developers.

G. On January 1, 2010, TJPA entered a TIFIA Loan Agreement with the United States Department of Transportation (“**TIFIA Loan**”), which pledges certain property tax increment revenue attributable to certain State-owned parcels as security for the payment of the TIFIA Loan.

H. On February 1, 2012, the Former Agency was dissolved pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) (“**AB 26**”), codified in relevant part in California’s Health and Safety Code Sections 34161 – 34168 and upheld by the California Supreme Court in California Redevelopment Assoc. v. Matosantos, No. S194861 (Dec. 29, 2011). On June 27, 2012, AB 26 was subsequently amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) (“**AB 1484**”). (Together, AB 26 and AB 1484 are primarily codified in sections 34170 et seq. of the California Health and Safety Code, which sections, as amended from time to time, are referred to as the “**Redevelopment Dissolution Law.**”)

I. Pursuant to the Redevelopment Dissolution Law, all of the Former Agency’s assets (other than housing assets) and obligations were transferred to the Successor Agency. Some of the Former Agency’s housing assets, related to projects that were either completed or had no continuing enforceable obligation, were transferred to the City, acting by and through the Mayor’s Office of Housing and Community Development (“**MOHCD**”), which is the City’s designated Successor Housing Agency under Health and Safety Code Section 34176. The Redevelopment Plan, Development Controls (defined below), and other relevant Project Area documents remain in effect and the Successor Agency retains all affordable housing obligations in the Project Area.

J. Under the Redevelopment Dissolution Law, with approval from a successor agency’s oversight board and the State of California’s Department of Finance (“**DOF**”), a successor agency may continue to implement “enforceable obligations”—existing contracts, bonds, leases, etc.—which were in place prior to the suspension of redevelopment agencies’ activities on June 28, 2011, the date that AB 26 was approved. Redevelopment Dissolution Law defines “enforceable obligations” to include bonds, loans, judgments or settlements, and any “legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy,” (Cal. Health & Safety Code Section 34171(d)(1)(E)) as well as certain other obligations, including but not limited to requirements of state law and agreements made in reliance on pre-existing enforceable obligations. The Implementation Agreement, Pledge Agreement Option Agreement and AB 812 meet the definition of “enforceable obligations” under the Redevelopment Dissolution Law.

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

the Implementation Agreement, AB812, and the Option Agreement.

L. On April 15, 2013, DOF issued a Final and Conclusive Determination for the Pledge Agreement, the Implementation Agreement, and the Affordable Housing Program funded by LMIHF for Transbay. A copy of DOF's Final and Conclusive Determination is attached as Attachment 1.

M. On September 12, 2012, the Successor Agency complied with its obligations under the Implementation Agreement by issuing a Request for Proposals (the "**RFP**") from development teams to design and develop a high-density, mixed-income residential project on Block 9 in the Project Area. Block 9, also identified as Lot 120, Assessor's Block 3736, is an about 31,564-square-foot parcel on Folsom Street west of First Street, two blocks south of the future Transbay Transit Center (the "**Site**"). The parcel that makes up Block 9 will be transferred from the State to the City pursuant to the Cooperative Agreement.

N. Three proposals were received and deemed to meet the minimum threshold requirements defined in the RFP. Based on evaluation of the written proposals, as well as interviews with each team, the proposal from Avant Housing, LLC and Essex Portfolio, L.P. with BRIDGE Housing Corporation (BRIDGE), Skidmore Owings & Merrill LLP ("**SOM**"), and Fougeron Architecture ("**Fougeron**") was scored the highest by a selection panel comprised of Successor Agency staff, City staff, and a representative from the Transbay Citizens Advisory Committee ("**CAC**"). This proposal included a purchase price of \$43,320,000 payable at the transfer of title of Block 9 to the Developer into the trust account established by the TJPA ("**Trust Account**"), which complies with Section III, Subsection G of the Cooperative Agreement and with the Director's Deed by which the State will deed the Site to the City.

O. On July 16, 2013, the Commission on Community Investment and Infrastructure (the "**Commission**") unanimously approved an Exclusive Negotiation Agreement ("**ENA**") between the Developer, BRIDGE and the Successor Agency.

P. The Parties currently anticipate that the development to be constructed pursuant to this Agreement will consist of the following components on Block 9: (1) a residential project with up to 545 total units comprised of up to 436 market-rate units and 109 units affordable to households earning up to 50% Area Median Income (the "**BMR Units**"), which is equivalent to 20% of 545 total units, as further defined in Section 4.02 and 5.02 of this Agreement ("**Project**"), it being understood that the top 21 floors of the building will be comprised solely of Market Rate Units (the "**Market Rate Project**") and the bottom 21 floors will be comprised of some Market Rate Units and all of the BMR Units, integrated throughout the bottom 21 floors in a unit mix that is representative of the total market rate units throughout the Project (the "**Affordable Project**") and that the Market Rate Project and the Affordable Project may be legally configured in a manner determined by the Developer, as approved by the Successor Agency, which approval shall not be unreasonably withheld or delayed, including but not limited to, one or more air rights subdivisions, so long as such configuration complies with the then current and applicable federal, state, and local laws, ordinances, rules, and regulations; (2) streetscape improvements, including the construction of certain improvements on Clementina Alley; (3) ground floor retail spaces on Folsom Street; (4) shared mid-block open space; and (5) off-street parking in an underground garage. The development program, as depicted in Attachment 2 Development Program, conforms to the goals and requirements of the Redevelopment Plan, the Development Controls and Design Guidelines (the "**Development Controls**"), and the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan (the "**Streetscape Plan**").

Q. It is contemplated by the Parties, that the Developer, with the assistance of BRIDGE, will work with Successor Agency staff to submit an application to the California Debt Limit Allocation Committee ("**CDLAC**") for tax exempt bond funding to be used solely for the Affordable Project, and

following receipt of an allocation by CDLAC of an allocation of an acceptable amount of tax exempt bonds, the Developer, with the assistance of BRIDGE, will work with the Successor Agency and MOHCD to obtain an inducement/reimbursement resolution, timely publication of TEFRA Notice, and the conduct of TEFRA Hearing approving the issuance of the bonds and thereafter to cause the City to issue the bonds, or such other entity authorized to issue bonds if the City does not issue the bonds and as approved by the City. This relationship between Developer and BRIDGE with respect to the development, construction, ownership and operation of the Affordable Project is described in a Memorandum of Understanding (“MOU”) between the Developer and BRIDGE as approved by the Successor Agency. Alternatively, the Developer may choose to develop the Project with a different financing structure that does not include a bond issuance; provided, however, that the Developer and BRIDGE will enter into a MOU related to BRIDGE’s role in the outreach, initial lease-up and certain aspects of management of the BMR Units and other functions as necessary and as delineated in the MOU. Regardless of the financing structure, the Project will be subject to an affordability restriction of at least 20% of all units affordable to households earning up to 50% of Area Median Income (“AMI”) as determined by the U.S. Department of Housing and Urban Development (“HUD”) for the San Francisco area, adjusted solely for household size, through the recording of a Declaration of Restriction, attached to this Agreement as Attachment 16, that will require the BMR Units to remain as affordable units at the initial level of affordability for the life of the Project.

R. Section 4.7.2 of the Transbay Redevelopment Plan requires that the Board of Supervisors of the City and County of San Francisco approve the disposition of Block 9 under the standards and procedures described in Section 33433 of the California Health and Safety Code.

S. The Parties wish to enter into this Agreement to complete the sale of the Site to the Developer to construct the Improvements, as defined below.

ARTICLE 1 - CONTRACT TERMS

1.01 Successor Agency

The Successor Agency, also known as Office of Community Investment and Infrastructure (“OCII”), is a public body exercising its functions and powers and organized and existing under the California Community Redevelopment Law, as amended by the Redevelopment Dissolution Law, and includes any successor public agency designated by or pursuant to law. Pursuant to the Implementation Agreement and the Option Agreement, the Successor Agency has the duty to prepare and sell the Site.

1.02 Developer

The Developer is Block 9 Transbay LLC, a Delaware limited liability company, of which Avant Housing LLC, a Delaware limited liability company, and Essex Portfolio, L.P., a California limited partnership, or their affiliates, are the members, subject to the provisions of Section 6.02 below.

1.03 Intentionally Deleted

1.04 Site

The Site is the real property located in the Transbay Redevelopment Project Area on Folsom Street west of First Street as shown on the Site Plan (Attachment 3) and described in the Site Legal Description (Attachment 4) and contains approximately 31,564 square feet including a vehicle and pedestrian access easement on the southwest corner of the parcel of approximately 400 square feet.

1.05 Purchase Price

The Developer shall deposit the purchase price for the Site, , in cash or immediately available funds, into the Trust Account, as defined in Section 2.03(f) below, which purchase price shall be FORTY THREE MILLION, THREE HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS (\$43,320,000) plus an additional purchase payment of THREE HUNDRED TEN THOUSAND AND 00/100 DOLLARS (\$310,000), for a total purchase price of FORTY THREE MILLION, SIX HUNDRED THIRTY THOUSAND AND 00/100 DOLLARS (\$43,630,000), (the “**Purchase Price**”). The Purchase Price shall be paid in one lump sum (less the Good Faith Deposit, defined in Section 1.06 below) at or prior to the close of Escrow (as defined in Section 2.02 below) simultaneously with transfer of title. If the Developer fails to pay the Purchase Price by February 10, 2015 the close of Escrow date specified in the Schedule of Performance, Attachment 5 (“**Close of Escrow Date**”), an additional TEN THOUSAND AND 00/100 DOLLARS (\$10,000) shall be added to the Purchase Price for each calendar day after February 10, 2015 until the date of the closing (“the **Additional Purchase Payment**”). If the Developer fails to pay the Purchase Price and the Additional Purchase Payment and escrow does not close on or before February 17, 2015 (as such February 17, 2015 date is extended pursuant to the terms of this Section 1.05), then the Successor Agency shall have the right, but not the obligation, to terminate this Agreement at its sole discretion, or to extend the Close of Escrow Date beyond February 17, 2015 to a date certain at its sole discretion and on the condition that the Additional Purchase Payment include \$10,000 per day for each day of any extension. The Developer shall not be required to pay the Additional Purchase Payment (and the February 10, 2015 and February 17, 2015 Closing Dates shall automatically be deemed extended) as a result of any delay or change to the close of Escrow date: (i) caused or requested by the Successor Agency (ii) caused by Force Majeure under Section 8.07(a)(i), or (iii) caused by a failure of any of the conditions precedent set forth in Section 2.07(a). “**Caused or requested by the Successor Agency**” for purposes of the previous sentence shall not include an extension granted by the Successor Agency beyond February 17, 2015 for the Developer’s failure to pay the Purchase Price and Additional Purchase Payment.

Subject to any representations and warranties expressly set forth in this Agreement, the Successor Agency is selling the Site on an “as-is” basis, with Developer to rely solely on the results of its investigations and any representations or warranties expressly set forth in this Agreement.

(a) Successor Agency Costs

Developer shall also pay for any Successor Agency costs associated with this Agreement either directly or through reimbursement of any related third party costs, including, but not limited to: title insurance, escrow fees, surveys, environmental review, parcel mapping, lot line adjustments, quiet title or McEnerney actions, permits, inspections, staffing and attorney costs and TJPA staff and attorney costs. The \$500,000 Deposit paid by Developer pursuant to the ENA shall first be credited by Successor Agency against such costs.

1.06 Good Faith Deposit

Within thirty (30) days after the Effective Date of this Agreement; provided that the Commission of the Successor Agency shall not have imposed conditions in connection with its approval of this Agreement that are not contained in this Agreement as executed by Developer and are not acceptable to Developer (in which event, Developer may terminate this Agreement by notice to Successor Agency, the Developer shall pay to the Successor Agency a non-refundable good faith deposit in the amount of TWO MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$2,500,000), which, if the Parties successfully close on the purchase-sale of the Site, shall be applied to the Purchase

Price (the “**Good Faith Deposit**”) and deposited into the Trust Account by the Successor Agency at the close of Escrow. Developer shall forfeit any right to reimbursement of the Good Faith Deposit or application of the Good Faith Deposit to the Purchase Price if Developer fails to perform its obligations under Section 2.07(b) for any reason and, as the result, the transaction does not close by February 17, 2015 (or by a new Close of Escrow Date if such date is extended pursuant to the provisions of Section 1.05 above) and Successor Agency terminates this Agreement; provided however that the Developer does not forfeit the Good Faith Deposit and it shall be returned to Developer promptly if Escrow does not close by the February 10, 2015 Close of Escrow Date or a new Close of Escrow Date under Section 1.05 due to Developer’s termination of this Agreement following a failure of any of Developer’s conditions precedent under Section 2.07(a) if any such condition is not satisfied within five (5) days following notice from Developer to Successor agency and the TJPA. None of the ENA Deposit shall be credited against the Good Faith Deposit.

1.07 Redevelopment Plan and Project Area Declaration of Restrictions

The Redevelopment Plan and the Project Area Declaration of Restrictions are the Redevelopment Plan and Project Area Declaration of Restrictions defined in the Recitals to this Agreement, as the same may be amended and extended from time to time. Development on the Site is subject to all the terms and conditions of the Redevelopment Plan and the Project Area Declaration of Restrictions.

1.08 Term of this Agreement/Schedule of Performance

(a) The term of this Agreement will begin on the Effective Date, as defined in Section 12.16, until the earlier of termination in accordance with its terms or Completion of Construction of Improvements has occurred (the “**Term**”). “**Completion of Construction of the Improvements**” shall be defined as Successor Agency receipt of a copy of the Final C of O for the Improvements (as defined in the Scope of Development, Attachment 6), provided by the City of San Francisco’s Department of Building Inspection (“**DBI**”), copies of which shall be provided to the Successor Agency’s Executive Director no later than ten (10) business days after the Developer has received the Final C of O from DBI. Upon Developer’s receipt of Final C of O, and Developer’s subsequent submittal of Final C of O to the Successor Agency, and Successor Agency’s issuance and recordation of a Notice of Termination, which the Successor Agency agrees to promptly complete after receiving the Final C of O and making its final reasonable determination of Developer’s compliance with all requirements of this Agreement, Developer will be deemed to be discharged of all obligations of this Agreement, except for those provisions contained in Sections 5.01, 5.02 and 5.04.

(b) Developer, as applicable will perform its obligations under this Agreement in accordance with the Schedule of Performance, Attachment 5, subject to Section 8.07 (Force Majeure) and Section 2.07. Developer shall pay the Purchase Price at or prior to the February 10, 2015 date (as extended pursuant to Section 1.05) close of Escrow date specified in the Schedule of Performance or be subject to the Additional Purchase Payment as defined in Section 1.05.

1.09 Definitions/Interpretation of Agreement

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

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

specifically referenced.

ARTICLE 2 - CONVEYANCE TERMS

2.01 Purchase and Development

Subject to all of the terms, covenants and conditions of this Agreement, and Community Redevelopment Law as amended by Redevelopment Dissolution Law, Successor Agency agrees to sell and convey the Site to Developer for the Purchase Price and the Additional Purchase Payment, if applicable, and for the purposes of developing, constructing, maintaining and operating the Improvements thereon, and Developer agrees to purchase the Site from Successor Agency and pay the Purchase Price to Successor Agency. In accordance with this Agreement, Developer shall develop, construct, maintain and operate the Improvements thereon.

2.02 Escrow

(a) Open, Close of Escrow. On or before the date specified therefore in the Schedule of Performance, Attachment 5, Developer shall establish an escrow with either First American Title Insurance Company or Chicago Title Company (“**Title Company**”) and shall notify Agency in writing of such escrow (the “**Escrow**”). At least fifteen (15) business days prior to the date specified for close of Escrow in the Schedule of Performance, Attachment 5, the Successor Agency and Developer shall provide escrow instructions to the Title Company as shall be necessary and consistent with this Agreement; at the same time, providing copies to each other. The Successor Agency and Developer agree to execute such additional or supplemental instructions as may be necessary to enable the Escrow Agent to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control. At least two (2) business days prior to such date specified for close of Escrow, the parties shall each deposit into Escrow all documents and instruments that such party is obligated to deposit into Escrow in accordance with this Agreement.

(b) Title, Escrow and Closing Costs. Developer shall pay to the Title Company or the appropriate payee thereof all title report costs; title insurance premiums and endorsement charges as requested by Developer; recording fees, transfer taxes, and any escrow fees in connection with the conveyance of the Site by Successor Agency to Developer. The Successor Agency will not incur any expenses in this Escrow transaction.

2.03 Title

(a) The escrow instructions shall provide that, upon the close of Escrow, the Title Company shall provide and deliver to Developer, an owner's title insurance policy (the “**Title Policy**”) (which at Developer's option may be an ALTA owner's policy) issued by the Title Company in an amount reasonably designated by Developer, at the sole cost and expense of Developer, insuring that fee simple title to the Site is vested in Developer. The Title Policy shall be in the form of the Pro Forma title policy attached to this Agreement as Attachment 17 including the endorsements set forth in such Pro Forma (the title exceptions set forth on Attachment 17 shall be referred to as the “**Approved Title Conditions**”).

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

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

(d) At the close of Escrow, Successor Agency shall convey to Developer fee simple title to the Site by the Grant Deed, in substantially the form attached hereto as Attachment 11, free and clear of any liens, encumbrances and other matters affecting title except for the Approved Title Conditions.

(e) Intentionally Omitted

(f) The TJPA has established a Trust Account that complies with Section III, Subsection G of the Cooperative Agreement and with the Director's Deed by which the State will deed the Site to the City ("**Trust Account**"). The TJPA shall cause Caltrans to agree that, following Caltrans' receipt of a copy of this Agreement, Caltrans will submit an executed and acknowledged Relinquishment of Power of Termination, in substantially the form attached to the Cooperative Agreement as Exhibit 'D' (the "**Caltrans Relinquishment**"), together with escrow instructions from Caltrans to the Escrow Agent that provide that the Escrow Agent is authorized to record the Caltrans Relinquishment in the Official Records of the City and County of San Francisco immediately following, and subject only to, the deposit into the Trust Account at the Closing of all funds due from the Closing. Without limiting any provision of this Agreement, Successor Agency shall cause TJPA to take all actions necessary to transfer the property interests described in this Article 2 in accordance with the terms of this Agreement.

2.04 Payment of Purchase Price

The Purchase Price shall be deposited into the Trust Account no later than the scheduled date for close of Escrow as set forth in the Schedule of Performance, Attachment 5, and shall be deposited by Developer into escrow in cash or immediately available funds no later than twenty-four (24) hours prior to the scheduled Close of Escrow Date. The Successor Agency shall deposit the Grant Deed into Escrow no later than twenty-four (24) hours prior to the scheduled Close of Escrow Date.

2.05 Taxes and Assessments

Ad valorem taxes and assessments levied, assessed or imposed from and after close of Escrow shall be the responsibility of Developer. Should Completion of Construction of the applicable Improvements, as defined in Section 1.08, not be completed by the dates specified in the Schedule of Performance for reasons other than Force Majeure under Section 8.07 Developer will be required to pay to the Successor Agency the amount equal to the estimated property tax increment that would otherwise be due, as described in Section 4.11. This payment, referred to as the Delay of Construction Tax Increment Fee, shall be deposited directly into an account specified by the TJPA.

Consistent with the TIFIA Loan: (a) Developer shall not object to any conclusion that the assessed value of the Site shall be the greater of: (i) the existing assessed value of the Site as determined by the County Assessor, or (ii) the sum of: (x) the purchase price for the Site, plus (y) the cost of the building(s) constructed pursuant to the DDA; (b) subject to the rights of any Mortgagee (defined in Section 7.01) under any Mortgage (defined in Section 7.01), Developer shall agree to apply fire and

casualty property insurance proceeds to the restoration of the Improvements if, in the reasonable judgment of the Successor Agency, the funds available to Developer in the event of all or partial destruction of the Improvements are sufficient to restore the Improvements to their prior use and condition; and (c) Successor Agency shall record a deed restriction for the term of the TIFIA Loan that the Site, will not be used, in whole or in part, by any entity or for a purpose that will result in an exemption from the payment of real estate taxes being granted in any amount, without the prior written consent of the lender under the TIFIA Loan, with the exception of the following: 1) property that is used for infrastructure and other public facilities, and 2) property that is used for the production of affordable housing, as contemplated by the Redevelopment Plan. Notwithstanding anything to the contrary, the City and the Successor Agency acknowledge and agree that the BMR Units may be eligible for, and Developer may apply for, pursuant to California Revenue and Taxation Code Section 214(g) and the then applicable Rules of the California State Board of Equalization, the welfare exemption as to the BMR Units.

2.06 Access and Entry by Developer to the Site/Permit to Enter

(a) Before the date of this Agreement, Successor Agency represents and warrants to Developer that Successor Agency has furnished to Developer copies of existing surveys, environmental reports, inspection reports, and any other writings or data pertaining to the physical condition of the Site which are in Agency's possession or control, and shall assist the Developer in getting any such reports or data from the TJPA.

(b) Prior to conveyance of the fee title interest in the Site, Developer and its representatives shall have the right of access to and entry upon the Site, from time to time and at all reasonable times, for the purpose of obtaining data and making surveys and tests, including site tests and soil borings, necessary to carry out the purposes of this Agreement; provided, however, that prior to being granted access to the Site, Developer shall enter an access agreement with the entity holding title to the Site at the time access is requested, providing such terms as are reasonably required by that entity, including appropriate indemnities and insurance to the entity holding title to the Site, the entity occupying the Site, the Successor Agency, and the TJPA. Such access agreement may be, but is not required to be, in the form of Attachment 8. The access agreement shall be for a period of time which reasonably will permit Developer to complete the activities for which access and entry is authorized.

2.07 Conditions Precedent to Conveyance and Developer Obligations

(a) Conditions to Developer's Obligations to Pay Purchase Price. The following are conditions to Developer's obligations with respect to the conveyance of the payment of the Purchase Price and Additional Purchase Payment to the TJPA, to the extent not expressly waived in writing by Developer::

(i) The Successor Agency shall not be in default of and shall have performed all of its obligations required to be performed by Successor Agency prior to the Close of Escrow Date, as set forth in Sections 2.02(a), 2.03(c), (d) and (f), and 2.04;

(ii) The TJPA shall not be in default of and shall have performed its obligations under Section 2.03(f);

(iii) The Title Company is prepared to issue the Title Policy to Developer in substantially the form attached to this Agreement as Attachment 17 and in a form acceptable to Developer and in accordance with Section 2.03(a) and (c);

(iv) This Agreement shall not have been previously terminated pursuant to

any other provision hereof;

(v) Successor Agency shall have instructed the Title Company to consummate the Escrow as provided in Section 2.02 and shall have delivered to Developer and the Title Company all instructions and documents (including without limitation the Grant Deed) to be delivered by Successor Agency at Close of Escrow pursuant to the terms and provisions of this Agreement and reasonably required by the Title Company to allow the Title Company to issue the Title Policy to Developer;

(vi) As of the Close of Escrow Date, there shall be no litigation filed or threatened (excluding any litigation initiated by Developer or by an entity under Developer's control or the control of TMG Partners, Essex Portfolio, L.P., or Essex Property Trust Inc., and excluding litigation that challenges the validity or enforcement of Transbay Transit Center Community Facilities District 2014-1) that affects title to the Site, arises out of or relates to the physical condition of the Site, affect or may affect Developer's ability to finance the purchase of the Site, affects or may affect Developer's ability to finance, build, or market the Improvements, challenges the actions of Successor Agency or TJPA relating to the Site or this Agreement, or challenges or otherwise relates to the Developer's right to occupy the Site;

(vii) The Commission of the Successor Agency shall not have imposed conditions in connection with its approval of this Agreement that are not contained in this Agreement as executed by Developer and are not acceptable to Developer; and

(vii) The Board of Supervisors has granted Section 33433 approval for this Agreement.

(b) Conditions to Successor Agency's Obligations to Convey Site. The following are conditions to the Successor Agency's obligations with respect to the conveyance of the Site to the extent not expressly waived by Successor Agency:

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

(ii) Successor Agency shall have received and reasonably approved evidence of the availability of equity capital and/or mortgage financing of the Improvements and construction contract under Section 2.08 (the Successor Agency hereby confirms that evidence of equity capital has been received as of the date of this Agreement);

(iii) Developer shall have instructed the Title Company to consummate the Escrow as provided in Section 2.02;

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

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

(vi) Developer shall have delivered to Successor Agency and the Title Company all instructions and documents to be delivered by Developer at close of Escrow under Sections 2.02 and 2.03; and

(vii) Developer shall have paid to the Successor Agency the Good Faith Deposit when due under Section 1.06.

2.08 Submission of Evidence of Financing and Project Commitments

(a) No later than the time specified in the Schedule of Performance for submission of evidence of financing subject to the provisions of Section 4.02 (and subject to extensions for Force Majeure and other matters as set forth in this Agreement), which time shall not be less than 45 days before the Close of Escrow Developer shall submit to Successor Agency for review and approval a statement in a form reasonably satisfactory to the Successor Agency sufficient to demonstrate that Developer has adequate funds or will have adequate funds and is committing such funds to the anticipated Construction Costs of the Improvements (the Successor Agency hereby confirms that Developer has satisfied this condition as of the date of this Agreement).

(b) No later than the time specified in the Schedule of Performance for submission of a construction contract, with a general contractor reasonably satisfactory to the Successor Agency, for the construction of the Improvements, Developer shall submit evidence of a construction contract, which time shall not be more than 8 months after the Commencement of Construction as provided for in the Schedule of Performance.

(c) Successor Agency will notify Developer in writing of its approval or disapproval (and a detailed description of the grounds for any disapproval) of any of the foregoing documents within five (5) days after submission of such documents to Successor Agency, including written reasons for a disapproval. Successor Agency shall not unreasonably withhold such approval. In the event the Parties are unable to resolve any differences with respect to the adequacy of any of the documentation or evidence of financing require by this Section 2.08, the Parties shall resolve the dispute as follows:

Any disputes concerning the interpretation of the requirements under this section 2.08(c), and specifically whether the documentation provided by the Developer satisfies the requirements of Section 2.08, shall be decided by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question arose but in no event after the time the claim, dispute or other matter in question would be barred by the applicable statute of limitations. The arbitrator appointed to conduct the arbitration (the “**Arbitrator**”) shall schedule a hearing date no later than five (5) days after the demand is filed and issue a decision within five (5) days after the date of the hearing. The arbitration process shall be completed no later than January 20, 2015. If the dispute whether the documentation provided by the Developer under this Section 2.08 is arbitrated, the decision of the arbitrator shall be issued no later than January 20, 2015. The parties shall not have the right to engage in pre-arbitration discovery. All documents that the Parties shall rely on during the arbitration hearing shall be provided as required by the Arbitrator. Each party shall be responsible for 50% of the Arbitrator fees and administrative costs of the American Arbitration Association. The arbitrator shall issue a written decision, which shall be based on California law and shall include findings of fact and conclusions of law. The arbitrator shall not have the power to commit errors of law or legal reasoning, and the arbitrator's decision may be vacated or corrected pursuant to California Code of Civil Procedure Section 1286.2 or 1286.6 for any such error. The award rendered by the Arbitrator shall be final and not subject to appeal, except the parties shall have the right of appeal if permitted by California Code of Civil Procedure Sections 1285 through 1287.6, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction

thereof. Neither party may seek equitable relief in court pending resolution of the arbitration. Notwithstanding the above, the Successor Agency may waive completion of the arbitration process to ensure that the conveyance of the Site can occur no later than February 10, 2015, as such date may be extended pursuant to Section 1.05

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS DESCRIBED IN THIS SECTION 2.08(b) DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN SECTION 2.08(b). IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS SECTION 2.08(b) TO NEUTRAL ARBITRATION.

INITIALS: Successor Agency _____ Developer _____

2.09 Conveyance of Title to the Site and Delivery of Possession

Subject to the provisions of Sections 2.06 and 2.07, and provided that the conditions to Successor Agency's obligations and the conditions to Developer's obligations with respect to conveyance of the Site have been satisfied or expressly waived, and Developer has paid to Successor Agency all sums due hereunder at the times when due, then Successor Agency shall convey to Developer, and Developer shall accept the conveyance of, the fee simple interest in the Site, in the Approved Title Condition, on the date specified for Close of Escrow Date in Section 1.05.

ARTICLE 3 - SITE CONDITION; HAZARDOUS MATERIALS INDEMNIFICATION

3.01 Prior to Conveyance/Site "As Is"

(a) Successor Agency shall convey the Site in its present, "AS IS" condition, free of any liens, encumbrances, or other matters affecting title except for the Approved Title Conditions, and free and clear of all personal property, tenants, users or occupants, and shall not prepare the Site for any purpose whatsoever prior to conveyance to Developer. So long as there is no material adverse change in the condition of the Site after the Effective Date, Developer agrees to accept the Site in "AS IS" condition at the close of Escrow in the Approved Title Condition.

(b) Developer acknowledges that Successor Agency, City, TJPA, and any employee, representative or agent of Successor Agency, City or TJPA, have not made any representation or warranty, express or implied, with respect to the Site, and it is agreed that Successor Agency makes no

representations, warranties or covenants, express or implied, as to its physical condition; as to the condition of any improvements; as to the suitability or fitness of the land; as to any Environmental Law, or otherwise affecting the use, value, occupancy or enjoyment of the Site; or as to any other matter whatsoever; it being expressly understood that the Site is being sold in an "AS IS" condition. The provisions of this Section 3.01, as with the other provisions of this Agreement, shall survive the close of Escrow and shall not merge into the Grant Deed delivered to Developer at close of Escrow.

(c) Developer will be given the opportunity to investigate the Site fully, using experts of its own choosing as described in Section 2.06(b).

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

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

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

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE

TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, DEVELOPER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: DEVELOPER: _____

3.02 Hazardous Materials Indemnification

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

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

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

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

3.03 Risk of Loss

After close of Escrow, all risk of loss with respect to any improvements on the Site shall be borne by Developer; provided that Successor Agency shall assign to Developer at closing any unexpended

insurance proceeds and any uncollected claims and rights under insurance policies covering such loss, if any.

ARTICLE 4 - CONSTRUCTION OF IMPROVEMENTS

4.01 The Improvements

The improvements on the Site, as further described in the Scope of Development in Attachment 6 shall include the Market-Rate Project and the Affordable Project as more particularly described in Recital P and section 9.03; (b) streetscape improvements; (c) ground-floor retail spaces on Folsom Street; (d) shared mid-block open space; and (e) off-street parking in a shared underground garage (collectively, the “**Improvements**” or the “**Project**”).

4.02 Developer's Construction Obligations

(a) Developer shall construct, or cause to be constructed, the Improvements on the Site within the times and in the manner set forth herein and in the Schedule of Performance (Attachment 5), the Scope of Development (Attachment 6), and the Design Review and Document Approval Procedures (Attachment 7)

(b) Developer shall carry out the development process for Block 9, as described in this paragraph, including but not limited to: forming and hiring the design and construction teams in compliance with applicable laws, rules, regulations and Successor Agency policies; providing the design team with the Development Program, information and timely decisions to facilitate creation of a design responsive to the Project requirements; causing the securing of all necessary public approvals and permits; providing clarification to the general contractor and prime contractors regarding construction scope to facilitate construction in conformance with the Project Approval Documents as defined in Attachment 7; approving and processing necessary or owner-initiated changes to the work; administering the draw process to pay consultants and contractors in a timely and well-documented manner; coordinating with pertinent public agencies throughout design and construction to secure required approvals, including Certificates of Occupancy; monitoring the progress of the Project; and monitoring and facilitating the leasing and property management activities to open the building in a manner that optimizes occupancy and ongoing success within the financial goals of the Project, and consistent with the then current federal, state, and local laws, ordinances, rules and regulations applicable to the Project, including but not limited to any affordability requirements and restrictions. Notwithstanding the foregoing, BRIDGE will manage the initial outreach, marketing, and leasing of the Affordable Project as further defined in the MOU.

(c) The provision of BMR Units on Block 9 shall meet and exceed the Inclusionary Housing Requirement in the Redevelopment Plan by providing 109 BMR Units which is the equivalent of 20% of 545 total units, and the Project will be subject to a Declaration of Restrictions (in a form as attached to this Agreement as Attachment 16) recorded on the Site at Closing that will provide that the BMR Units shall be maintained as affordable to households earning up to 50% Area Median Income (the “**Affordability Requirement**”), for the life of the project.

(d) Developer shall construct, or cause to be constructed, the Improvements in accordance with Section 4.02(a) and (b) above and with applicable provisions of the San Francisco Building Code and Administrative Bulletin AB-093, excepting that the Improvements shall be constructed to a Leadership in Energy and Environmental Design Silver standard or Green Point rated standard of 125 as committed in the proposal submitted by the Developer in response to the RFP.

4.03 Compliance with Project Approval Documents and Law

Subject to the provisions of this Section 4.03, Developer shall construct the Improvements in compliance with the Project Approval Documents approved by the Successor Agency (as defined in the Design Review and Document Approval Procedures (the “**DRDAP**”)(Attachment 7), or such similar documents as reasonably required by the City, as applicable, and in compliance with all applicable local, state and federal laws and regulations, including all laws relating to accessibility for persons with disabilities.

4.04 Compliance with Redevelopment Requirements/City Requirements

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

4.05 Preparation of Project Approval Documents/Approval of Architect

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

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

(ii) A California licensed structural and civil engineer shall review and certify all final foundation and grading design.

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

4.06 Submission of Project Approval Documents

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

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

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

exterior and public area signs and public art work, if any.

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

(c) Successor Agency's review and approval or disapproval of Project Approval Documents as heretofore provided in this Section shall be final and conclusive. Successor Agency shall act reasonably and in good faith in its review and approval process. Developer may, from time to time make changes to the Final Construction Documents and shall give copies of the documents evidencing such changes to Successor Agency; provided that Successor Agency shall only have the right to disapprove or require changes subsequently for Changes described in clauses (i) through (iii) below; and further provided that Developer will provide to the Successor Agency for approval, no less than 14 days from the date the change will be implemented and incorporated into the design for such changes that would (i) be a Change in the Improvements as defined in Section 4.17, (ii) violate applicable law or governmental regulations, or (iii) reduce the number of BMR Units below one hundred nine (109), change the integration of, or quality of finishes or equipment in, the BMR Units, materially modify the configuration of the ground floor lobby, materially change the configuration of and quality of finishes and landscape materials in exterior public or shared private open spaces, or change any of items included in the conditions of approval associated with the Schematic Design approval.

4.08 Construction Schedule

(a) Developer, shall commence, prosecute and complete the construction and development of the Improvements within the times specified in the Schedule of Performance (as such dates may be extended pursuant to the terms of this Agreement) or within such extension of such times as may be granted by Successor Agency for Developer performance as provided by this Agreement. The "**Commencement Date**" for construction of Improvements means the date specified in the applicable written notification from Developer to the Successor Agency of the date of commencement of construction of the applicable Improvements, which date shall be based upon either (i) the date of commencement of construction identified in the Developer's contract/agreement with its general contractor, or (ii) the date identified in a notice to proceed issued by Developer and/or its architect to the general contractor.

4.09 Cost of Developer Construction

The cost of developing the Site and construction of all Improvements thereon shall be borne solely by Developer, except as otherwise provided in this Agreement.

4.10 Issuance of Building Permits

(a) Developer shall have the sole responsibility for obtaining all necessary building permits and shall make application for such permits directly to the Central Permit Bureau of the City. When applicable, the Successor Agency shall reasonably and expeditiously cooperate with Developer in its efforts to obtain such permits, at no cost or expense to Successor Agency. Prior to commencing construction of any portion of the Improvements, Developer shall have obtained the requisite building permits. Successor Agency acknowledges that Developer intends to obtain shoring/excavation permit(s) or addenda pursuant to the City's site permit process, well in advance of the issuance of site permit

addenda for the vertical construction of the Project and in connection with same Successor Agency shall reasonably cooperate with Developer with regard to obtaining such excavation/shoring permit(s) or addenda and shall permit such shoring/excavation work to commence upon issuance of requisite permit(s) or the addendum for such work. From and after the date of its submission of any such application, Developer shall diligently prosecute such application.

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

4.11 Times for Construction

Developer agrees for itself, and its successors and assigns to title of the Site or any part thereof, promptly to begin and diligently prosecute to completion the redevelopment of the Site through the construction of the Improvements thereon in accordance with the provisions of this Agreement, and that such construction shall in any event commence and thereafter be diligently pursued and shall be completed no later than the dates specified in the Schedule of Performance, unless such dates are extended or otherwise as provided herein including in accordance with the provisions of Section 8.01(c) of this Agreement.

Should Completion of Construction of the Improvements, not occur by the date specified in the Schedule of Performance for reasons other than allowable delays per Section 8.07, Developer will be required to pay directly to the TJPA the amount equal to the estimated property tax increment that would otherwise be due to the San Francisco Office of the Assessor-Recorder ("Assessor-Recorder"). Specifically, any taxes that would have been due to the Assessor-Recorder if the Project had commenced or been completed by the dates specified in the Schedule of Performance shall be paid to the Successor Agency until issuance of the Final C of O. This Delay of Construction Tax Increment Fee shall be deposited directly into an account specified by the TJPA. The Developer shall not receive a credit of any kind with the Assessor-Recorder for any payments to the Successor Agency made for property made pursuant to this Section 4.11.

4.12 Construction Signs and Barriers

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

4.13 Notice of Termination – Issuance

(a) After Completion of Construction of the Improvements, and after Developer has received a copy of the Final C of O issued by DBI for the Improvements, and upon Developer's request,

and after making its final, reasonable, determination of Developer's compliance with the requirements of this Agreement that must be complied with to the date of the issuance of the final C of O, and provided that at such time there is not an uncured Event of Default of the Developer of any obligations that remain in effect after the termination of this Agreement, Successor Agency shall promptly issue to Developer, in recordable form, a duly executed Notice of Termination in the form of Attachment 13 ("**Notice of Termination**") which results in the termination of this Agreement ("Agreement Termination"). The Notice of Termination shall be a conclusive determination of Completion of Construction of the applicable Improvements in accordance with this Agreement and the full performance of the agreements and covenants contained in this Agreement and in the Grant Deed with respect to the obligation of the Developer, and its successors and assigns, to construct the applicable Improvements. Upon Developer's receipt of Final C of O, and Developer's subsequent submittal of Final C of O to the Successor Agency, and Successor Agency's issuance and recordation of a Notice of Termination, which the Agency agrees to promptly complete after receiving the Final C of O and making its final determination of Developer's compliance with all requirements of this Agreement,

(b) Agency's issuance and recordation of any Notice of Termination does not relieve Developer or any other person or entity from compliance with applicable law and governmental regulations including those relating conditions to occupancy of such Improvements.

4.14 Right to Reconstruct the Improvements in the Event of Casualty

In the event that the Improvements are destroyed by casualty prior to the issuance of the Notice of Termination, Developer shall have the right to rebuild the Improvements substantially in conformity with the approved Project Approval Documents, subject to changes necessary to comply with the applicable building code, and in the event Redevelopment Requirements are no longer in effect, the Planning Code, and other local requirements then in effect for the Site shall apply to any reconstruction of the Improvements. All dates set forth in the Schedule of Performance shall be equitably adjusted to reflect such casualty.

4.15 Provisions Surviving Completion of Construction

At the time the Successor Agency records a Notice of Termination of this Agreement, Developer will be deemed to be discharged of all obligations of this Agreement, except for those provisions contained in Sections 5.01, 5.02 and 5.04.

4.16 Access to Site – Successor Agency

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

4.17 No Changes Without Approval

After the Notice of Termination is issued and for the period during which the Redevelopment Plan and Declaration of Restrictions are in effect, neither Developer nor any successor or assign may make or permit any change in the uses permitted under Section 5.02 of this Agreement or any Change in the Improvements (as defined below), unless the express prior written consent for the change in uses or any Change in the Improvements has been requested and obtained from the Successor Agency; and if obtained, upon any terms and conditions the Successor Agency reasonably requires. The Successor Agency's approval may be granted or withheld in its reasonable discretion. "**Change in the Improvements**" is defined to mean only any alteration, modification, addition and/or substitution of or to the Site or the Improvements that affects: (a) the density of development; (b) the extent and nature of the open space on the Site from that certified by the Agency as complete in accordance with this Agreement; (c) the exterior design (to the extent material, but excluding modifications to the exterior design to accommodate any retail use of the ground floor); (d) the exterior materials (to the extent material, but excluding modifications to the exterior materials to accommodate any retail use of the ground floor); and/or (e) the exterior color (to the extent material but excluding modifications to the exterior materials to accommodate any retail use of the ground floor). For the purposes of this Section, "exterior" also includes the roof of the Improvements. The Successor Agency's approval will not be unreasonably withheld or delayed.

4.18 Off-Site Infrastructure and Improvements Damage

In addition to the indemnification provisions contained in Section 12.01 of this Agreement, Developer further agrees to repair fully and/or replace to the satisfaction of the Successor Agency, any damage to the off-site infrastructure and improvements within the Project Area, including streets, sidewalks, curbs, gutters, drainage ditches, fences and utility lines lying within or adjacent to the Site resulting from work performed by or for such Party in the development of the Site as set forth herein. Developer, or its general contractors, before commencement of such off-site work, shall secure this obligation with a \$250,000 bond or insurance in form reasonably acceptable to the Successor Agency, or other security acceptable to the Successor Agency, such as a personal guaranty. Successor Agency acknowledges that the insurance required by Section 4.19 below satisfies the security obligations in the preceding sentence and that Developer need not separately procure any additional or different insurance or bonds to comply with the preceding sentence. Developer expressly acknowledges and agrees that its liability under this provision is not limited to the amount of the bond or insurance.

4.19 Insurance Requirements

Developer shall obtain and maintain, or shall contractually require others to maintain, the insurance and/or bonds as set forth below throughout the period of time between the Close of Escrow Date and the Successor Agency's issuance of a Notice of Termination ("**Compliance Term**"), at no expense to Successor Agency. Upon Successor Agency's issuance of a Notice of Termination, all obligations under this Section 4.19 shall cease. If the Developer maintains broader coverages and/or higher limits than the minimums shown in this Section 4.19, the Successor Agency requires and shall be entitled to the additional coverage and/or the higher limits so maintained in the insured or beneficiary capacities set forth in this Article 4.19. Exceptions and/or deviations from the requirements of this Section 4.19 and Attachment 8 shall be permitted with the written approval of the person serving as Successor Agency's risk manager, which approval shall not unreasonably be withheld or delayed.

A. Developer's Insurance. Subject to the foregoing termination provision, Developer shall maintain the following insurance coverage and/or bonds during the time periods set forth below:

(a) Workers Compensation: To the extent Developer has "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident. Such coverage shall be written on such forms as required by the laws of the State of California.

(b) Commercial General Liability: Developer shall maintain commercial general liability insurance, with limits set forth below for bodily injury and broad form property damage coverage products and completed operations, and including insured contract coverage, as follows:

(i) Before the start of demolition/construction if the Site is unoccupied, limits of not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million (\$4,000,000) policy aggregate limit;

(ii) During demolition/construction of the Project and until at least substantial completion of the Project, on-site coverage with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate per policy period. Such coverage may be provided by a wrap/OCIP insurance program that also insures other construction participants (e.g. contractor and subcontractors), but in such event the shared limits under such wrap insurance program shall be at least Twenty-Five Million Dollars (\$25,000,000) per occurrence and Fifty-Million Dollars (\$50,000,000) in the aggregate, per policy period. At least Two Million Dollars (\$2,000,000) of such coverage per occurrence and in the aggregate shall extend coverage at least one thousand (1,000) feet around the Project Site.

(iii) From and after completion of construction, limits of not less than Twenty-Five Million Dollars (\$25,000,000) per occurrence and Fifty-Million Dollars (\$50,000,000) in the aggregate, per policy period.

(iv) All such commercial general liability insurance shall be written on an ISO form GC 00 01 policy form or commercially reasonable occurrence-based equivalent.

(c) Business Auto: Business automobile liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable. Such coverage shall be written on an ISO CA 00 01(any auto) policy form or commercially reasonable equivalent.

(d) Crime Policy or Fidelity Bond: Crime policy or fidelity bond covering Developer's officers and employees against dishonesty with respect to the Funds, in the amount of Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five Thousand Dollars (\$5,000) each loss, including Successor Agency as additional obligee or loss payee or other comparable beneficiary.

(e) Pollution Legal Liability: If available at commercially reasonable premiums, pollution legal liability applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate, and including Non-Owned Disposal Site coverage, maintained for a term of no less than five (5) years from the policy's date of inception, which shall be no later than the Close of Escrow Date. This policy may be provided by the Developer's contractor.

(f) Property Insurance. Developer shall maintain insurance as follows:

(i) Builders Risk: During the course of construction and at least until a temporary certificate of occupancy is issued, builders' risk insurance, written on an "all risk" policy form, excluding

earthquake and flood at Developer's discretion, for one hundred percent (100%) of the replacement value of all completed improvements at the Site, including coverage in transit and storage off-site (which may be subject to commercially reasonable sublimits), with a deductible not to exceed Fifty Thousand Dollars (\$50,000) each loss

(ii) Property Insurance: From and after termination of the builders risk insurance, Developer shall maintain, or cause to be maintained:

(a) Commercial property insurance excluding earthquake and flood at Developer's discretion, but including vandalism and malicious mischief, for one hundred percent (100%) of the replacement value of all fixtures and improvements of every kind located on the Site, including coverage for loss of rental income due to an insured peril for at least twelve (12) months. Except as may be otherwise approved by the person serving as Successor Agency's risk manager, which approval shall not unreasonably be withheld or delayed, the deductible or self-insured retention on such property insurance policy shall not exceed Five Million Dollars (\$5,000,000) per occurrence; and

(b) Boiler and Machinery insurance, comprehensive form, in the amount of replacement value of all insurable machinery. Except as may be otherwise approved by the person serving as Successor Agency's risk manager, which approval shall not unreasonably be withheld or delayed, the deductible or self-insured retention on such insurance policy shall not exceed Five Million Dollars (\$5,000,000) per occurrence. Such insurance may be issued as part of or as a component of the commercial property insurance required above.

B. Other's Insurance. Subject to the foregoing termination provision, Developer shall contractually require others to maintain the insurance and bonds set forth below:

(a) Developer shall contractually require its contractor and all subcontractors providing direct labor on the Project to have or be insured under the following coverages at all times during their respective work on the Project:

(i) Workers Compensation: To the extent the contractor or such subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident. Such coverage shall be written on such forms as required by the laws of the State of California;

(ii) Commercial General Liability: Commercial general liability insurance, with limits set forth below for bodily injury and broad form property damage coverage, products and completed operations, and including insured contract coverage, as follows:

(a) During demolition/construction of the Project and until at least substantial completion of the Project, commercial general liability insurance under a project-based wrap/OCIP insurance program insuring multiple construction participants (e.g. Developer, contractor and subcontractors), with shared limits of at least Twenty-Five Million Dollars (\$25,000,000) per occurrence and Fifty-Million Dollars (\$50,000,000) in the aggregate, per policy period. At least Two Million Dollars (\$2,000,000) of such coverage per occurrence and in the aggregate shall extend coverage at least one thousand (1,000) feet around the Project Site.

(b) Such commercial general liability insurance shall be written on an ISO form GC 00 01 policy form or commercially reasonable occurrence-based equivalent.

(iii) Business Auto: Business automobile liability insurance, with limits not less than One

Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable. Such coverage shall be written on an ISO CA 00 01(any auto) policy form or commercially reasonable equivalent.

(b) Professional Liability: Developer shall contractually require professional liability insurance with respect to negligent acts, errors or omissions in connection with professional services in connection with the Project as follows:

(i) The lead architect on the Project shall be contractually required to maintain professional liability insurance with limits of not less than Four Million Dollars (\$4,000,000) per claim and Four Million Dollars (\$4,000,000) in the aggregate.

(ii) All other design professionals for major Project components that Developer contracts with directly after the date hereof shall be contractually required to maintain professional liability insurance with limits of at least One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate.

(iii) Developer shall contractually require the foregoing professionals to maintain their respective professional liability insurance continuously throughout the performance of its work on the Project and for a period of no less than two years from substantial completion or recordation of a notice of completion of the Project.

(c) Bonds. The general contractor for the Project shall provide performance and payment bonds, each in the amount of one hundred percent (100%) of the contract amount, naming Developer as obligee, or other completion security approved by Successor Agency in its reasonable discretion; provided that no such bonds shall be required if such contractor qualifies for the issuance of such bonds, as such qualification is evidenced by written confirmation from a surety, or its agent, with financial capacity reasonably acceptable to Successor Agency.

3. General Insurance Requirements.

(a) Additional Insured Requirements: During the respective time periods set forth above, and subject to the foregoing termination provision, Developer shall include as additional insureds under Developer's own required commercial general liability and auto liability policies, and shall contractually require its contractor and subcontractors providing direct labor on the Project, to add as additional insureds under their respective commercial general liability and auto policies, Successor Agency and its commissions, officers, agents and employees. With respect to commercial general liability insurance, Successor Agency and its commissions, officers, agents and employees shall be made additional insureds with respect to the named insureds' ongoing operations. To the extent Developer contractually requires its contractor or subcontractors providing direct labor on the Project to make Developer an additional insured under other commercial general liability policies of insurance not required by this Section 4.19, then, except in cases where Developer concludes in its sole discretion that the contractor or subcontractor cannot comply on commercially reasonable terms Developer shall likewise require that Successor Agency and its commissions, officers, agents and employees also be made additional insureds under such policies with respect to the named insureds' ongoing operations. All Developer's commercial general liability policies must provide that the insurance afforded such additional insureds is primary to any other insurance available to the additional insured. Additional insured status may be effectuated or required by broad form additional insured provisions (i.e. additional insured when required by written contract), by endorsement, or otherwise. With respect to commercial general liability insurance, it is agreed that ISO form CG 20 12 05 09, or equivalent, satisfies the requirements of this paragraph.

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

(c) Developer shall notify Successor Agency in writing within twenty-one (21) calendar days of Developer's receipt of any notice of cancellation of any insurance or bonds: (i) Developer is required to maintain hereunder, and/or (ii) that Developer contractually requires others to maintain pursuant to this Section 4.19.

(d) With respect to any property insurance, Developer hereby waives all rights of subrogation against Successor Agency to the extent of any loss covered by Developer's property insurance, except to the extent subrogation would affect the scope or validity of insurance.

(e) Approval of Developer's insurance by Successor Agency will not relieve or decrease the obligations of Developer under this Agreement.

(f) Successor Agency shall not be liable for or have any obligation to pay for all or any part of the premiums associated with the insurance policies and/or bonds required herein.

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

(h) Developer shall provide Successor Agency with certificates of insurance for each of the required insurance policies procured by Developer, and shall provide copies of endorsements for such policies and/or make such policies available for inspection and copying promptly upon written request of Successor Agency or its authorized designee.

ARTICLE 5 - COVENANTS AND RESTRICTIONS

5.01 Covenants

Developer expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that as to any Improvements constructed or to be constructed thereon, or any part thereof, or alterations or changes thereto, and in addition to any other term, covenant and condition of this Agreement, Developer and all such successors and assigns and all persons claiming under or through it, shall use, devote, operate and maintain the Improvements thereon, and every part thereof, only and in strict accordance with the provisions of this Article 5. The provisions hereof are contained in the Grant Deed, Attachment 11, and Declaration of Site Restrictions, Attachment 14. To the extent that Developer is a corporation, limited liability company, partnership or other entity, the provisions of this Article 5 shall apply only to such entity and not to the shareholders, officers, directors, members or partners of any such entity.

5.02 General Restrictions

The Site and the Improvements thereon shall be devoted only to the uses permitted by (i)

the Redevelopment Plan, (ii) the Project Area Declaration of Restrictions, and (iii) Affordability Requirements to be documented in the Declaration of Restrictions which will require 109 units which is the equivalent of 20% of 545 units, to be affordable, for the life of the project, to households earning no more than fifty percent of Area Median Income, adjusted solely for household size as determined annually by MOHCD, (iv) the tax credit regulatory agreement, and (v) the tax exempt bond regulatory agreement. The total amount for rent and utilities (with the maximum allowance for utilities determined by the San Francisco Housing Authority) charged to a Qualified Tenant in the Affordable Project may not exceed: thirty percent (30%) of the applicable Median Income set forth above, adjusted solely for household size; or the fair market rent established by the San Francisco Housing Authority for Qualified Tenants holding Section 8 vouchers or certificates; provided, however, to the extent that any existing tax credit regulatory agreement, bond regulatory agreement, or any other similar restrictive covenant applicable to the Affordable Project requires lower rents, or lower incomes, or both, the Affordable Project shall comply with such more restrictive requirements, including the requirement that the units remain affordable at the income levels described in this section for the life of the project.

5.03 Restrictions Before Completion

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

5.04 Nondiscrimination

(a) There shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Developer or any occupant or user of the Site in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, and Developer itself (or any person or entity claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Site or any part thereof, nor shall Developer or any occupant or user of the Site or any transferee, successor, assign or holder of any interest in the Site or any person or entity claiming under or through such transferee, successor, assign or holder, establish or permit any such practice or practices of discrimination or segregation, including, without limitation, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or others of the Site.

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

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

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

5.05 Effect, Duration and Enforcement of Covenants

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

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

(ii) binding against Developer, its successors and assigns to or of the Site and any Improvements thereon or any part thereof or any interest therein, and any party in possession or occupancy of the Site or the Improvements thereon or any part thereof. It is further intended and agreed that the covenants provided in this Article 5 shall remain in effect subject to the termination provisions of Section 5.06(c) without limitation as to time, and the covenants in Section 5.02 shall remain in effect for the respective duration of the Redevelopment Plan and the Project Area Declaration of Restrictions; provided, however, that such agreements and covenants shall be binding on Developer itself, each successor in interest or assign, and each party in possession or occupancy, respectively, only for such period as it shall have title to or an interest in or possession or occupancy of the Site or part thereof.

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

(c) As stated above, the covenants contained in this Article 5 (except for those contained in Section 5.03) shall remain in effect without limitation as to time; provided, however, that if Successor Agency becomes the fee owner of the Site or any portion thereof, whether voluntarily or involuntarily, through the Successor Agency's Exclusive Right to Repurchase by operation of law or by

reason of the conditions subsequent contained in the Grant Deed to the Site (which conditions terminate upon Agreement Termination) then the covenants contained in this Article 5 (except those contained in Section 5.04, the Redevelopment Plan and the Project Area Declaration of Restrictions, if still in effect) shall terminate and be of no further force or effect as to the Site or the portion thereof of which Successor Agency has become the fee owner.

(d) The conveyance of the Site by Successor Agency to Developer is made and accepted upon the express covenants contained in this Article 5 and provided further, that those covenants contained in Sections 5.01, 5.02 and 5.04 survive the Agreement Termination and shall be provided for in the Grant Deed and the Declaration of Site Restrictions.

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

5.06 After Agreement Termination

The provisions contained in Sections 5.02 and 5.04 shall survive the Agreement Termination.

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

6.01 Representation as to Developer

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

6.02 Prohibition Against Transfer of the Site, the Improvements and the Agreement

Subject to the terms of Article 7, which permits Mortgages to encumber the Project, and the transfers described in Section 2.03(d), before the Agreement Termination, Developer shall not make or create or suffer to be made or created any total or partial sale, conveyance, mortgage, encumbrance, lien, assignment, option to acquire, any trust or power, or transfer in any other mode or form, of this Agreement, the Site or the Improvements thereon, or any part thereof, or interest therein, or permit any significant change in the ownership of Developer to occur or contract or agree to do any of the same (collectively a “**Transfer**”) without the prior written approval of Successor Agency, which shall not be unreasonably withheld or delayed (the “**Successor Agency Approval**”); provided, however, without prior written approval of the Successor Agency, (a) Developer may permit a change in the ownership of the Developer at any time by adding or removing members or partners, so long as either Essex Portfolio, L.P. or TMG Partners or any of their respective affiliates (the “**Developer Managers**”) at all times retain the right to control or to manage the day-to-day operation of Developer’s activities, subject to approval of certain material decisions by any such new equity investor members or partners and subject to replacement of either or both of the Developer Managers by such equity investor member or partner as a member or partner in Developer or as the entity(ies) managing the day-to-day operation of Developer’s activities upon a default by either or both of the Developer Managers under the operating agreement or partnership agreement of Developer, subject to the approval of the Successor Agency, which approval shall not unreasonably be withheld and which approval shall be deemed given if the Successor Agency has not denied the replacement of the Developer Managers within five (5) business days of being notified of such a change; (b) TMG Avant LLC shall have the right to assign its interest in Developer to an entity controlled by TMG Partners or any of its affiliates; (c) there may be a change in any portion of the beneficial ownership of Essex Portfolio, L.P. or Essex Property Trust Inc. resulting from any event

including a merger, consolidation or other corporate event; (d) Developer may assign its rights and obligations under this Agreement and may convey the Site and Improvements to a joint venture entity in which Developer or its affiliate is a member or a partner, but only if either Essex Portfolio, L.P. or TMG Partners or an affiliate of either at all times retains the right to control the day-to-day operation of Developer, subject to approval of certain material decisions by any such new equity investor members or partners and subject to replacement of either or both of the Developer Managers by any such equity investor member or partner as a member or partner in Developer or as the entity(ies) managing the day-to-day operation of Developer's activities upon a default by either or both of the Developer Managers under the operating agreement or partnership agreement of Developer, subject to the approval of the Successor Agency, which approval shall not unreasonably be withheld and which approval shall be deemed given if the Successor Agency has not denied the replacement of the Developer Managers within five (5) business days of being notified of such a change; (e) encumber the Site and Improvements with recorded documents, including, without limitation, easements, stormwater maintenance agreements, reciprocal easement agreements and parcel or subdivision maps, including without limitation, if in connection with the construction and permanent financing for the Project; (f) encumber the Site and Improvements with one or more regulatory agreements, restrictive covenants, or land use restriction agreements in connection with the bond financing, tax credits, and affordability restrictions; (g) transfer the Affordable Units to a limited partnership and the admission of a tax credit investor as a partner so long as the Developer or Essex Portfolio, L.P, and/or an affiliate of either is a general partner of such limited partnership; (h) the removal or withdrawal of BRIDGE as a general partner of the limited partnership that owns or will own the Affordable Units and the replacement of BRIDGE with another tax exempt entity in accordance with the terms of the limited partnership agreement of the limited partnership that owns or will own the Affordable Units so long as replacement general partner is subject to Successor Agency Approval, which Approval shall be deemed given if such Successor Agency Approval is not denied by notice given within ninety (90) days after the giving of Developer's request for such Approval; (i) mechanics' and suppliers' liens related to the construction of the Project may encumber the Site and the Improvements, provided that Developer is in good faith contesting the bases of the claims for such liens; and (j) convey the upper 21 floors of the Improvements to an affiliate of Developer.

Furthermore, in the event prior to the commencement of construction Developer incurs a land loan which is secured by the Site, the Successor Agency Approval for such land loan will not be issued until Developer provides the Successor Agency with a guaranty in an amount not to exceed the excess, if any, of the outstanding amount of such land loan over the fair market value of the Site as of the date the Successor Agent acquires title to Site from the Developer pursuant to the Exclusive Right to Repurchase under Section 8.02; provided, however, that such guaranty shall have no force and effect unless and until the Successor Agency acquires title to the Site from Developer pursuant to the Exclusive Right to Repurchase under Section 8.02.

Provided further, that Developer agrees that any leases for any portion of the Improvements entered into prior to commencement of construction of the Improvements will include a provision that allows for the termination of the lease by the Successor Agency subsequent to its exercise, prior to the commencement of construction of the Improvements, of its Exclusive Right of Repurchase and subject to any notice requirements (not to exceed 30 days) under the lease.

6.03 Effect of Violation

(a) In the event that, contrary to the provisions of this Agreement, a Transfer does occur, in addition to all other remedies provided herein or by law, including, but not limited to, termination of this Agreement, Successor Agency, as provided in Section 8.02(a) shall have an Exclusive Right to Repurchase the Site prior to Developer commencement of construction of the Improvements.

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

ARTICLE 7 - MORTGAGE FINANCING: RIGHTS OF HOLDERS

7.01 Mortgagee

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

7.02 Required Provisions of Any Mortgage

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

7.03 Address of Mortgagee

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

7.04 Mortgagee's Right to Cure

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

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

(b) Any Mortgagee, in case Developer shall be in default hereunder, shall have the right to remedy, or cause to be remedied, such default within the later to occur of (i) one hundred twenty

(120) days following the date of Mortgagee's receipt of the notice referred to in Section 7.04(a) above, or (ii) one hundred twenty (120) days after the expiration of the period provided herein for Developer to remedy or cure such default, and Successor Agency shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Developer, or (iii) if the cure can only reasonably be accomplished following a foreclosure, then the Mortgagee shall be allowed additional time as is reasonably necessary to acquire the Site through foreclosure.

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

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

(e) Notwithstanding anything to the contrary contained herein, the provisions of this Article 7 shall inure only to the benefit of the Mortgagee s under Mortgages which are permitted hereunder.

7.05 Application of Agreement to Mortgagee's Remedies

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

7.06 No Obligation to Construct Improvements or Pay Money Damages

The Mortgagee, including without limitation any Mortgagee who obtains title to the Site or any part thereof as a result of foreclosure proceedings or action in lieu thereof (including any other party who thereafter obtains title to the Site or any part thereof from or through such Mortgagee or any purchaser at a foreclosure sale other than the Mortgagee), shall in no way be obligated by the provisions of the Agreement to either pay money damages or other consideration to the Successor Agency, or to construct or complete construction of the Improvements, nor shall any covenant or any other provision in the Redevelopment Plan, the Project Area Declaration of Restrictions, or any other document, instrument or plat whatsoever be construed to so obligate such Mortgagee; provided, however, that nothing in this Agreement shall be construed to permit or authorize such Mortgagee to devote the Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or authorized in the Redevelopment Plan, the Project Area Declaration of Restrictions, and this Agreement. If a Mortgagee elects to complete the construction of the Improvements pursuant to the terms of this Agreement, then upon prior written approval of the Executive Director of the Successor Agency, all applicable dates set forth in the Schedule of Performance shall be reasonably extended to permit such Mortgagee a reasonable time period to complete such Improvements from and after the date that such

Mortgagee obtains title to the Site.

7.07 Accommodation of Mortgagees

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

ARTICLE 8 - DEFAULTS AND REMEDIES

8.01 Developer Default

The occurrence of any one of the following events or circumstances shall constitute an Event of Default by Developer under this Agreement thirty (30) days after Developer's receipt of written notice from the Successor Agency of the alleged default and opportunity to cure, or in the case of a default not susceptible of cure within thirty (30) days, Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time, unless a different cure period is specified.

(a) Developer suffers or permits a Transfer to occur; or (b) Developer allows any other person or entity (except Developer's authorized representatives) to occupy or use all or any part of the Site in violation of the provisions of this Agreement;

(b) Developer fails to pay real estate taxes or assessments on the Site when due or places any mortgages, encumbrances or liens upon the Site or the Improvements thereon or any part thereof in violation of this Agreement;

(c) Subject to the provisions of Section 1.08(b) above, Developer fails to commence promptly, or after commencement fails to prosecute diligently to completion (as evidenced by a T C of O), the construction of the Improvements within the times set forth in the Schedule of Performance, Attachment 5 (as such dates are extended in accordance with the terms of this Agreement), or voluntarily abandons or suspends construction of the Improvements for more than one hundred eighty (180) consecutive days, and such failure, abandonment or suspension continues for a period of (i) thirty (30) days following the date of written notice thereof from Successor Agency as to a voluntary abandonment, suspension or failure to commence construction; or (ii) ninety (90) days following the date of written notice thereof from Successor Agency as to a failure to complete construction within the time set forth in the Schedule of Performance, Attachment 5; provided that such ninety (90) day period shall be extended by the Executive Director of the Successor Agency if the Successor Agency reasonably determines that the Developer is continuing to diligently pursue completion of the Improvements

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

(e) Developer fails to pay any amount required to be paid hereunder, other than the Purchase Price or Additional Purchase Payment for the Site provided, however, if Developer is contesting any such payment in good faith, then such failure to pay shall not constitute a default until resolution of such good faith contest;

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

(g) Subject to the provisions of Section 1.08(b) above, Developer fails to obtain a Building Permit or Site Permit with foundation and excavation addenda, as the case may be, and all other necessary permits for the Improvements to be constructed on the Site within the periods of time specified in this Agreement or the Schedule of Performance, except as may be extended due to actions or requirements of the Department of Building Inspection or any other applicable governmental agency;

(h) Developer does not submit all Design Development Documents and Final Construction Documents as required by this Agreement within the periods of time respectively provided therefor in this Agreement and the Schedule of Performance;

(i) Developer defaults in the performance of or violates any covenant, or any part thereof, set forth in Section 4.04(b), Article 5 or in the Grant Deed; or in the case of a default which is not cured within thirty (30) days, Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time. The language of this paragraph shall not be construed to limit the right of the Developer to contest, under the terms of this Agreement, the allegation of default in the performance or violation of any covenant, or any part thereof, set forth in Article 5 or in the Grant Deed.

(j) Developer fails to perform any other agreements or obligations on Developer's part to be performed under this Agreement other than Conditions to Successor Agency's Obligations to Convey Site under Section 2.07(b).

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

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

(a) Exclusive Right of Repurchase. Following close of Escrow and transfer of the Site to the Developer, in the event Developer does not commence construction as required under the Schedule of Performance set forth in Attachment 5 (or as such dates may be extended pursuant to the terms of Section 8.01(c)), or within the cure periods provided in Section 8.01(c) plus any time attributable to Force Majeure, the Successor Agency shall have an exclusive right to repurchase the Site from the Developer for the lesser of the Purchase Price or fair market value (the "**Exclusive Right of Repurchase**"). This Exclusive Right of Repurchase shall automatically terminate immediately upon commencement of construction of the Improvements per the Schedule of Performance. Fair market value shall be determined through an appraisal process ("**Appraisal Process**") followed by the issuance of a request for proposals to be issued by the Successor Agency. In addition to a purchase price, the request for proposals shall also include an affordable housing fee to satisfy the Inclusionary Housing Requirement, as contemplated in Article 9.

The Appraisal Process shall be as follows:

i. Each party shall, at their own expense, designate a real estate broker with at least ten (10) years' experience in leasing comparable commercial properties in the San Francisco market.

If either party fails to designate their real estate broker as set forth in this subparagraph within twenty-one (21) days after Successor Agency delivers written notice to Developer of its exercise of the right to repurchase under this Section, then the real estate broker selected by the other party shall act alone and his/her determination shall be binding.

ii. The two (2) real estate brokers selected by the parties (the “**Party Brokers**”) shall each select a similarly qualified, independent real estate broker, whose expenses shall be shared equally by Developer and Successor Agency (the “**Neutral Broker**”). If the Neutral Broker cannot be agreed to by the parties, then the American Arbitration Association, or any successor organization, shall select the Neutral Broker in accordance with its rules and procedures and subject to California law regarding the selection of arbitrators. The parties shall jointly share the fees charged by the American Arbitration Association.

iii. The Party Brokers selected by the parties shall, after soliciting, accepting and reviewing such information and documentation as they may deem necessary and appropriate, including that submitted by either party, within thirty (30) days after appointment, prepare a statement of what they consider the fair market value of the Site.

iv. Once the two (2) Party Brokers reach their conclusions, then the Neutral Broker shall select the fair market value opinion that he or she determines to be closest to the actual fair market value, without averaging or otherwise compromising between the two values, and the amount so selected shall be the purchase price that is binding on the parties (“**FMV**”).

Following the determination of the FMV, the Successor Agency shall issue a request for proposals for the site and shall require a minimum bid of 90% of the FMV to qualify as a potential purchaser of the site. Repurchase of the Site shall occur after the Successor Agency has received payment (“**Repurchase Payment**”) from the new developer selected through a request for proposals issued by the Successor Agency. The Repurchase Payment delivered to Developer shall be the lesser of 90% of the FMV or the Purchase Price.

To exercise its rights under this Subsection, Successor Agency shall deliver to Developer a written notice of the Successor Agency’s intent to (i) exercise its Exclusive Right of Repurchase and (ii) record the Notice of Exclusive Right of Repurchase on the Site, attached as Attachment 12.

(b) Retain Good Faith Deposit. Developer shall forfeit any right to reimbursement of the Good Faith Deposit or application of the Good Faith Deposit to the Purchase Price in the case of an Event of Default by Developer.

(c) Other Remedies. The Successor Agency shall be entitled to exercise all remedies permitted by law or at equity, excluding actions for consequential damages; provided, however, if Developer’s default is a failure to purchase the Site in accordance with the terms of this Agreement, then Successor Agency’s sole remedy shall be to terminate this Agreement and retain the Good Faith Deposit.

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

8.03 Additional Remedies of Successor Agency

The remedies provided for herein are in addition to and not in limitation of other remedies including, without limitation, (i) those provided in the Grant Deed and elsewhere in violation of the covenants set forth in Article 5; (ii) the remedies set forth in the Equal Opportunity Program; and (iii) the remedies set forth in the Prevailing Wage Provisions.

8.04 Successor Agency Default

The Successor Agency's failure to perform any agreements or obligations on Successor Agency's part to be performed under this Agreement and the continuation of such failure for more than thirty (30) days after written notice from Developer of the alleged failure and opportunity to cure, or in the case of a failure not susceptible of cure within thirty (30) days, Successor Agency's failure promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time.

8.05 Remedies of Developer

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

(a) Limitation on Damages. Successor Agency shall not be liable to Developer for damages caused by any default by Successor Agency, including general, special, or consequential damages, or to expend money to cure a default by Successor Agency, except as provided in Section 8.05 (d).

(b) Specific Performance. Subject to Section 8.05(d), Developer shall have the right to institute legal action for specific performance of the terms of this Agreement to the extent that such action is available at law or in equity with respect to such default.

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

(d) Return of Good Faith Deposit. If the Agreement is terminated prior to close of Escrow due to a default by the Successor Agency following expiration of all cure periods. Successor Agency shall be liable for return of the Good Faith Deposit, but the Successor Agency shall have no liability for other money.

8.06 Rights and Remedies Cumulative

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

8.07 Force Majeure/Extensions of Time

(a) Force Majeure.

(i) Before Close of Escrow Date. Neither Successor Agency nor Developer, as the case may be, nor any successor in interest (the “**Delayed Party**”, as applicable) shall be considered in breach of or default in any obligation or satisfaction of a condition to Close of Escrow under Sections 2.07(a) or (b), and all applicable dates set forth in the Schedule of Performance prior to the Close of Escrow Date, or any extension of the Close of Escrow Date under Section 1.05, shall automatically be extended for any period of Force Majeure; provided, however, that (i) within three (3) business days after any one of the persons identified as receiving notice under this Agreement in Section 12.03 of Successor Agency or by the executive vice president of development or general counsel of Essex Portfolio, L.P., as member of Developer, on behalf of Developer, learns of the enforced delay, the party seeking the benefit of the provisions of this Section shall have first notified the other party thereof in writing, stating the cause or causes thereof and requesting an extension for the period of the enforced delay, and (ii) the period of the enforced delay may not exceed six (6) months. If such period extends for more than six (6) months, then either Successor Agency or Developer, by notice to the other, may terminate this Agreement, whereupon the Good Faith Deposit shall promptly be returned to Developer and the parties shall have no further liabilities or obligations under this Agreement arising or accruing following such termination. “**Force Majeure**” for purposes of this Section 8.07(a)(i) means events that cause enforced delays in the Delayed Party’s performance of its obligations under Sections 2.07(a) and (b) due to any of the following causes beyond the Delayed Party’s reasonable control, including an Act of God or of a public enemy, acts of terrorism, acts of Government, or administrative appeals, litigation or arbitration not initiated by Developer, or by an entity under Developer’s control or that is under the control of TMG Partners, Essex Portfolio, L.P., or Essex Property Trust Inc., and that is not a challenge to the validity or enforcement of Transbay Transit Center Community Facilities District 2014-1, but only where the administrative appeals, litigation, or arbitration prevents (i) the Successor Agency from performing its obligations under Sections 2.02(a), 2.03(c), and 2.04, (ii) the TJPA from performing its obligations under Section 2.03(f), (iii) Developer from obtaining a policy of title insurance at Close of Escrow substantially in the form of the Pro Forma title policy attached to this Agreement as Attachment 17 including the endorsements set forth in such Pro Forma and the Approved Title Conditions, and provided in each such case that the Delayed Party proceeds, to the extent that it is within its reasonable control to do so, with due diligence to resolve any dispute that is the subject of such administrative appeal, litigation, or arbitration .

(ii) After Close of Escrow, neither Successor Agency nor Developer, as the case may be, nor any successor in interest (the “**Delayed Party**”, as applicable) shall be considered in breach of or default in any obligation or satisfaction of a condition to an obligation of another party required to be performed by the Delayed Party after Close of Escrow, in the event of Force Majeure, and all applicable dates set forth in the Schedule of Performance shall automatically be extended for any period of Force Majeure. “**Force Majeure**” for purposes of this Section 8.07(a)(ii) means events that cause enforced delays in the Delayed Party’s performance of its obligations hereunder due to any of the following: causes beyond the Delayed Party’s reasonable control, including acts of God or of a public enemy, acts of terrorism, acts of Government, earthquakes, tsunamis, fires, floods, epidemics, quarantine restrictions, freight embargoes, inability to obtain supplies or materials or reasonably acceptable substitute supplies or materials (provided that Developer has ordered such materials on a timely basis), inability, through no fault of Developer, to obtain the issuance and subsequent sale of tax exempt mortgage revenue bonds, credit enhancement of such bonds, if necessary, allocation of low income housing tax credits, or construction financing from a third party construction lender, unusually severe weather, archeological finds on the Site, substantial interruption of work because of labor disputes, administrative appeals,

litigation or arbitration where the administrative appeal, litigation, or arbitration is not initiated by the Developer or by an entity under Developer's control or the control of TMG Partners, Essex Portfolio, L.P., or Essex Property Trust Inc. and that is not a challenge to the validity or enforcement of Transbay Transit Center Community Facilities District 2014-1 (provided in each such case that, to the extent that it is in its reasonable control to do so, Developer proceeds with due diligence to resolve any dispute that is the subject of such action), or delays of contractor, subcontractors and/or by materialmen, it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of Successor Agency or Developer (and the dates set forth in the Schedule of Performance) shall be extended for the period of the enforced delay; provided, however, that within five (5) days after any one of the persons identified as receiving notice under this Agreement in Section 12.03 of Successor Agency or the executive vice president of development or general counsel of Essex Portfolio, L.P., as member of Developer, on behalf of Developer, learns of the enforced delay, the party seeking the benefit of the provisions of this Section shall have first notified the other party thereof in writing, stating the cause or causes thereof and requesting an extension for the period of the enforced delay.

(b) Extension by Successor Agency. Successor Agency, with notice to the TJPA, may extend the time for Developer's performance of any term, covenant or conditions of this Agreement or permit the curing of any default upon such terms and conditions as Successor Agency determines appropriate; so long as (i) the Close of Escrow Date is not extended past February 17, 2015 (as such date is extended pursuant to the provisions of this Agreement; provided, however, that any such waiver or extension or permissive curing of any particular default shall not release any of Developer's obligations nor constitute a waiver of Successor Agency's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement.

8.08 General

(a) Any legal action to cure, correct or remedy any default, or to obtain any other remedy consistent with the terms of this Agreement shall be instituted in the Superior Court of the City and County of San Francisco, State of California.

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

ARTICLE 9 - SPECIAL TERMS, COVENANTS AND CONDITIONS

9.01 Mitigation Measures

The Developer, subject to Section 4.02(b) of this Agreement, agree that the construction and subsequent operation of all or any part of the Improvements shall be in accordance with the mitigation measures set forth in the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project Final Environmental Impact Statement/Environmental Impact Report ("**EIS/EIR**") and included as Attachment 9, Mitigation Measures. Additionally, the Developer shall provide, to the entity, or entities, specified in Attachment 9, any required reports detailing the mitigation measures implemented by the Developer and/or its contractors at the Site during demolition and construction of the Improvements until Completion of Construction, and through operation of the Improvements as applicable. As

appropriate, these mitigation measures shall be incorporated by the Developer into any contract for the construction or operation of the Improvements.

9.02 Proposed Districts

(a) Community Benefit District.

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

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

(iii) Developer waives and releases any and all rights, claims, losses, injuries, costs, damages, or causes of action that it may have now or in the future to, and shall not directly or indirectly, advocate, support, aid, or encourage any other person or entity to, challenge the initial assessment rates of the CBD, provided that the CBD does not require Developer to pay an initial assessment that exceeds the rates stated in Section 9.02(a)(ii). This waiver and release is a general release. Developer is aware of California Civil Code Section 1542, which reads as follows:

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

To give full force and effect to the above general release, Developer hereby expressly, knowingly, and voluntarily waives all the rights and benefits of Section 1542 and any other similar law of any jurisdiction. By placing its initials below, Developer specifically acknowledges and confirms the validity of the releases made above and the fact that Developer was represented by counsel who explained, at the time this Agreement was made, the consequences of the above releases.

_____ Developer acknowledges the above general release.

(b) Mello-Roos Community Facilities District.

(i) The Improvements shall be subject to the provisions of the 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 infrastructure in the Transit Center District Plan area. Participation in the CFD is required because the Developer has been granted the right to build the Improvements at a significantly greater density than would have been allowed under the zoning regulations in effect before adoption of the Transbay Redevelopment Plan, and because the infrastructure funded by the CFD will have direct benefits for, and considerable value to, the Improvements. The special tax rates have not been finally established as of the effective date of this

Agreement, but are expected by the Parties, to be equal to, or less than, those set forth in the CFD Rate and Method of Apportionment (“**RMA**”) attached hereto as Attachment 15.

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

(iii) The “amount that otherwise would have been due” under Section 9.02(b)(ii) above shall be the amount that would have been due under the RMA attached hereto as Attachment 15, calculated as if the Improvements were subject to the RMA from, and after, the date of issuance of the Final Certificate of Occupancy for the Improvements until the Improvements are subject to the

(iv) The Developer agrees to cast its vote, or if Developer has more than one vote, 100% of its votes, in favor of the CFD, on or before the date scheduled by the City for the vote on the CFD, provided that the tax rates for the CFD are not greater than the rates in the RMA attached as Attachment 15 to this Agreement.

(v) The Developer waives any rights it may have now or in the future to challenge, and shall not advocate, support, aid, or encourage any other person or entity to challenge, the legal validity of the CFD or any part of the CFD, provided that the tax rates in the CFD are not greater than the tax rates in the RMA attached as Attachment 15 to this Agreement. Developer shall Indemnify the City, OCII, and the TJPA (each an “**Indemnified Party**”) and the Indemnified Party’s officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims arising or resulting directly or indirectly from Developer’s breach of this Section 9.02(b) of this Agreement. This waiver and release is a general release. Developer is aware of California Civil Code Section 1542, which reads as follows:

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

To give full force and effect to the above general release, Developer hereby expressly, knowingly, and voluntarily waives all the rights and benefits of Section 1542 and any other similar law of any jurisdiction. By placing its initials below, Developer specifically acknowledges and confirms the validity of the releases made above and the fact that Developer was represented by counsel who explained, at the time this Agreement was made, the consequences of the above releases.

_____ Developer acknowledges the above general release

9.03 Affordable Housing Requirements

(a) Affordable Housing in Project. Per Section 5027.1 of the California Public Resource Code and the Implementation Agreement, 35% of all the housing built in the Project Area shall be affordable to persons and families with very-low, low-, or moderate-incomes. The Redevelopment Plan proposed to meet this requirement in two ways: (1) 15% of units constructed in all new market-rate housing developments within the Project Area containing more than 10 units must be

affordable to qualifying persons and families (the “**Inclusionary Housing Requirement**”); and (2) the balance of the affordable housing units necessary to meet the 35% requirement will be provided in stand-alone affordable housing projects.

The provision of BMR Units on Block 9 shall meet and exceed the Inclusionary Housing Requirement in the Redevelopment Plan by providing BMR Units that comprise not fewer than the greater of (i) 20% of the Project’s units or (ii) one hundred nine (109) Units and that comply with the Affordability Requirement. The BMR Units shall be integrated on a non-discriminatory basis throughout the lower 21 floors of the tower and the podium, with the final selection and distribution of BMR Unit location subject to the review and approval of the OCII Executive Director, which approval may only be denied on a reasonable basis. No later than 60 days after the Effective Date, Developer shall provide the locations of the BMR Units, the approximate location which is subject to change based on reasonable design considerations but such changes will not change the integration of the BMR Units throughout the 21 lower floors of the Improvements. In addition and consistent with the Inclusionary Housing Requirement in the Redevelopment Plan and the RFP, BMR Units shall be provided in the same proportion to the Market Rate Units in the Project in the mix of unit types (based solely on the number of bedrooms in a unit), and shall occupy twenty percent (20%) of the net area of the residential portion of the Project. The interior features of the BMR Units shall be equivalent to the those in the Market Rate Units in the lower 21 floors of the Project and shall be of good quality and consistent with current standards for new multi-family rental housing. Site parking shall be at parity among the Market Rate and BMR Units. The marketing and lease-up of the BMR Units will comply with all OCII rules and regulations, including but not limited to, occupancy preferences for Certificate of Preference and Ellis Act Housing Preference holders: provided, however, that such preferences shall not be required to be provided to the extent granting such preferences will cause the Affordable Project to be in violation of the Fair Housing Act, the requirements of the tax exempt bond law and regulations and/or the tax credit laws and regulations.

(b) Proposed Affordable Housing Financing Structures

If the Developer elects to utilize a bond financing structure for the Affordable Units, the Developer, with the assistance of BRIDGE, will work with Successor Agency staff to submit an application to the California Debt Limit Allocation Committee (“**CDLAC**”) for an allocation of tax exempt bond funding to be used solely for the Affordable Project. The Successor Agency shall take all actions necessary on its part to be taken with respect to preparing and filing the application for the allocation of tax exempt bonds so that the Developer shall at all times be in compliance with the Schedule of Performance. After an allocation is granted by CDLAC the Project will have approximately 110-days from such allocation to issue the tax exempt bonds. During the period after the allocation of bond volume cap for the Affordable Project and prior to the expiration of the approximate 110-day period, Developer, BRIDGE and Successor Agency staff will work with the Developer’s counsel, Bond Counsel, a Financial Advisor, and the City Attorney to prepare bond documents which include: a City Regulatory Agreement; Indenture Agreement; and, a Borrower Loan Agreement in “substantially final form.” The Board of Supervisors acting for and on behalf the City, acting through MOHCD, shall adopt an inducement/reimbursement resolution (the “**Issuance Resolution**”) and timely publish notice of and conduct a TEFRA Hearing approving the issuance of the tax exempt bonds and thereafter the City shall issue the bonds; provided, however, if the City elects not issue the bonds, Developer may select and utilize, any other entity qualified to issue bonds; and provided further, if the City does not issue the bonds it will timely publish notice of and conduct a TEFRA hearing approving the issuance of the tax exempt bonds. The relationship between the Developer and BRIDGE is documented through the existing Memorandum of Understanding (“**MOU**”) between the Developer and BRIDGE, as approved by the Successor Agency. Alternatively, the Developer may choose to develop the Project with a different financing structure that does not include a bond issuance; provided, however, that BRIDGE’s role in the initial lease-up and long-term management of the BMR Units is set forth in the MOU. Regardless of the financing structure, the Project will be subject to an

affordability restriction, through the recording of a Declaration of Restriction, that will require the BMR Units to remain as affordable units at the initial level of affordability for the life of the Project.

9.04 Streetscape Improvements

(a) Design and Construction; Reimbursement of Costs

Developer shall complete or cause to be completed the design and construction of the Streetscape Improvements (as defined in Attachment 6, Scope of Development). The RFP stated that the Former Agency would reimburse the Developer for the cost of the Streetscape Improvements up to ONE MILLION DOLLARS AND 00/100 (\$1,000,000) and accordingly the Developer or successor buyer will be reimbursed upon completion of the Streetscape Improvements as determined by the Successor Agency.

(b) Maintenance

Developer shall maintain or cause to be maintained the Streetscape Improvements in compliance with the laws of the State of California and the Ordinances and Regulations of the City and County of San Francisco.

9.05 Open Space

(a) Design and Construction

Developer shall complete or cause to be completed the design and construction of the Open Space (as defined in Attachment 6, Scope of Development). The Developer shall pay one hundred percent (100%) of the cost of the design and construction of the Open Space.

(b) Maintenance

Developer shall maintain or cause to be maintained the Open Space in compliance with the laws of the State of California and the Ordinances and Regulations of the City and County of San Francisco.

9.06 Underground Parking Garage

The Developer shall complete or cause to be completed the design and construction of the Garage (as defined in Attachment 6, Scope of Development). The Developer shall be responsible for all costs associated with the design, construction, and operation of the Garage including the Car Share Spaces (as defined in Attachment 6, Scope of Development).

ARTICLE 10 – SUCCESSOR AGENCY EQUAL OPPORTUNITY PROGRAM

Developer will comply with the Successor Agency’s Equal Opportunity Program, as described in this Article 10 and in Attachment 10, and will submit all documents required pursuant to the policies included in Attachment 10 (the “**Equal Opportunity Program**”), pursuant to the Schedule of Performance, Attachment 5. To the extent that Developer is a corporation, limited liability company, partnership or other entity, the provisions of this Article 10 shall apply only to such entity and not to the shareholders, officers, directors, members or partners of any such entity.

(a) Non-Discrimination

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

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

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

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

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

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

Notwithstanding the above, Developer and the Successor Agency further acknowledge that the Developer will develop and implement all of the Policies described above with the understanding that:

1. The existing work force is not affected, and no existing employee needs to be replaced. Rather, the Permanent Workforce policy applies only to future employees, if any;
2. In the event of any future job opening, the Developer is entitled to set

any employment qualifications it desires, in its sole discretion, to the extent such qualifications do not violate state or federal laws, including the California Fair Employment and Housing Act;

3. The Policies require the Developer to use good faith efforts to reach the employment opportunity goals and do not establish any required number of hires of qualified economically disadvantaged small business enterprises or qualified economically disadvantaged Project Area or San Francisco residents;

4. Developer shall utilize the Office of Economic and Workforce Development - CityBuild for construction placement services to assist in achieving the Successor Agency's workforce goals and shall execute an agreement with CityBuild to fund CityBuild's staff costs for such services, proportionately up to a maximum of One Hundred Fifty Nine Thousand Forty Two Dollars (\$159,042) of staff costs for every Five Hundred Million Dollars (\$500,000,000) in total Project costs; and

5. References in the Permanent Workforce Policies to "tenant" do not apply to residential tenants of the Project.

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

ARTICLE 11 – INTENTIONALLY DELETED

ARTICLE 12 - GENERAL PROVISIONS

12.01 Indemnification

Developer shall indemnify, defend, and hold harmless the Successor Agency, the City, the TJPA and their respective members, officers, agents and employees from and against any losses, costs, claims, damages, liabilities and causes of action (including reasonable attorney's fees and court costs) to the extent arising out of: (i) the actions of Developer, (ii) any challenge to the entitlement of the Developer to undertake the program described in the Scope of Development, (iii) in any way connected with the death of or injury to any person or damage to any property occurring during the construction of the Improvements, or (iv) in any way connected with the death of or injury to any person or damage to any property occurring on the Site; provided, however, that the foregoing indemnity and defense obligations shall not apply to any losses, costs, claims, damages, liabilities or causes of action (including reasonable attorneys' fees and court costs) to the extent due to the violation of law, governmental regulation or ruling, or negligence or willful misconduct of the person or party seeking to be indemnified and/or defended (Agency or the City, as the case may be), or its respective agents, employees or contractors; and (ii) may permissibly be satisfied by insurance procured by or on behalf of Developer and/or which Developer contractually requires others to procure, provided such insurance is at no cost or expense to the party seeking to be indemnified; and provided further that the Developer's insurance coverage shall not limit the Developer's indemnity and defense obligations under this section. The party(ies) seeking indemnity or defense agree to cooperate with reasonable requests by Developer to tender matters to such insurance. The Developer's obligations under this Section 12.01 shall survive Successor Agency's issuance of the Notice of Termination as to any acts or omissions occurring prior to such issuance.

12.02 Provisions with Respect to Time Generally

All references in this Agreement to time limitations, including those in the Schedule of

Performance, shall mean such time limitations as they may be extended pursuant to the terms of this Agreement.

12.03 Notices

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

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

With a copy to: Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attention: Real Estate/Finance Team
Facsimile No.: (415) 554-4755

If to Developer: Block 9 Transbay LLC
c/o TMG Avant
100 Bush Street, Floor 26
San Francisco, CA 94104
Attention: Cathy Greenwold
Facsimile No.: (415) 772-5911

With a copy to: Scott C. Verges
100 Bush Street, Floor 26
San Francisco, CA 94104
Facsimile No. (415) 772-5911

Essex Portfolio L.P.
925 East Meadow Drive
Palo Alto, CA 94303
Attention John D. Eudy
Facsimile No. (650) 494-1671

Essex Portfolio, L.P.
925 East Meadow Drive
Palo Alto, CA 94303
Attention: Jordan E Ritter
Facsimile No. (650) 858-1372

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

delivery, facsimile transmission or nationally recognized private courier service shall be deemed to have been given when received by the recipient. Any party may change its address for notices under this Section 12.03 by written notice given to the other party in accordance with the provisions hereof.

12.04 Time of Performance

- (a) All dates for performance (including cure) shall expire at 5:00 p.m. (San Francisco, California time) on the performance or cure date.
- (b) A performance date which falls on a Saturday, Sunday or Agency holiday is automatically extended to the next Agency working day.
- (c) Unless otherwise specified, whenever an action is required in response to a submission, request or other communication, the responding party shall respond within thirty (30) days.

12.05 Attachments/Recitals

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

12.06 Non-Merger in Deed

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

12.07 Headings

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

12.08 Successors and Assigns

This Agreement shall be binding upon and, subject to the provisions of Article 6, shall inure to the benefit of, the successors and assigns of Agency, Developer and any Holder and where the term "Developer", "Successor Agency" or "Holder" is used in this Agreement, it shall mean and include their respective successors and assigns, including as to any Holder, any transferee of such Holder or any successor or assign of such transferee.

12.09 Counterparts/Formal Amendment Required

- (a) This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.
- (b) This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.
- (c) Any modifications or waiver of any provisions of this Agreement or any

amendment thereto shall be in writing and signed by a person or persons having authority to do so, on behalf of both Successor Agency and Developer.

12.10 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, without regard to any choice of law principles.

12.11 Recordation

Successor Agency shall cause this Agreement to be recorded in the Recorder's Office of the City and County of San Francisco at the time of conveyance of the Site to the Developer.

12.12 Estoppels

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

12.13 Attorneys' Fees

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

12.14 Further Assurances

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

12.15 No Personal Liability

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

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

12.16 Effective Date

Representatives of Developer shall sign this Agreement before the Successor Agency

staff calendars consideration of this Agreement by the Successor Agency Commission, but in no event later than December 15, 2014 to conform to the Performance Schedule. The Effective Date of this Agreement and the parties' rights and obligations hereunder shall be the date on which this Agreement is approved by the Successor Agency Commission. The Successor Agency shall insert such date into the appropriate locations in this Agreement, but the failure to do so shall not in any way affect the enforceability of this Agreement.

ARTICLE 13 - REFERENCES AND DEFINITIONS

Affordable Developer is defined in Section 1.03.

Affordable Housing Air Space Parcel is defined in Section 2.03.

Affordable Requirement is defined in Section 4.02(c).

Agreement means this Disposition and Development Agreement.

Area Median Income is defined in Recital Q.

Block 9 Affordable Project is defined in Recital O.

BMR Unit is defined in Recital P.

City means the City and County of San Francisco.

Completion of Construction of the Improvements is defined in Section 1.08.

Compliance Term means the period of time on and after the Close of Escrow through the Termination of the DDA.

Deed means the Grant Deed, as shown in Attachment 11.

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

Default by Agency is defined in Section 8.04.

Default by Developer is defined in Section 8.01.

Effective Date is defined in Section 12.16.

Environmental Law is defined in Section 3.02(c).

Escrow is defined in Section 2.02.

Exclusive Right to Repurchase is defined in Section 8.02, a form of which is shown on Attachment 12.

Final C of O is defined in Section 1.08.

Force Majeure is defined in Section 8.07.

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

Hazardous Substance is defined in Section 3.02(b).

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

MOHCD is defined in Recital H.

Notice of Termination is defined in Section 4.13

Permit to Enter is referred to in Section 2.06 and attached hereto as Attachment 8.

Project means the Improvements as defined in the Scope of Development, Attachment 6 and Section 4.01.

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

Proposed Site Plan is attached as Attachment 3.

Redevelopment Plan is defined in Recital B of this Agreement.

Redevelopment Requirements are defined in Section 4.04

Schedule of Performance is attached as Attachment 5.

Scope of Development is attached as Attachment 6.

Shared Open Space is defined in Attachment 6.

Shared Underground Parking Garage is defined in Attachment 7.

Site is defined in Section 1.04.

Site Plan is attached as Attachment 3.

Site Permit is defined in Section 4.10.

Streetscape Improvements is defined in Attachment 6.

Term is defined in Section 1.09 (a).

Title Company is defined in Section 2.02(a).

Trust Account is defined in Section 2.03(f).

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

<p>Authorized by Successor Agency Resolution No. XX-2014, adopted _____, 2014</p> <p>SUCCESSOR AGENCY</p> <p>Successor Agency to the Redevelopment Agency of the City and County of San Francisco</p> <p>By _____ Tiffany J. Bohee Executive Director</p> <p>Approved as to Form:</p> <p>DENNIS J. HERRERA, City Attorney</p> <p>By _____ Heidi J. Gewertz Deputy City Attorney</p> <p>Project Manager Approval:</p> <p>By _____ Courtney Pash Project Manager</p>	<p>DEVELOPER</p> <p>BLOCK 9 TRANSBAY LLC a Delaware limited liability company</p> <p>By: TMG AVANT LLC, a Delaware limited liability company, Member</p> <p>By: TMG Partners, a California corporation, Manager</p> <p>By: _____ Name: _____ Title: _____</p> <p>By: ESSEX PORTFOLIO, L.P., a California limited partnership Member</p> <p>By: Essex Property Trust, Inc., a Maryland corporation, its general partner</p> <p>By: _____ Name: _____ Title: _____</p>
<p>CITY ACKNOWLEDGEMENT</p> <p>Mayor's Office of Housing</p> <p>By _____ Olson M. Lee Director</p>	



April 15, 2012

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

Dear Ms. Bohee:

Subject: Request for Final and Conclusive Determination

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

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

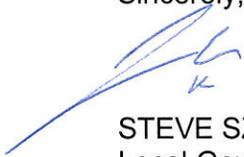
Finance has completed its review of the Agency's petition, which included obtaining clarification on items provided and additional supporting documentation. Pursuant to Health and Safety Code section 34177.5 (i), we are pleased to inform you that the approval of 102, 105, and 237 as listed on the approved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

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

Ms. Tiffany Bohee
April 15, 2013
Page 2

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

Sincerely,



STEVE SZALAY
Local Government Consultant

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



Trans Bay Transit Center Property Transactions

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

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

09/10/2013 09:17 AM

1 attachment



winmail.dat

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

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

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

Regards,
Justyn Howard
Assistant Program Budget Manager
Department of Finance
Local Government Unit
915 L St., 10th Floor
Sacramento, CA 95814
Phone: 916-445-1546
Email: justyn.howard@dof.ca.gov<mailto:justyn.howard@dof.ca.gov>

RESIDENTIAL PROJECT

- **545** TOTAL UNITS, INCLUDING **3 TOWNHOUSES** ON CLEMENTINA
 - **436** MARKET RATE UNITS
 - **109** AFFORDABLE UNITS(20 % OF TOTAL)

OPEN SPACE

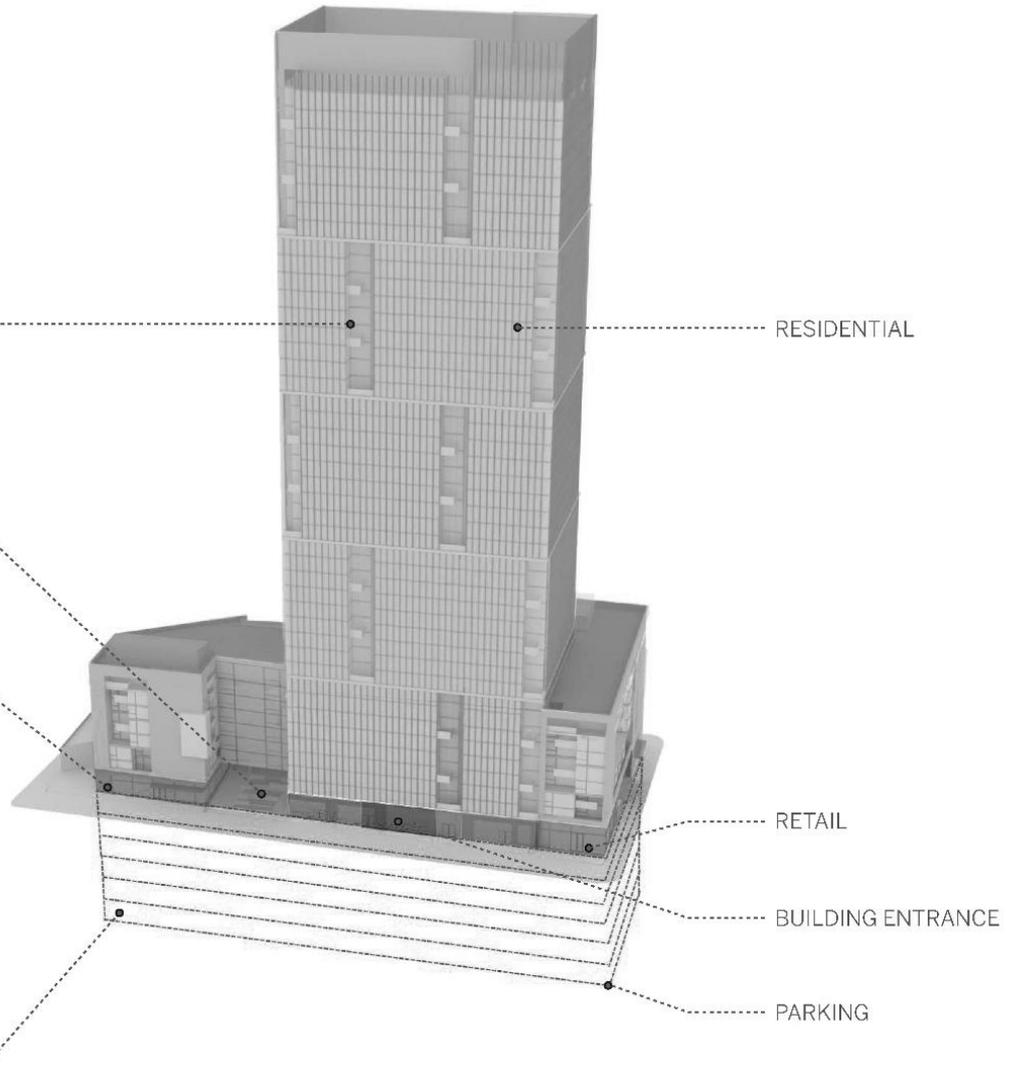
- **2,915 SQ FT** SHARED OPEN SPACE AT GROUND LEVEL

FOLSOM BOULEVARD RETAIL

- **6,465 SQ FT** GROUND LEVEL RETAIL

BELOW GRADE PARKING (6 LEVELS)

- BIKE PARKING AT B1: **206 (.38:1)**
- **APROX 286 STALLS (.52:1)** FROM B1 TO B6 COMPRISED OF:
 - **269** SELF PARK
 - **11** HC
 - **3** CAR SHARE STALLS
 - **3** CHARGING STATIONS



**ATTACHMENT 4
LEGAL DESCRIPTION**

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

PARCEL ONE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE SOUTHWESTERLY LINE OF FIRST STREET; AND RUNNING THENCE NORTHWESTERLY ALONG SAID LINE OF FIRST STREET, 48 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 48 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET; AND THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID LINE OF FOLSOM STREET, 100 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 348.

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF CLEMENTINA STREET AND THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHEASTERLY ALONG SAID LINE OF FIRST STREET, 107 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 107 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; AND THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF CLEMENTINA STREET, 100 FEET TO THE POINT OF BEGINNING.

BEING PART OF 100 VARA BLOCK NUMBER 348.

PARCEL THREE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 100 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF FOLSOM STREET, 75 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID SOUTHEASTERLY LINE OF CLEMENTINA STREET, 75 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA LOT NO. 55.

PARCEL FOUR:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 175 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 1ST STREET; RUNNING THENCE SOUTHWESTERLY AND ALONG SAID LINE OF FOLSOM STREET, 50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF CLEMENTINA STREET, 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA LOT NO. 55.

PARCEL FIVE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 225 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID LINE OF FOLSOM STREET, 25 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID LINE OF CLEMENTINA STREET, 25 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA BLOCK NO. 348.

EXCEPTING THEREFROM PARCELS TWO, THREE, FOUR AND FIVE, ALL THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED OCTOBER 18, 1954, IN VOLUME 6469, PAGE 496, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, DISTANT THEREON NORTH 44° 52' 05" WEST, 53.09 FEET FROM THE MOST SOUTHERLY CORNER OF SAID STATE'S PARCEL; THENCE CONTINUING ALONG SAID SOUTHWESTERLY LINE, NORTH 44° 52' 05" WEST, 101.91 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET, 40 FEET WIDE; THENCE ALONG LAST SAID LINE, NORTH 45° 07' 55" EAST, 181.61 FEET TO A POINT DISTANT THEREON SOUTH 45° 07' 55" WEST, 68.55 FEET FROM THE INTERSECTION OF SAID LINE OF CLEMENTINA STREET WITH THE SOUTHWESTERLY LINE OF FIRST STREET; THENCE FROM A TANGENT THAT BEARS SOUTH 23° 20' 57" WEST, ALONG A CURVE TO THE LEFT WITH A RADIUS OF 796 FEET, THROUGH AN ANGLE OF 15° 01' 58", AN ARC LENGTH OF 208.85 FEET TO THE POINT OF COMMENCEMENT.

PARCEL SIX:

COMMENCING AT THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED RECORDED NOVEMBER 7, 1952, IN VOLUME 6035, AT PAGE 505, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL, SOUTH 45° 07' 55" WEST, 25.01 FEET TO THE NORTHEASTERLY LINE OF ECKER STREET; THENCE ALONG LAST SAID LINE, NORTH 44° 52' 05" WEST, 33.58 FEET TO A LINE CONCENTRIC WITH AND DISTANT WESTERLY, MEASURED RADIALLY, 28 FEET FROM THE "BO + MO" LINE OF THE DEPARTMENT OF PUBLIC WORKS' SURVEY FOR THE STATE FREEWAY IN SAN FRANCISCO, ROAD IV-SF-224-SF; THENCE ALONG SAID CONCENTRIC LINE, FROM A TANGENT THAT BEARS NORTH 6° 01' 58" EAST, ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 796 FEET, THROUGH AN ANGLE OF 2° 17' 01", AN ARC DISTANCE OF 31.73 FEET TO THE NORTHEASTERLY LINE OF SAID PARCEL; THENCE ALONG LAST SAID LINE, SOUTH 44° 52' 05" EAST, 53.09 FEET TO THE POINT OF COMMENCEMENT.

BEING A PORTION OF 100 VARA LOT NO. 55 IN BLOCK NO. 348.

APN: LOT 120, BLOCK 3736

**Attachment 5
Schedule of Performance**

Task	Performance Date	Outside Date for Performance (must occur no later than date specified)
DDA Effective Date	Date Successor Agency Commission approves the DDA.	December 16, 2014
Schematic Design -- Approval by Successor Agency Commission	Approved concurrently with Successor Agency Commission approval of the DDA.	December 16, 2014
Developer Opens Escrow	At least 30 business days prior to close of Escrow.	January 10, 2014
TJPA to vacate Site for access by Developer	January 15, 2015	January 15, 2015
Developer Pays Good Faith Deposit	Within 30 days after the DDA Effective Date.	January 16, 2014
Parties Submit Escrow Instructions	At least 15 business days prior to close of Escrow.	January 19, 2015
Board of Supervisors to Approve Section 33433 Requirement	Prior to Close of Escrow	February 3, 2015
Parties Submit Closing Documents to Escrow	At least 2 business days prior to close of Escrow.	February 5, 2015
Developer Deposits Purchase Price into Escrow	No later than 24 hours prior to close of Escrow.	February 9, 2015
Successor Agency Deposits Grant Deed into Escrow	No later than 24 hours prior to close of Escrow.	February 9, 2015
Payment of Purchase Price and Close of Escrow	February 10, 2015	February 10, 2015
Developer Submit Below-Market-Rate Unit Location	Within 60 days after the DDA Effective Date	February 16, 2015
Adoption of Inducement/Reimbursement Resolution	April 30, 2015	April 30, 2015

Design Development Documents -- Submission to Successor Agency	No later than 7 months after DDA Effective Date.	July 16, 2015
Design Development Documents -- Approval by Successor Agency	Completeness check no later than [10] working days after submittal.	July 30, 2015
Design Development Documents -- Approval by Successor Agency	Approval no later than [42] days after the date Design Development Documents are determined to be complete.	September 10, 2015
TEFRA Noticing	At least 30 days prior to Introduction at the Board of Supervisors.	October 2015
Final Construction Documents for the Excavation and Shoring-- Submission to Successor Agency	Within 12 months after DDA Effective Date.	December 16, 2015
Final Construction Documents -- Approval by Successor Agency	Within 21 days after receipt of the Final Construction Documents from and approved by DBI and any other City agencies with jurisdiction.	Phased submittals of packages
Introduce Intent to Apply for Bonds – Board of Supervisors	At least 6 months prior to bond closing	November 2015
Apply to CDLAC	At least 90 days prior to commencement of construction	March 2016
Close Bonds	Immediately prior to commencement of construction	May 2016
Commencement of Construction	Within 18 months after Board of Supervisors 33433 Approval	July 2016
Developer to Submit Evidence of Construction Contract for Improvements	No more than 8 months after Commencement of Construction	March 2017
Completion of Construction	36 month construction schedule	July 2019

Attachment 6
Scope of Development

I. Description of Improvements

The Site on which the Project will be built consists of Block 9 in the Transbay Redevelopment Project Area, which is an approximately 31,564-square-foot parcel on Folsom Street between First and Essex Streets, two blocks south of the future Transbay Transit Center. Lot 120 of Assessor's Block 3736 will be transferred from the State to the Successor Agency, through the City, pursuant to the Cooperative Agreement, the Implementation Agreement, and the Option Agreement.

The Improvements are defined as follows:

- A. 80/20 Project. The Developer shall construct, or cause to be constructed, a 42-story residential building (excluding basement levels and mechanical penthouse), with approximately 545 residential units. The building will include up to four hundred and thirty-six (436) market-rate units as well as 109 below market-rate units, which will be located in the lower 21 floors of the building, affordable to households earning up to 50% of Area Median Income (AMI). In no event shall the below market rate units comprise less than 20% of the total number of residential units. The gross building area devoted to residential uses (excluding parking areas below grade and excluding retail) will be approximately 556,000 square feet.

The average size of the residential units is anticipated to be approximately 720 net square feet. Fifty-six (56) units, approximately 10% of the units, are anticipated to be two-bedroom units; the balance of the units are anticipated to be 129 studio units and 327 one-bedroom units.

- B. Shared Amenities. The Developer shall construct approximately 9,800 square feet of roof top open space to be shared by all residents.
- C. Ground Floor Retail. The Developer shall construct approximately 6,700 square feet of ground level retail on Folsom Street.
- D. Shared Underground Parking Garage. The Developer shall construct, or cause to be constructed, an underground parking (the "Garage"). The Garage will include the following: a) approximately 226 spaces for the market-rate units; b) 57 spaces for the affordable units; c) 3 car sharing spaces (the "Car Share Spaces"); and d) parking for approximately 200 bicycles. The Garage will be accessible to vehicles by way of a single ramp located at the west side of the Site off of First Street.
- E. Shared Open Space. The Developer shall construct, or cause to be constructed, at a minimum 2,400 square feet of public open space on the Open Space Parcel (as depicted in the Development Program).
- F. Streetscape Improvements. The Developer shall construct, or cause to be constructed, the streetscape improvements for Block 9 as documented in the Streetscape Plan, as amended by the Folsom Street

Schematic Design documents dated January 7, 2012 (the “Streetscape Improvements”), and as further developed through Developer’s discussions with OCII staff.

II. Planning Goals and Objectives

The following goals from Section 2.2 of the Redevelopment Plan apply to the Project. The Redevelopment Plan goals were established in conjunction with the Transbay Citizens Advisory Committee and members of the public at large. The goals set forth objectives that will direct the revitalization of the community. Together with the Development Controls and Design Guidelines and the Streetscape and Open Space Plan, these goals will guide the direction of all future development within the Project Area.

- A1. Construct wider sidewalks throughout the Project Area as needed to facilitate easy pedestrian travel.
- A2. Beautify streetscapes in accordance with the Development Controls and Design Guidelines.
- A3. Improve street and sidewalk lighting along all streets and encourage private property owners to provide additional lighting elements to the streetscape.
- A5. Increase the amount of street-level amenities such as street furniture, street trees, and public artwork to create a pleasant pedestrian experience.
- A6. Ensure that new buildings have multiple residential entrances and/or retail at the street level to contribute to sidewalk activity, according to the Development Controls and Design Guidelines.
- A7. Maintain existing alleys and walkways and create new pedestrian alleys and walkways to create a continuous network to connect streets, open spaces, and other activity centers.
- B3. Facilitate pedestrian and vehicular access into and through large blocks and extend the pattern of small, mid-block streets that exists in the area.
- B4. Discourage unnecessary private automobile use by encouraging developments that promote car sharing, shuttles, carpooling, public transit, car rental services, taxi service and other alternatives to the privately-owned automobile.
- B6. Encourage unbundling of parking from commercial and residential units, and encourage lower parking requirements.
- B7. Minimize the number of curb cuts in new developments and encourage common vehicular access for adjacent sites, where feasible.
- B8. Minimize interference to transit from vehicular access to buildings and truck loading zones.
- C1. Create an open space network to serve the diverse needs of a mixed-use community including features such as plazas, playgrounds, recreation spaces, and softscaped areas.

- C3. Fulfill the vision of the Downtown Area Plan of the San Francisco General Plan that almost everyone within the Project Area will be within 900 feet of a publicly accessible space, including small and privately owned spaces.
- C5. Promote neighborhood serving retail establishments to provide residents and workers with immediate walking access to daily shopping needs.
- C7. Encourage adequate public community services such as childcare, schools, and libraries.
- C8. Promote the creation of a community facilities district to assist in funding streetscape and open space improvements and maintenance.
- D1. Create a boulevard on Folsom Street from Second Street to the Embarcadero to serve as a pedestrian promenade while maintaining it as a vehicular route.
- D2. Develop signage to identify the area as the gateway to the city from the new Transbay Terminal and the Bay Bridge.
- D3. Encourage the installation of public art in streetscapes, open space, and commercial developments.
- D4. Ensure proper tower spacing and height and bulk controls for large-scale development, according to the Development Controls and Design Guidelines.
- D5. Ensure that high-rise buildings reflect high quality architectural and urban design standards.
- E1. Create a mixture of housing types and sizes to attract a diverse residential population, including families and people of all income levels.
- E2. Develop high-density housing to capitalize on the transit-oriented opportunities within the Project Area and provide a large number of housing units close to downtown San Francisco.
- E3. Focus residential development along Folsom, Beale and Main Streets and design these streets as mixed-use residential corridors.
- E4. Maximize housing development on the former Caltrans-owned properties according to the Development Controls and Design Guidelines in order to provide financial support to the new Transbay Terminal and Caltrain Downtown Extension through tax increment and land sale revenue.

III. Development Standards

All development on the Site shall comply with the Redevelopment Plan, the Development Controls and Design Guidelines, and the Streetscape and Open Space Plan (as amended by the Folsom Street Design Development Documents).

IV. Developer Responsibilities

In addition to the other Developer responsibilities set forth in the Agreement, the Developer shall be responsible, at its sole expense, for the installation and/or coordination of all public improvements

required for the development of the Site. Such public improvements, whether within the Site or in the adjacent public right-of-way include, but are not limited to, the following:

A. All site preparation activities on the Site.

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

Attachment 7
Design Review and Document Approval Procedures

INTRODUCTION

This Transbay 9 Design Review and Document Approval Procedure ("DRDAP") sets forth the procedure for design submittals of the plans and specifications for the developments of Blocks 9 of Zone 1 of the Transbay Redevelopment Project Area ("Project Area") and their review and consideration for approval by the Office of Community Investment and Infrastructure ("OCII"), as Successor Agency to the former San Francisco Redevelopment Agency (the "Former Agency"). The development will include a mixed use residential and commercial project, new streets and streetscape designs, public and private open spaces, and other permanent structures, as well as potential interim uses. Other departments and agencies of the City and County of San Francisco ("City Agencies") will review plans and specifications for compliance with applicable City and County of San Francisco ("City") regulations.

REVIEW

Subdivision Map Review

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

Temporary and Interim Uses

OCII staff shall review applications for temporary and interim uses.

DOCUMENTS FOR PROJECT APPROVAL

Project Approval documents shall consist of three components or stages:

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

SCOPE OF REVIEW

OCII in consultation with the San Francisco Planning Department and the San Francisco Department of Building Inspection (DBI), and other City Agencies shall review and approve Schematic Design plans, Design Development Documents and Final Construction Documents, each as defined below, for conformity with any prior approvals, the Redevelopment Plan for the Project Area ("Redevelopment Plan") and accompanying Plan Documents, including but not limited to the Transbay Development

Controls and Design Guidelines (“Development Controls”) and the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan (“Streetscape Plan”). OCII's review shall include consideration of such items as the architectural design, site planning and landscape design as applicable and appropriate to each submittal. The applicant shall submit a report regarding compliance with the Mitigation Monitoring and Reporting Program previously adopted by the Former Agency pursuant to the California Environmental Quality Act (CEQA). The mitigation measures are a part of the Final Environmental Impact Statement/Environmental Impact Report for the Project Area (EIS/EIR). The mitigation measures are intended to reduce the major impacts of this development on the environment. OCII shall review such report to ensure compliance with the CEQA and the adopted Mitigation Monitoring and Reporting Program.

OCII PROCESS

Review by OCII

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

Pre-Submission Conference(s)

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

Cooperation by Applicant

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

COMMUNITY REVIEW OF DESIGN SUBMITTALS

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

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

REVIEW OF SCHEMATIC DESIGN

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

Timing of OCII's Review

OCII staff shall review the Schematic Design for completeness and advise the applicant in writing of any deficiencies within seven (7) working days following receipt of the applicant's Schematic Design submittal. In the event OCII staff does not so advise the applicant, the application for Schematic Design shall be deemed complete. The time limit for OCII staff's review shall be within sixty (60) days from the date the Schematic Design has been determined to be complete. OCII shall take such reasonable measures necessary to comply with the time periods set forth herein.

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

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

Document Submittals

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

REVIEW OF DESIGN DEVELOPMENT DOCUMENTS

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

Scope of Review

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

Timing of OCII's Review

OCII staff shall review the Design Development Documents for completeness and general consistency with the schematic design and shall advise the applicant in writing of any deficiencies within ten (10) working days after the receipt of the Design Development Documents. In the event OCII staff does not so advise the applicant, the Design Development Documents shall be deemed complete. The time limit for OCII staff's review shall be forty-two (42) days from the date the Design Development Documents were determined to be complete. OCII staff shall take such reasonable measures necessary to comply with the time periods set forth herein. If the Design Development deviates significantly from the approved schematic design, does not meet the conditions outlined in the schematic approval, or extensive revisions or clarifications to the Design Development are required, the time limit may be extended at OCII Executive Director's discretion.

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

Document Submittals

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

REVIEW OF FINAL CONSTRUCTION DOCUMENTS

OCII Review

Final Construction Documents will relate to the construction documents' level of detail for a specific project. The purpose of this submittal is to expand and develop the Design Development Documents to their final form, prepare drawings and specifications in sufficient detail to set forth the requirements of

construction of the project and to provide for permitting. Final Construction Documents may be divided and submitted in accordance with an addenda schedule for the project approved in writing in advance by the City's Department of Building Inspection and OCII architectural staff or their designee. Provided the applicant's Final Construction Documents are delivered to OCII architectural staff concurrently with submittal to the Department of Building Inspection, Final Construction Documents shall be reviewed by OCII architectural staff within thirty (30) days following OCII staff's receipt of such documents from and approved by the Department of Building Inspection and any other appropriate City Agencies with jurisdiction. In the event that the applicant's Final Construction Documents are not delivered concurrently to OCII staff, OCII staff shall review the Final Construction Documents as expeditiously as possible.

Document Submittals

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

COMPLIANCE WITH OTHER LAWS

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

OCII REVIEW OF CITY PERMITS

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

SITE PERMITS

The applicant may apply for a Site Permit and addenda from the Department of Building Inspection upon OCII's staff's determination that the Design Development Documents are approved or conditionally approved and generally consistent with the Schematic Designs. The applicant however may not obtain an approved Site Permit until the Design Development documents have been approved or conditionally approved by OCII staff. The Site Permit application can be submitted before the Final Construction Documents for the project have been completed and submitted for approval to OCII architectural staff and the Department of Building Inspection. Applicant may apply for a Site Permit after approval of the Schematic Design Documents but prior to approval of the Design Development Documents or the Final Construction Documents at its own risk.

Notwithstanding the foregoing, the applicant may also apply for City permits related to grading and excavation activities prior to OCII architectural staff's approval of the Design Development Documents,

provided that OCII architectural staff approves such activities prior to issuance of any City permits. Grading and excavation are often the first two addenda to site permits.

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

MODIFICATIONS AND AMENDMENTS TO PROJECT APPROVAL

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

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

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

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

GOVERNMENT REQUIRED PROVISIONS, CHANGES

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

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

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

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

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

SCHEMATIC DESIGN

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

Written Statement

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

Data Charts

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

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

Schematic Design Drawings

Vicinity Plan

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

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

Infrastructure Plans

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

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

Site Plan

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

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

Phasing Plan

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

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

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

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

Model

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

Perspectives, Sketches and Renderings

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

Materials Board

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

DESIGN DEVELOPMENT DOCUMENTS

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

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

Site plans showing where applicable:

Building relationships to landscaped areas, parking facilities, loading facilities, roads, sidewalks, mid-block connections, any transit facilities, and both public and private open space areas. All land uses within the subject parcel shall be designated. Streets and points of vehicular and pedestrian access shall be shown, indicating proposed new paving, planting and lighting if applicable.

All utilities or service facilities which are a part of or link this project to the public infrastructure shall be shown.

Grading plans depicting proposed finish site elevations.

Site drainage and roof drainage.

Required connections to existing and proposed utilities.

All existing structures adjacent the site.

Building floor plans and elevations including structural system, at an appropriate scale (1/8" to 1' minimum, or another appropriate scale as agreed to by OCII staff).

Building sections showing typical cross sections at an appropriate scale, and in particular indicating street walls and adjacent open spaces, relationship of ground floor uses to pedestrian outdoor areas, and including mechanical equipment.

Landscape design plans showing details of landscape elements including walls, fences, planting, outdoor lighting, ground surface materials. Appropriate reference to improvements in the City's right of way shall be shown.

Drawings showing structural, mechanical and electrical systems.

Materials and colors samples as they may vary from those submitted for Schematic Design approval.

Sign locations and design.

Outline specifications for materials and methods of construction.

Roof plan showing location of and screen design for all rooftop equipment; and roof drainage.

Wall sections illustrating exterior cladding systems, store fronts, canopies, etc. at an appropriate scale (1/8" minimum).

Design details of all primary exterior conditions sufficient to establish baseline for Final Construction Documents.

FINAL CONSTRUCTION DOCUMENTS

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

The Final Construction Documents shall generally be consistent with the approved Design Development Documents. The Final Construction Documents shall comply with the requirements of the City's Department of Building Inspection, including Site Plans and Construction Drawings and Specifications

ready for bidding. In addition, the applicant shall submit a presentation of all exterior color schedules including samples, if appropriate, and design drawings for all exterior signs and graphics prior to completed construction. OCII architectural staff and applicant shall continue to work to resolve any outstanding design issues, as necessary.

**ATTACHMENT 8
FORM OF PERMIT TO ENTER**

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, organized and existing under the laws of the State of California (“**Successor Agency**”) grants to _____ (“**Permittee**”), a non-exclusive permit to enter upon certain Successor Agency-owned or -leased real property (hereinafter referred to as the “**Permit Area**”), located at _____ upon the terms, covenants and conditions hereinafter set forth in this Permit to Enter (“**Permit**”).

1. **Permit Area:** The Permit Area is more particularly shown on Attachment A hereto and made a part hereof. The Permit is non-exclusive and is subject to the rights of ingress and egress by the Successor Agency and others, who are authorized to access portions of the Permit Area.

2. **Interim Use:** The Permittee shall use the Permit Area to _____
_____ [describe permitted activities]
which is described elsewhere herein as the “**Interim Use.**” No uses other than those specifically stated herein are authorized hereby.

3. **Time of Entry:** Entry may commence, once the Permit is fully executed, on _____, at 8:00 a.m. Entry shall terminate on _____, at 5:00 p.m., unless earlier terminated by the Successor Agency’s Executive Director under Section 11 hereof or earlier terminated by Permittee by cessation of activities/operations, or unless such time is extended by the Executive Director.

4. **Compensation to Successor Agency:** Permittee shall pay compensation to the Successor Agency:

YES

NO

If yes is checked, Permittee shall pay the Successor Agency:

One cent (\$ 0.01) per square foot per day for duration of the permit to enter or

\$ _____ per day pursuant to Section 9 *Reduction or Waiver of Use Fee* of the Successor Agency’s Permit to Enter Policy.

(Executive Director’s initials authorizing fee reduction/waiver). _____
initials

5. Indemnification:

a. General Indemnification: Permittee shall defend, hold harmless and indemnify the Successor Agency, the City and County of San Francisco (the "City"), and the Transbay Joint Powers Authority ("TJPA") and/or their respective commissioners, members, officers, agents and employees of and from any and all claims, demands, losses, costs, expenses, obligations, damages, injuries, actions, causes of action and liabilities of every kind, nature and description directly or indirectly, arising out of or connected with this Permit and any of the Permittee's operations or activities related thereto, and excluding the willful misconduct or gross negligence of the person or entity seeking to be defended, indemnified or held harmless, and excluding any and all claims, demands, losses, costs, expenses, obligations, damages, injuries, action, causes of action or liabilities of any kind arising out of any Release (as defined in Section 6f below) or threatened release of any Hazardous Substance (as defined in Section 6d below), pollutant, or contaminant, or any condition of pollution, contamination, or nuisance which shall be governed exclusively by the provisions of Section 6c below. This section does not apply to contracts for construction design services provided by a design professional, as defined in California Civil Code Section 2782.8

b. Indemnification By Design Professionals: This section applies to any design professional as defined in California Civil Code Section 2782.8 who is or will provide professional services as part of, collateral to, or affecting this Permit with the Permittee ("Design Professional"). Each Design Professional who will provide design services shall defend, hold harmless and indemnify the Successor Agency, the City, and the TJPA and their respective commissioners, members, officers, agents and employees of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional. It is expressly agreed and understood that the duty of indemnification pursuant to this section is to be interpreted broadly to the greatest extent permitted by law, including but not limited to California Civil Code Section 2782.8.

c. No Mechanics' Liens: Permittee shall not permit any mechanics' or other liens to be levied against the Permit Area for any labor or material furnished to Permittee or claimed to have been furnished to Permittee or to Permittee's agents or contractors in connection with the Interim Use and Permittee shall hold the Successor Agency free and harmless from any and all cost or expense connected with or arising from the Interim Use.

6. Hazardous Material Acknowledgement and Indemnification:

a. Hazardous Material Acknowledgement: Permittee recognizes that, in entering upon the Permit Area and performing the Interim Use under this Permit, its employees, invitees, subpermittees and subcontractors may be working with, or be exposed to substances or conditions which are toxic or otherwise hazardous. Permittee acknowledges that the Successor Agency is relying on the Permittee to identify and evaluate the potential risks involved and to take all appropriate precautions to avoid such risks to its employees, invitees, subpermittees and subcontractors. Permittee agrees that it is assuming full responsibility for

ascertaining the existence of such risks, evaluating their significance, implementing appropriate safety precautions for its employees, invitees, subpermittees and subcontractors and making the decision on how (and whether) to enter upon the Permit Area and carry out the Interim Use, with due regard to such risks and appropriate safety precautions.

b. Proper Disposal of Hazardous Materials: Permittee assumes sole responsibility for managing, removing and properly disposing of any waste produced during or in connection with Permittee's entry and/or Interim Use of the Permit Area including, without limitation, preparing and executing any manifest or other documentation required for or associated with the removal, transportation and disposal of hazardous substances to the extent required in connection with the Permittee's activities hereunder.

c. Toxics Indemnification: Permittee shall defend, hold harmless and indemnify the Successor Agency, the City, and their respective commissioners, members, officers, agents and employees from and against any and all claims, demands, actions, causes of action or suits (actual or threatened), losses, costs, expenses, obligations, liabilities, or damages, including interest, penalties, engineering consultant and attorneys' fees of every kind, nature and description, resulting from any release or threatened release of a hazardous substance, pollutant, or contaminant, or any condition of pollution, contamination, or nuisance in the vicinity of the Permit Area or in ground or surface waters associated with or in the vicinity of the Permit Area to the extent that such release or threatened release, or condition is directly created or aggravated by the Interim Use undertaken by Permittee pursuant to this Permit or by any breach of or failure to duly perform or observe any term, covenant or agreement in this Permit to be performed or observed by the Permittee, including but not limited to any violation of any Environmental Law (as defined in Section 6e below); provided, however, that Permittee shall have no liability, nor any obligation to defend, hold harmless or indemnify any person for any claim, action, loss, cost, liability, expense or damage resulting from the discovery or disclosure of any pre-existing condition on or in the vicinity of the Permit Area; and provided further that Permittee shall be held to a standard of care no higher than the standard of care applicable to environmental and geotechnical professionals in San Francisco.

d. Hazardous Substances: For purposes of this Permit, the term "Hazardous Substance" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U. S. C. Section 9601(14), and in addition shall include, without limitation, petroleum, (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs" or "PCB"), PCB-containing materials, all hazardous substances identified at California Health & Safety Code Sections 25316 and 25281(d), all chemicals listed pursuant to California Health & Safety Code Section 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under applicable state or local law.

e. Environmental Laws: For purposes of this Permit, the term "Environmental Laws" shall include but not be limited to all federal, state and local laws, regulations, ordinances, and judicial and administrative directives, orders and

decrees dealing with or pertaining to solid or hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee and community right-to-know requirements, related to the Interim Use.

f. Release: For purposes of this Permit, the term "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance or pollutant or contaminant).

g. Soils Investigation: If the Interim Use under Section 2 of this Permit includes any soils investigations, then Permittee warrants as follows:

(1) If any soils investigation permitted hereby involves the drilling of holes having a diameter dimension that could create a safety hazard for persons, said holes shall during any drilling operations be carefully safeguarded and shall upon the completion of said drilling operations be refilled (and compacted to the extent necessary) to the level of the original surface penetrated by the drilling.

(2) The Successor Agency has no responsibility or liability of any kind or character with respect to any utilities that may be located in or on the Permit Area. Permittee has the sole responsibility to locate the same and to protect the same from damage. Permittee shall be solely responsible for any damage to utilities or damage resulting from any damaged utilities. Prior to the start of the Interim Use, the Permittee is advised to contact Underground Services Alert for assistance in locating existing utilities at (800) 642-2444. Any utility conduit or pipe encountered in excavations not identified by Underground Services Alert shall be brought to the attention of the Successor Agency's Engineer immediately.

(3) All soils test data and reports prepared based thereon, obtained from these activities shall be provided to the Successor Agency upon request and the Successor Agency may use said data for whatever purposes it deems appropriate, including making it available to others for use in connection with any development. Such data, reports and Successor Agency use shall be without any charge to the Successor Agency.

(4) Any hole drilled shall, if not refilled and compacted at the end of each day's operation, be carefully safeguarded and secured after the completion of each day's work, as shall the drilling work area and any equipment if left on the Permit Area.

7. **Insurance**: Permittee shall procure and maintain coverage for the duration of the Permit, including any extensions, insurance against claims for injuries to persons or damages to property which may arise from or in connection with performance of Interim Use by the Permittee, its agents, representatives, employees or subcontractors. The cost of such insurance shall be borne by the Permittee.

a. Minimum Scope of Insurance: Coverage shall be at least as broad as:

(1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).

(2) Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 (any auto).

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

(4) Professional Liability Insurance appropriate to the Contractor's profession covering all negligent acts, errors and omissions.

b. Minimum Limits of Insurance: Permittee shall maintain limits no less than:

(1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

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

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

(4) Professional Liability Insurance: \$1,000,000 per claim and in the annual aggregate. If the Contractor's Professional Liability Insurance is "claims made" coverage, these minimum limits shall be maintained by the Contractor for no less than three (3) years beyond completion of the Interim Use.

c. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Successor Agency. At the option of the Successor Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to the Successor Agency, the City and their respective Commissioners, officers, agents and employees; or the Permittee shall provide a financial guarantee satisfactory to the Successor Agency guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. Other Insurance Provisions:

(1) The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) The Successor Agency, the City, the TJPA and their respective Commissioners, officers, agents and employees are to be covered as insureds as respects: liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Permittee; and liability arising out of the Interim Use performed by or on behalf of the Permittee.

(ii) For any claims related to this Permit, the Permittee's insurance coverage shall be primary insurance as respects to the Successor Agency, the City and their respective

Commissioners, officers, agents and employees. Any insurance or self-insurance maintained by the Successor Agency, the City and their respective Commissioners, officers, agents and employees shall be excess of the Permittee's insurance and shall not contribute with it.

(iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Successor Agency, the City and their respective Commissioners, officers, agents or employees.

(2) Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the Successor Agency, the City and their respective Commissioners, officers, agents and employees for losses arising from the Interim Use performed by the Permittee or for the Successor Agency.

(3) All Coverages: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Successor Agency.

e. Acceptability of Insurers: Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII, unless otherwise approved by the Successor Agency's Risk Manager in writing.

f. Verification of Coverage: Permittee shall furnish the Successor Agency with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that Insurer to bind coverage on its behalf. The certificates and endorsements may be on forms provided by the Successor Agency. All certificates and endorsements are to be received and approved by the Successor Agency before the Interim Use commences. The Successor Agency reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

g. Subpermittee: Permittee shall include all subpermittees as insureds under its policies or shall require each subpermittees to furnish separate insurance certificates and endorsements. All coverages for subpermittees shall be subject to all the requirements stated herein.

8. "As Is", Maintenance, Restoration, Vacating: The Permit Area is accepted "AS IS" and entry upon the Permit Area by Permittee is an acknowledgment by Permittee that all dangerous places and defects in said Permit Area are known to it and are to be made secure and kept in such secure condition by Permittee. Permittee shall maintain the Permit Area so that it will not be unsafe, unsightly or unsanitary. Upon termination of the Permit, Permittee shall vacate the Permit Area and remove any and all personal property located thereon and restore the Permit Area to its condition at the time of entry. The Successor Agency shall have the right without notice to dispose of any property left by Permittee after it has vacated the Permit Area. Successor Agency makes no representations or warranties, express or implied, with respect to the environmental condition of the Permit Area or the surrounding property (including without limitation all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), or compliance with any Environmental Laws, and gives no indemnification, express or implied, for any costs of liabilities arising out of or related to the presence, discharge,

migration or Release or threatened Release of the Hazardous Substance in or from the Permit Area.

9. Compliance With Laws:

a. Compliance with all Laws: All activities and operations of the Permittee and/or its agents, contractors or employees or authorized entries under this Permit shall be in full compliance with all applicable laws and regulations of the federal, state and local governments, including but not limited to mitigation measures, if any, which are attached hereto and made a part hereof as if set forth in full.

b. Nondiscrimination: The Permittee herein covenants for himself or herself and for all persons claiming in or through him or her that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, gender identity, marital or domestic partner status, disability (including AIDS or HIV status), national origin or ancestry in the use, occupancy or enjoyment of the Permit Area.

10. Security of Permit Area: There is an existing fence with gates around the Permit Area:

Yes No

If “Yes” is checked above, Permittee shall maintain said fence in good condition and repair any damage caused by Permittee or as a result of the Interim Use. Permittee may relocate the fence as needed, provided that the fence is restored to its original condition upon termination of the permit. During the term of the permit, the Permittee shall keep the Permit Area secure at all times.

11. Early Termination: This Permit may be terminated by the Successor Agency in its sole discretion upon 24 hours' notice. Posting at the Permit Area shall be sufficient notice.

12. Entry under Permittee Authority: The Permit granted Permittee for the Permitted Activities/Operations as defined in Section 2 shall mean and include all subpermittees, agents and employees of the Permittee. In this regard, Permittee assumes all responsibility for the safety of all persons and property and any contents placed in the Permit Area pursuant to this Permit. All Interim Use performed in the Permit Area and all persons entering the Permit Area and all property and equipment placed therein in furtherance of the permission granted herein is presumed to be with the express authorization of the Permittee.

13. Governing Law: This Permit shall be governed by and interpreted under the laws of the State of California.

14. Attorneys' Fees: In any action or proceeding arising out of this Permit, the prevailing party shall be entitled to reasonable attorneys' fees and costs. For purposes of this Permit, the reasonable fees of attorneys of either party 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 attorney's services for either party were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the San Francisco City Attorney's Office.

15. Supplementary Provisions:

a. Is additional insurance required? Yes No

Additional Insurance: If "Yes" is checked above, Permittee shall obtain additional insurance consisting of insurance protecting against loss or damage to real and personal property caused by fire, water, theft, vandalism, malicious mischief or windstorm, and any other causes contained in standard policies of insurance. Permittee shall supply such insurance in an amount of not less than the replacement value of the buildings and improvements on the Permit Area, evidenced by a policy of insurance and/or certificate attached hereto in the form and on the terms specified above and with the Successor Agency and the City as additional insured.

b. Is a fence and gate required? Yes
No

Fence and Gate: If "Yes" is checked above, the Permittee shall, at its expense, erect a fence (with gate) securing the Permit Area before entry on the Permit Area and shall maintain said fence and gate in good condition and repair during the Time of Entry as defined in Section 3. Said fence and gate erected by Permittee shall constitute the personal property of Permittee.

c. Is security personnel required? Yes No

Security Personnel: If "Yes" is checked above, Permittee shall provide necessary security personnel at its own expense to prevent unauthorized entry into Permit Area during:

Daytime: Yes No Nighttime: Yes No

d. Will subpermittees use the Permit Area? Yes No

Subpermittees: If "Yes" is checked above, each Subpermittee shall execute this Permit by which execution each such Subpermittee agrees to all of the terms, covenants and conditions hereof. However, Subpermittees may be covered under Permittee's insurance in lieu of obtaining and maintaining separate insurance pursuant to Section 7(g). As additional Subpermittees are identified for various aspects of the Interim Use hereunder, they shall execute this Permit, if still valid, or a new permit to enter, before entering the Permit Area or commencing operations therein.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in triplicate as of the _____ day of _____, 2014.

PERMITTEE
[type of business entity]

By: _____
Name
Position

SUCCESSOR AGENCY TO THE REDEVELOPMENT

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

By: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA, CITY ATTORNEY

By: _____
HEIDI J. GEWERTZ
DEPUTY CITY ATTORNEY

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

INTRODUCTION

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

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

ORGANIZATION

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

IMPLEMENTATION

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

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

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

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

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

MITIGATION MEASURE	Responsibility for Implementation	MITIGATION SCHEDULE	Monitoring Responsibility	Monitoring Actions/Schedule
Saf 2 – Prepare a life safety plan including the provision of on-site measures such as a fire command post at the Terminal, the Fire Department’s 800-megahertz radio system and all necessary fire suppression equipment	TJPA	Prior to project facility permitting	TJPA	TJPA to develop life safety plan during facility design phases and implement during testing and startup up phase.
Saf 3 – Prepare a risk analysis to accurately determine the number of personnel necessary to maintain an acceptable level of service at Project facilities.	TJPA	Prior to project facility permitting	TJPA	TJPA to develop risk analysis during facility design phase.

Noise – Operations

NoiO 1 – Apply noise mitigation at the following locations adjacent to the bus storage facility:

- Provide sound insulation to mitigate noise impacts at the residences north of the AC Transit Facility at the corner of Perry and Third Street. At a minimum, apply sound insulation to the façade facing the bus storage facility (the south façade).
- Construct two noise barriers to mitigate noise impacts to residences south of the AC Transit Facility along Stillman Street. The first noise barrier would be approximately 10 to 12 feet high and run along the southern edge of the AC Transit storage facility. The second noise barrier would be approximately 5 to 6 feet high and would be located on the portion of the ramp at the southwestern corner of the AC Transit facility. Treat the noise barriers with an absorptive material on the side facing the facility to minimize the potential for reflections off the underside of the freeway.
- Construct a noise barrier to mitigate noise impacts to residences south of the Golden Gate Transit Facility along

TJPA	During construction	TJPA	TJPA to design detailed noise mitigation during preliminary and final design phases. TJPA engineering staff to inspect installation and/or construction of mitigation measures.
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**TRANSBAY TERMINAL/CALTRAIN DOWNTOWN EXTENSION/REDEVELOPMENT PROJECT
FEIS/FEIR MITIGATION MONITORING AND REPORTING PROGRAM**

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

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

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

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

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

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

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

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

MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
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levels than normal. For example, some manufacturers of construction equipment can supply special noise control kits with highly effective mufflers and other materials that substantially reduce noise emissions of equipment such as generators, tunnel ventilation equipment, and heavy diesel power equipment including mobile cranes and front-end loaders.

- Use of temporary barriers near noisy activities. By locating the barriers close enough to the noise source, it is possible to obtain substantial noise attenuation with barriers 10 to 12 feet high even though the residences are 30 to 40 feet higher than the construction site.
- Use of partial enclosures around noisy activities. It is sometimes necessary to construct shed-like structures or complete buildings to contain the noise from nighttime activities.

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

MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
Vibration – Operations				
Vib01 – Use high-resilience track fasteners or a resiliently supported tie system for the Caltrain Downtown Extension for areas projected to exceed vibration criteria, including the following locations: (1) Live/Work condos, 388 Townsend Street (Hubbell an Seventh), (2) San Francisco Residences on Bryant (Harrison Parking Lot Site), (3) Clock Tower Building, and Second Street High Rise and (4) new Marriott Courtyard (Marine Firefighter’s Union).	TJPA	During preliminary engineering, final design and construction	TJPA	TJPA to develop locations/use of resilience track fasteners or resiliently supported tie system during preliminary engineering and final design. Review construction documents and inspect installation. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as CCSF Department of Building Inspection (DBI) and DPW.
Vibration – Construction				
VibC1 – Limit or prohibit use of construction techniques that create high vibration levels. At a minimum, processes such as pile driving would be prohibited at distances less than 250 feet from residences.	TJPA	During preliminary engineering, final design and construction	TJPA	TJPA to ensure preliminary design, final design and contract documents preclude use of pile driving equipment within 250 feet of residences. Construction management and inspection will monitor contractors’ activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.

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

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

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

MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>VibC 6 – Include specific limits, practices and monitoring and reporting procedures for the use of controlled detonation. Control and monitor use of controlled detonation to avoid damage to existing structures. Include specific limits, practices, and monitoring and reporting procedures within contract documents to ensure that such construction methods, if used, would not exceed safety criteria.</p>	TJPA	During final design and during construction	TJPA	TJPA to establish detailed limits, practices, and monitoring program for controlled detonation during final design. Include provisions in contract documents and monitor contractors' activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.

Soils/Geology

<p>SG 1 – Monitor adjacent buildings for movement, and if movement is detected, take immediate action to control the movement.</p>	TJPA	During construction	TJPA	TJPA to include provisions in contract documents requiring such monitoring and corrective measures and inspect contractors' activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.
<p>SG 2 – Apply geotechnical and structural engineering principles and conventional construction techniques similar to the design and construction of high-rise buildings and tunnels throughout the downtown area. Apply design measures and utilize pile-supported foundations to mitigate potential settlement of the surface and underground stations.</p>	TJPA	During preliminary engineering and final design	TJPA	TJPA to review design and contract documents to ensure implementation. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.
<p>SG 3 – Design and construct structural components of the project to resist strong ground motions approximating the maximum anticipated earthquake (0.5g). The cut-and-cover portions will require pile supports to minimize non-seismic settlement in soft compressible sediments (Bay Mud). The underground Caltrain station at Fourth and Townsend will require pile-supported foundations due to the presence of underlying soft sediments.</p>	TJPA	During preliminary engineering, final design and construction	TJPA	TJPA to design structural components to meet seismic standards during preliminary engineering and final design. Review design, contract documents and construction activities to ensure implementation. Where applicable, coordinate with JPB and CCSF departments with jurisdiction

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

MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
--------------------	---	------------------------	------------------------------	-----------------------------

over activities, such as DBI and DPW .

SG 4 – Underpin existing building, where deemed necessary, to protect existing structures from potential damage that could result from excessive ground movements during construction. Design the tunneling and excavation procedures (and construction sequence), and design of the temporary support system with the objective of controlling ground deformations within small enough levels to avoid damage to adjacent structures. Where the risk of damage to adjacent structures is too great, special measures will be implemented such as: (1) underpinning, (2) ground improvement, and/or (3) strengthening of existing structures to mitigate the risks.

Underpinning may include internal strengthening of the superstructure, bracing, reinforcing existing foundations, or replacing existing foundations with deep foundations embedded outside the tunnel zone of influence. Alternatives, in lieu of underpinning, involve strengthening the rock between the building and crown of tunnel. Grouting in combination with inclined pin piles can be used not only to strengthen the rock, but also make the rock mass over the tunnel act as a rigid beam, allowing construction of tunnels with no adverse effects on the buildings supported on shallow foundations over the tunnel.

TJPA	During preliminary engineering, final design and construction	TJPA	TJPA to design tunneling, excavation procedures, underpinning, strengthening existing structures or ground improvement to protect existing structures from damage Include provisions in contract documents requiring contractors to implement measures during construction. Monitor construction activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.
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**TRANSBAY TERMINAL/CALTRAIN DOWNTOWN EXTENSION/REDEVELOPMENT PROJECT
FEIS/FEIR MITIGATION MONITORING AND REPORTING PROGRAM**

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

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

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

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

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

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

MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
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parties for salvage or interpretive use within the time frame specified herein will receive no further consideration.

CH 7 – Consult with Department and the Oakland Museum about contributing to Department’s exhibit and the production of an interpretive video at the Oakland Museum relating to the history and engineering of the major historic state bridges of the San Francisco Bay Area. TJPA will propose contributions to such an exhibit and video that would be related to the history of the TTT, bus ramp loop structures, and the Key System. Items contributed by TJPA to such an exhibit may include photographs, drawings, videotape, models, oral histories, and salvaged components from the TTT.

CH 8 – Assist the Oakland Museum by contributing up to \$50,000 toward the cost of preparing and presenting the exhibit and preparing an exhibit catalog or related museum publication in conjunction with the exhibit, in a manner and to the extent that is mutually satisfactory to TJPA, Department, and the Oakland Museum. A separate agreement will outline the negotiated financial contributions.

Work with the Oakland Museum and assist in the preparation of an exhibit and interpretive video if consultation results in agreement between TJPA and the Oakland Museum prior to demolition of the existing TTT.

TJPA will produce and deliver to the Oakland Museum agreed-upon materials for such an exhibit and interpretive video.

TJPA will work with Oakland Museum and assist in the preparation of an exhibit and an interpretive video if consultation results in an agreement between TJPA and Oakland Museum prior to demolition of the existing Transbay Terminal

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

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

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

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

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

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

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

MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
Beach District & South End District, Const. Date: 1913, Type of Impact: Tunnel under or near property				
<ul style="list-style-type: none"> • 301-321 Brannan Street/3788-037, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1909, Type of Impact: Tunnel under or near property • 130 Townsend Street/3788-008, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1910 [1], 1895-6 [2], Type of Impact: Tunnel under or near property • 136 Townsend Street/3788-009, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1902 [1], 1913 [2], Type of Impact: Tunnel under or near property • 144-46 Townsend Street/3788-009A, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1922, Type of Impact: Tunnel under or near property • 148-54 Townsend Street/3788-010, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1922, Type of Impact: Tunnel under or near property • 162-164 Townsend Street/3788-081, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1919, Type of Impact: Tunnel under or near property 				

Notes: National Register Status Codes are as follows:
 1 – Listed on the NRPH
 251 – Determined eligible for listing by the Keeper of the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>CH 20 – The parties to the MOA agree that Native American burials and related items discovered during implementation of the terms of the MOA and of the Project will be treated in accordance with the requirements of Section 7050.5(b) of the California Health and Safety Code. If, pursuant to Section 7050.5(c) of the California Health and Safety Code, the county coroner/medical examiner determines that the human remains are, or may be of Native American origin, then the discovery shall be treated in accordance with the provisions of Section 5097.98(a)-(d) of the California Public Resources Code. TJPA will ensure that to the extent permitted by applicable law and regulation, the views of any consulting Native American Tribe and the Most Likely Descendant(s) are taken into consideration when decisions are made about the disposition of other Native American archaeological materials and records.</p>	TJPA	Prior to, during, and following construction	TJPA	<p>TJPA agree that Native American burials and related items discovered during implementation of the terms of the MOA and of the Project will be treated in accordance with the requirements specified. If, pursuant to Section 7050.5(c) of the California Health and Safety Code, the county coroner/medical examiner determines that the human remains are, or may be of Native American origin, then the discovery shall be treated in accordance with the provisions specified. TJPA will ensure that to the extent permitted by applicable law and regulation, the views of any consulting Native American Tribe and the Most Likely Descendant(s) are taken into consideration when decisions are made about the disposition of other Native American archaeological materials and records.</p>

Hazardous Materials/Waste – Operations

<p>HWO 1 – Construct and operate any Caltrain fueling facility in compliance with local, state and Federal regulations regarding handling and storage of hazardous materials. (Caltrain Joint Powers Board (JPB)/TJPA)</p>	Caltrain Joint Powers Board (JPB)	During construction and operations	TJPA	<p>Review design and contract documents to ensure compliance with all applicable regulations. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations. Inspect operations, and comply with all permitting and reporting requirements.</p>
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**TRANSBAY TERMINAL/CALTRAIN DOWNTOWN EXTENSION/REDEVELOPMENT PROJECT
FEIS/FEIR MITIGATION MONITORING AND REPORTING PROGRAM**

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

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

MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
HWO 7 – Prepare a Hazardous Materials Management/Business Plan and file with the CCSF Department of Public Health.	JPB	During final design	TJPA	JPB to prepare and TJPA to file Hazardous Materials Management/Business Plan with CCSF Department of Public Health (DPH)

Hazardous Materials/Waste – Construction

HMC 1 – Follow California OSHA and local standards for fire protection and prevention. Handling and storage of fuels and other flammable materials during construction will conform to

these requirements, which include appropriate storage of flammable liquids and prohibition of open flames within 50 feet of flammable storage areas.

HMC 2 – Perform detailed investigations of the potential presence of contaminants in soil and groundwater prior to construction, using conventional drilling, sampling, and chemical testing methods. Based on the chemical test results, a mitigation plan will be developed to establish guidelines for the disposal of contaminated soil and discharge of contaminated dewatering effluent, and to generate data to address potential human health and safety issues that may arise as a result of contact with contaminated soil or groundwater during construction. The investigation and mitigation plan will follow the requirements of the City and County of San Francisco’s Article 22A in the appropriate areas along the alignment.

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

Review design and contract documents to ensure compliance with all applicable regulations. Obtain all

applicable permits. Inspect construction to ensure compliance with contract documents and regulations.

Review design and contract documents to ensure compliance with all applicable regulations. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH and DPW.

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

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

If required, treatment may include:

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

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

MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>sediments; and/or</p> <ul style="list-style-type: none"> o Construction of a small-scale batch waste water treatment system to remove dissolved contaminants (mainly organic constituents such as petroleum hydrocarbons [gas, diesel, and oils], BTEX, and VOCs) from the dewatering effluent prior to discharge to the sanitary sewer. A treatment system would also likely employ the use of filtration to remove suspended solids. 				
<p>HMC 6 – Develop a detailed mitigation plan for the handling of potentially contaminated soil and groundwater prior to starting project construction.</p>	TJPA	During final design	TJPA	Review detailed mitigation plan, include provisions in contract documents and inspect construction to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH and DPW. Obtain all applicable permits
<p>HMC 7 – Design dewatering systems to minimize downward migration of contaminants that can result from lowering the water table if necessary based on environmental conditions. As necessary, shallow soils with detected contamination would be dewatered first using wells screened only in those soils. Dewatering of deeper soils would then be performed using wells screened only in the zone to be dewatered. Dewatering wells would be installed using drilling methods that prohibit shallow contaminated soils from being carried deeper into the boreholes.</p>	TJPA	During final design and construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH and DPW
<p>HMC 8 – Require that workers performing activities on site that may involve contact with contaminated soil or groundwater have appropriate health and safety training in accordance with 29 CFR 1910.120.</p>	TJPA	During construction	TJPA	Provide health-and-safety training prior to start of and at timely intervals during construction. Include requirements in contract documents and monitor construction activities to ensure compliance.

A Worker Health and Safety Plan (HSP) will be developed for the project and monitored for the implementation of the plan on a day-to-day basis by a Certified Industrial Hygienist (CIH). The

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

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

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

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

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

MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
Ped 4 – Provide crosswalk signalization at intersections where they do not exist already, such as Folsom and Beale streets.	CCSF	Prior to opening of new Transbay Terminal	CCSF	TJPA will forward guidance to CCSF DPT.
Ped 5 – Provide cross-walk count-down signals at intersections and cross-walks immediately surrounding the new Transbay Terminal.	CCSF	Prior to opening of new Transbay Terminal	CCSF	TJPA will forward guidance to CCSF DPT.
Ped 6 – Ensure that Transbay Terminal design increases corner and sidewalk widths at the four intersections immediately surrounding the Transbay Terminal.	TJPA and CCSF, DPW	During Transbay Terminal design phase	TJPA	TJPA and CCSF DPW, where applicable, to include sidewalk width expansion during preliminary and final design of new Transbay Terminal
Ped 7 – Provide lights within crosswalks to warn when pedestrians are present in the crosswalk, such as at the cross-walk associated with the mid-block bus loading area.	TJPA	Prior to opening of new Transbay Terminal	TJPA	TJPA to work with CCSF DPT to install cross-walk warnings

Pre-Construction Activities

PC 1 – Complete a pre-construction building structural survey to determine the integrity of existing buildings adjacent to and over the proposed Caltrain Downtown Extension. Use this survey to finalize detailed construction techniques along the alignment and as the baseline for monitoring construction impacts during and following construction.	TJPA	Prior to preliminary engineering, final design and construction	TJPA	TJPA to perform building surveys during preliminary engineering. TJPA to include measures to protect existing buildings in final design and construction documents. TJPA to review design submittals, contract documents and construction activities to ensure implementation
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**TRANSBAY TERMINAL/CALTRAIN DOWNTOWN EXTENSION/REDEVELOPMENT PROJECT
FEIS/FEIR MITIGATION MONITORING AND REPORTING PROGRAM**

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

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

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

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

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

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

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

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

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

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

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

Visual/Aesthetics - Construction

VA 1 – Assure that construction crews working at night direct any artificial lighting onto the work site in order to minimize “spill over” light or glare effects on adjacent areas.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
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**TRANSBAY TERMINAL/CALTRAIN DOWNTOWN EXTENSION/REDEVELOPMENT PROJECT
FEIS/FEIR MITIGATION MONITORING AND REPORTING PROGRAM**

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

ATTACHMENT 10
AGENCY EQUAL OPPORTUNITY PROGRAM

Included in this Attachment 10:

1. Small Business Enterprise Agreement
2. Nondiscrimination in Contracts and Benefits
3. Minimum Compensation Policy
4. Healthcare Accountability Policy
5. Construction Workforce Agreement
6. Permanent Workforce Agreement
7. Prevailing Wages

Small Business Enterprise Agreement

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

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

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

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

CONSTRUCTION	50%
PROFESSIONAL SERVICES	50%
SUPPLIERS	50%

A. Trainee Hiring Goal. In addition to the goals set forth above in Section III, there is a trainee hiring goal for architects, designers and other professional services consultants as follows:

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

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

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

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

Criteria are set forth in the Policy (as defined in Section VII below).

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

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

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

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

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

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

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

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

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

temporary employment services are required and sought by the Agency.

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

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

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

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

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

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

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

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

DDA

Transbay Block 9

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

X. ADDITIONAL PROVISIONS

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

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

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

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

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

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

XI. PROCEDURES

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

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

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

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

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

2. A report showing the date that the bid was received, the amount bid by and

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

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

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

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

F. SBE Determination. The Agency shall exercise its reasonable judgment in determining whether a business, whose name is submitted by the Agency-Assisted Contractor or Contractor(s) as a SBE, is owned and controlled by a SBE. A firm's appearance in any of the Agency's current directories will be considered by the Agency as prima facie evidence that the firm is a SBE. Where the Agency-Assisted Contractor or Contractor(s) makes a submission the Agency shall make a determination, as to whether or not a business which the Agency-Assisted Contractor or Contractor(s) claims is a SBE is in fact owned and controlled by San

Francisco-based SBEs. If the Agency determines that the business is not a SBE, the Agency shall give the Agency-Assisted Contractor or Contractor a Notice of Non-Qualification and provide the Agency-Assisted Contractor or Contractor with a reasonable period (not to exceed 20 days) in which to meet with the Agency and if necessary make a Submission, concerning its good faith efforts. If the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to Section XII.

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

XII. ARBITRATION OF DISPUTES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

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

Agency

Agency-Assisted Contractor

XIII. AGREEMENT EXECUTION

Note: If you are seeking Agency certification as a SBE, you should fill out the “Application for SBE Certification”. If you are already an Agency certified SBE, you should execute the “SBE Eligibility Statement”.

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

Signature

Date

Print Your Name

Title

Company Name and Phone Number

Nondiscrimination in Contracts and Benefits

Instructions

A. What is the Nondiscrimination in Contracts Policy?

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

www.sfocii.org/index.aspx?page=126.

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

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

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

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

You may not discriminate against:

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

D. What are prohibited types of discrimination?

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

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

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

E. How are subcontracts affected?

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

F. Nondiscrimination in benefits for spouses and domestic partners

1. Who are domestic partners?

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

2. What is nondiscrimination in benefits?

DDA

Transbay Block 9

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

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

3. Examples of benefits

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

G. Form required

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

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

H. Attachments

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

I. If your answers change

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

Nondiscrimination in Contracts and Benefits - Declaration Form

1. Nondiscrimination—Protected Classes

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

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

b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Successor Agency or the City?

- Yes No

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

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

a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?

- Yes No

b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?

- Yes No

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

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

Benefit	Yes, for Spouses	Yes, for Partners	No
• Medical (health, dental, vision)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Pension	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bereavement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Family leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Parental leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employee assistance programs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Relocation and travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- Company discounts, facilities, events
- Credit union
- Child care
- Other _____
- Other _____

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

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

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

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

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

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

Name of Company/Organization: _____

Doing Business As (DBA): _____

Also Known As (AKA): _____

General Address: _____

(For General Correspondence) _____

Remittance Address: _____

(If different from above address) _____

Name of Signatory: _____ Title: _____

(Please Print)

Signature: _____

Phone Number: _____ Federal Tax ID Number: _____

Approximate number of employees in the U.S.: _____ Vendor Number: _____

(if known)

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

THIS FORM MUST BE RETURNED WITH THE ORIGINAL SIGNATURE

Please return this form to: Successor Agency to the San Francisco Redevelopment Agency, One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103.

MINIMUM COMPENSATION POLICY (MCP) DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (OCII) (successor to the San Francisco Redevelopment Agency) adopted the Minimum Compensation Policy (MCP), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to provide the following to their employees covered by the MCP on OCII contracts and subcontracts for services: For Commercial Business MCP the wage rate is \$12.66 per hour. For Nonprofit MCP the wage rate is \$11.03 per hour. In addition, 12 paid days off per year for vacation, sick leave, or personal necessity (or cash equivalent) and 10 days off without pay per year shall be offered.

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

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

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

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

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

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

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

Declaration

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

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

Signature

Date

Print Name

Company Name

Phone

HEALTH CARE ACCOUNTABILITY POLICY (HCAP) DECLARATION

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

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits approved by the OCII Commission; (2) pay OCII \$4.00 per hour for each hour the employee works on the covered contract or subcontract or on property covered by a lease (but not to exceed \$160 in any week) and OCII will appropriate the money for staffing and other resources to provide medical care for the uninsured; or (3) participate in a health benefits program developed by OCII.

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

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

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

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

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

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

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

Declaration

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

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

Signature

Date

Print Name

Company Name

Phone

DDA

Transbay Block 9

Attachment 10 – Agency Equal Opportunity Program

Assessor's Block 3736, Lot 120

CONSTRUCTION WORK FORCE AGREEMENT

- I. **PURPOSE.** The purpose of the Agency and the Developer/Affordable Developer entering into this Construction Work Force Agreement is to ensure participation of San Francisco residents and equal employment opportunities for minority group persons and women in the construction work force involved in constructing any of the phases upon the Site covered by the DDA.
- II. **WORK FORCE GOALS.**
- A. The goal set forth below is expressed as a percentage of each Contractor's total hours of employment and training by trade on the Site. The goal represents the level of San Francisco resident participation each Contractor should reasonably be able to achieve in each construction trade in which it has employees on the Site. The Owner agrees, and will require each Contractor (regardless of tier), to use its good faith efforts to employ San Francisco residents to perform construction work upon the Site at a level at least consistent with said goals.
- B. Goal: **50 percent** participation of San Francisco residents in the total hours worked in the trade.
- C. Amendments to the goals shall be prospective and go into effect 20 days after the Agency mails written notice of the amendments to the Developer/Affordable Developer. New goals shall not be applied retroactively.
- D. Although paragraph B establishes a single goal for participation of San Francisco residents, each Contractor is required to provide equal employment opportunity and to take equal opportunity for all ethnic groups, both male and female, and all women, both minority and non-minority. Consequently, a Contractor may be in violation of this Construction Work Force Agreement if a particular ethnic group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goal for participation of San Francisco residents, the Contractor may be in violation if a specific ethnic group is underutilized.) If the Agency determines, after affording a Contractor notice and an opportunity to be heard, that the Contractor has violated its obligations under this paragraph, the Agency may set, for that Contractor, work force participation goals by particular ethnic group, e.g., Blacks, Latinos, etc.
- E. Each Contractor is individually required to comply with its obligations under this Construction Work Force Agreement, and to make a good faith effort to achieve each goal in each trade in which it has employees employed at the Site. (See Section IV below.) The overall good faith performance by other contractors or subcontractors toward a goal does not excuse any covered Contractor's failure to make good faith efforts to achieve the goals.
- F. The Contractor shall not use the goals or equal opportunity standards to discriminate against any person because of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.

- G. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Unless otherwise permitted by law, trainees must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS").

III. INCORPORATION. Whenever the Owner, the general contractor, any prime contractor, or any subcontractor at any tier subcontracts a portion of the work on the Site involving any construction trade, it shall set forth verbatim and make binding on each subcontractor which has a contract in excess of \$10,000 the provisions of this Construction Work Force Agreement, including the applicable goals for San Francisco resident participation in each trade.

IV. EQUAL OPPORTUNITY REQUIREMENTS.

- A. Each Contractor shall take specific equal opportunities to ensure equal employment opportunity ("EEO"). The evaluation of the Contractor's compliance with this Construction Work Force Agreement shall be based upon its good faith efforts to achieve maximum results from its actions. Each Contractor shall document these efforts fully, and shall implement equal opportunity steps at least as extensive as the following:
1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at the Site. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment.
 2. Provide written notification to CityBuild when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 3. Maintain a current file of the names, addresses and telephone numbers of each resident applicant and each resident referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
 4. Provide immediate written notification to the Agency when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a resident sent or requested by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

5. Develop on-the-job training opportunities and/or participate in training programs, including apprenticeship, trainee and upgrading programs relevant to the Contractor's employment needs, especially those funded or approved by BAT or DAS. The Contractor shall provide notice of these programs to the sources compiled under Section IV.A.2 above.
6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at the Site.
7. Review, prior to beginning work at the Site and at least annually thereafter, the Contractor's EEO policy and equal opportunity obligations under the DDA and this Construction Work Force Agreement with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter. The Agency's contract compliance staff shall be invited to attend the meeting held prior to the beginning of work at the Site.
8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
9. Direct its recruitment efforts, both oral and written, to local minority group, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
10. Encourage present minority and female employees to recruit other minority group persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the Site and in other areas of a Contractor's work force.
11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

12. Conduct, at least annually, an inventory and evaluation of San Francisco resident personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training etc., such opportunities.
 13. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.
 14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the genders.
 15. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and equal opportunity obligations.
- B. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their equal opportunity obligations under Section IV.A.1 through 15. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Section IV.A.1 through 15 provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minority group persons and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force composition, makes a good faith effort to meet its individual goals, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

V. **ADDITIONAL PROVISIONS.**

- A. The failure by a union with which the Contractor has a collective bargaining agreement, to refer San Francisco residents shall not excuse the Contractor's obligations under this Construction Work Force Agreement.
- B. A Contractor shall not enter into any subcontract with any person or firm that the Contractor knows or should have known is debarred from government contracts pursuant to Executive Order 11246.
- C. No employee to whom the equal opportunity provisions of this Construction Work Force Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to Attachment 9 of the DDA or this Schedule.
- D. Each Contractor shall designate a responsible official to monitor all employment-related

activity to ensure that the Contractor's EEO policy is being carried out.

VI. DOCUMENTATION AND RECORDS.

- A. Submission of electronic certified payrolls. Each Contractor shall submit through the General Contractor to the Agency by noon on each Wednesday a report providing the information contained in the Agency's Optional Form of payroll report for the week preceding the previous week on each of its employees. Each prime contractor is responsible for the submission of this report by each of its subcontractors.
- B. Each Contractor shall submit through the General Contractor to the Agency by noon on each Wednesday a payroll report for the week preceding the previous week on each of its employees. Each prime contractor is responsible for the submission of this report by each of its subcontractors and for certifying its accuracy.
- C. No monthly progress payments will be processed until Contractor has submitted weekly certified payrolls to the Agency for the applicable time period. Certified payrolls shall be prepared pursuant to this SBE Policy for the period involved for all employees, including those of subcontractors of all tiers, for all labor incorporated into the work.
- D. Contractor shall submit certified payrolls to the Agency electronically via the Project Reporting System ("PRS") selected by the Agency, an Internet-based system accessible on the World Wide Web through a web browser. The Contractor and each Subcontractor and Supplier must register with PRS and be assigned a log-on identification and password to access the PRS.
- E. Use of the PRS may require Contractor, Subcontractors and Suppliers to enter additional data relating to weekly payroll information including, but not limited to, employee identification, labor classification, total hours worked and hours worked on this project, and wage and benefit rates paid. Contractor's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software.
- F. For each Agency-Assisted project, the Agency will provide basic training in the use of the PRS at a scheduled training session. Contractor and all Subcontractors and Suppliers and/or their designated representatives must attend the PRS training session.
- G. Contractor shall comply with the requirements of this Article VI at no additional cost to the Agency or the Owner.
- H. The Agency will not be liable for interest, charges or costs arising out of or relating to any delay in making progress payments due to Contractor's failure to make a timely and accurate submittal of weekly certified payrolls.
- I. In addition to the above, Contractor shall comply with the requirements of California Labor Code Section 1776, or as amended from time to time, regarding the keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its Subcontractors of all tiers.

- J. The Contractor shall make the payroll records available to for inspection at all reasonable hours at the job site office of Contractor.
- K. Contractor is solely responsible for compliance with Labor Code Section 1776 or this SBE Policy. The Agency shall not be liable for Contractor's failure to make timely or accurate submittals of certified payrolls.

ARBITRATION OF DISPUTES.

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

- H. **Burden of Proof.** The burden of proof with respect to Construction Work Force compliance and/or Good Faith Efforts shall be on the Owner. The burden of proof as to all other alleged breaches by the Owner shall be on the Agency.
- I. **California Law Applies.** Except where expressly stated to the contrary in this Construction Work Force Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.
- J. **Arbitration Remedies and Sanctions.** The arbitrator may impose only the remedies and sanctions set forth below:
1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.
 2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Owner or this Construction Work Force Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Owner or this Construction Work Force Agreement, other than those minor modifications or extensions necessary to enable compliance with this Construction Work Force Agreement.
 3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the Agency's Work Force policy requirements. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.
 4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this Construction Work Force Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.
 5. Direct any Arbitration Party to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

- K. **Arbitrator’s Decision.** The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.
- L. **Default Award; No Requirement to Seek an Order Compelling Arbitration.** The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.
- M. **Arbitrator Lacks Power to Modify.** Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of this Construction Work Force Agreement or any other agreement between the Agency and Owner or to negotiate new agreements or provisions between the parties.
- N. **Jurisdiction/Entry of Judgment.** The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator’s fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys’ fees, provided, however, that attorneys’ fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator’s decision may be entered in any court of competent jurisdiction.
- O. **Exculpatory Clause.** Owner expressly waives any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services (“the Work”). Owner acknowledges and agrees that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this Construction Work Force Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.
- P. **Severability.** The provisions of this Construction Work Force Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Construction Work Force Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this Construction Work Force Agreement or the validity of their application to other persons or circumstances.
- Q. **Arbitration Notice:** BY INITIALING IN THE SPACE BELOW YOU ARE

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

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

Agency

Owner

VI. PRECONSTRUCTION MEETING.

- A. Prior to the commencement of construction, the general contractor, any prime contractor, or any subcontractor at any tier shall attend a preconstruction meeting convened by the Agency and to which outreach organizations are invited to review the reporting requirements, the prospective construction work force composition and any problems that may be anticipated in meeting the construction work force goal.
- B. Any subcontractor at any tier, who does not attend such a meeting shall not be permitted on the job site. The Agency shall convene additional preconstruction meetings within 24 hours of the Contractor's request. The Contractor shall endeavor to include as many prospective subcontractors as possible at these meetings in order not to protract unduly the number of meetings.
- C. Failure to comply with this preconstruction meeting provision may result in the Agency ordering a suspension of work by the prime contractor and/or the subcontractor until the breach has been cured. Suspension under this provision is not subject to arbitration.

VII. TERM. The obligations of the Owner and the Contractors with respect to their construction work forces, as set forth in Attachment 9 of this DDA and this Construction Work Force Agreement, shall remain in effect until completion of all work to be performed by the Owner in connection with the construction of any of the phases.

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

Signature

Date

Print Your Name

Title

Company Name and Phone Number

PERMANENT WORK FORCE AGREEMENT

- I. PURPOSE.** The purposes of the Agency and the Developer/Affordable Developer in entering into this Permanent Work Force Agreement are to ensure:
- A. that San Francisco residents obtain **50 percent** of the permanent jobs in the work forces of the Owner and tenants at the Site.
 - B. that San Francisco residents are given first consideration for employment by the Owner and tenants for permanent employment at the Site.
- II. APPLICATION OF THIS SCHEDULE TO TENANTS.** The Developer shall include verbatim in its leases and require the incorporation verbatim in all subleases for space in the Site the provisions of this Permanent Work Force Agreement. The lease shall make the incorporated provisions binding on and enforceable by the Agency against the tenant to the same extent as these provisions are binding on and enforceable against the Developer; except that:
- A. Unless agreed otherwise by the Agency, a tenant with **26 or more** employees shall submit its workforce plan through the Developer to the Agency not later than 90 days prior to hiring any permanent employees to work on the tenant's premises; rather than pursuant to the requirements set forth in Section IV.
 - B. A tenant with 25 or less employees shall not be required to submit a workforce plan pursuant to Section IV, but instead shall undertake and document in writing the good faith efforts it made to meet the goals and first consideration in employment requirements set forth in Section III. The Agency's Contract Compliance Department shall determine if such a tenant has exercised good faith efforts.
 - C. A tenant with less than 25 employees shall submit to the Agency the reports required by Section VI and not later than 60 days after it opens for business and annually thereafter.
- III. GOALS AND OBJECTIVES.** The Developer and each tenant shall:
- A. make good faith efforts to employ 50 percent of its work force at the Site in each job category from residents of the City and County of San Francisco.
 - B. as provided in Section IV.B.1, give first consideration for employment at the Site to residents of San Francisco.
- IV. PERMANENT WORKFORCE PLAN.**
- A. The Developer and each tenant with more than 26 employees, whether or not it is a federal contractor, shall prepare and adopt a plan for its permanent work force at the Site.
 - B. The workforce plan shall contain the following:
 - 1. Detailed procedures for ensuring that San Francisco residents who are equally or more qualified than other candidates obtain first consideration for employment.

These procedures shall include specific recruiting, screening and hiring procedures (e.g., phased hiring) which ensure that qualified residents receive offers of employment prior to other equally or less qualified candidates. If a candidate(s) who is entitled to first consideration is not selected for the position, the Developer or tenant shall have the burden of establishing to the Agency and the arbitrator (if the matter is taken to arbitration), that the candidate who was selected was better qualified for the position than the candidate(s) who was entitled to first consideration.

2. Where it is a reasonable expectation that 10 percent or more of the employees in any job category will regularly work less than 35 hours per week, detailed procedures for ensuring that minority group persons, women, and San Francisco residents do not receive a disproportionate share of the part time work.
3. An agreement that not more than 15 percent of the positions in any job category will be filled by persons transferred from other facilities operated by the Developer, without the prior approval of the Agency. The Agency shall grant approval upon a showing that transfers in excess of 15 percent do not unreasonably interfere with the objective of creating new jobs for San Francisco residents and that such transfers further legitimate business needs of the Owner. Transfers shall be counted in determining if the Developer has met the employment goals for each ethnic group and women.
4. Where required by the Agency, detailed procedures for utilizing Outreach Organizations as meaningful referral sources for job applicants.

V. **ARBITRATION OF DISPUTES.**

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

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

Parties' Participation. The Agency and all persons or entities that have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person

or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Owner made an initial timely Demand for Arbitration pursuant to Section V.B. above.

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

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

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

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

Burden of Proof. The burden of proof with respect to Permanent Work Force compliance and/or Good Faith Efforts shall be on the Owner. The burden of proof as to all other alleged breaches by the Owner shall be on the Agency.

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

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

1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.
2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Owner or this Permanent Work Force Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Owner or this Permanent Work Force Agreement, other

than those minor modifications or extensions necessary to enable compliance with this Permanent Work Force Agreement.

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the Agency's Work Force policy requirements. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.
4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this Permanent Work Force Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.
5. Direct any Arbitration Party to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

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

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

Arbitrator Lacks Power to Modify. Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of this Permanent Work Force Agreement or any other agreement between the Agency and Owner or to negotiate new agreements or provisions between the parties.

Jurisdiction/Entry of Judgment. The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-

prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

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

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

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

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

_____ Agency _____ Owner

VI. REPORTS.

- A. The Owner and each tenant shall prepare, for its Site work force, reports for each job category which show by race, gender, residence (including if in the Western Addition Redevelopment Project Area A-2), and, where required by the Agency, by transfer/non-transfer and referral source:
1. Current work force composition;
 2. applicants;
 3. job offers;
 4. hires;
 5. rejections;
 6. pending applications;
 7. promotions and demotions; and
 8. employees working, on average, less than 35 hours per week.
- B. The reports shall be submitted quarterly to the Agency, unless otherwise required by the Agency. In this regard the Owner and each tenant agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, the Agency may require daily, weekly or monthly reports containing all or some of the above information. The Owner and each tenant further agrees that the above reports may not be sufficient for monitoring the Owner's or tenant's performance in all circumstances, that they will negotiate in good faith concerning additional reports, and that the arbitrator shall have authority to require additional reports if the parties cannot agree.

VII. TERM. The obligations of the Owner and its tenants with respect to their permanent work forces as set forth in the DDA, and this Permanent Work Force Agreement, shall arise from the date the Owner or its tenants first assigns employees to the Site on a permanent basis and remain in effect for three years thereafter.

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

Signature

Date

Print Your Name

Title

Company Name and Phone Number

PREVAILING WAGE PROVISIONS
(LABOR STANDARDS)

1. **Applicability.** These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Improvements as defined in the Disposition and Development Agreement (DDA) between the Developer and the Agency of which this Attachment 10 and these Labor Standards are a part.

2. **All Contracts and Subcontracts shall contain the Labor Standards. Confirmation by Construction Lender.**

(a) All specifications relating to the construction of the Improvements shall contain these Labor Standards and the Developer shall have the responsibility to assure that all contracts and subcontracts, regardless of tier, incorporate by reference the specifications containing these Labor Standards. If for any reason said Labor Standards are not included, the Labor Standards shall nevertheless apply. The Developer shall supply the Agency with true copies of each contract relating to the construction of the Improvements showing the specifications that contain these Labor Standards promptly after due and complete execution thereof and before any work under such contract commences. Failure to do shall be a violation of these Labor Standards.

(b) Before close of escrow under the DDA and as a condition to close of escrow, the Developer shall also supply a written confirmation to the Agency from any construction lender for the Improvements that such construction lender is aware of these Labor Standards.

3. **Definitions.** The following definitions shall apply for purposes of this Prevailing Wage Provisions:

(a) "Contractor" is the Developer if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds \$10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the Improvements.

(b) "Laborers" and "Mechanics" are all persons providing labor to perform the construction, including working foremen and security guards.

(c) "Working foreman" is a person who, in addition to performing supervisory duties, performs the work of a Laborer or Mechanic during at least 20 percent of the workweek.

4. **Prevailing Wage.**

(a) All Laborers and Mechanics employed in the construction of the Improvements will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted

by §5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency or may be obtained from the California Department of Industrial Relations website:

<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>

- (b) All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.
- (c) Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.
- (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Developer that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §8. The Executive Director of the Agency may require the Developer to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.
- (e) Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

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

- (a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.

- (b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.
- (c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.
- (d) Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:
 - 1. The deduction is not otherwise prohibited by law; and
 - 2. It is either:
 - a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or
 - b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and
 - 3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and
 - 4. The deduction shall serve the convenience and interest of the employee.
- (e) Any authorized purchase of United States Savings Bonds for the employee.
- (f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- (g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.
- (h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments, provided that a collective bargaining agreement between the Contractor and representatives of its employees provides for

such payment and the deductions are not otherwise prohibited by law.

6. **Apprentices and Trainees.** Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first 90 days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanic's hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.
7. **Overtime.** No Contractor contracting for any part of the construction of the Improvements which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of 40 hours in such workweek, whichever is greater.
8. **Payrolls and Basic Records.**
 - (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Improvements and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the Improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.
 - (b) The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the

Improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or the Developer acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.

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

- (c) The Contractor shall make the records required under this §8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

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

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

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

12. Posting of Notice to Employees. The "Notice to Employees" (in the form appearing on the last page of these Labor Standards) and the Wage Determination referred to in Section 4(a) of these Labor Standards shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the Improvements before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

13. Violation and Remedies.

- (a) Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.
- (b) Stop Work--Contract Terms, Records and Payrolls. If there is a violation of these

Labor Standards by reason of the failure of any contract or subcontract for the construction of the Improvements to contain the Labor Standards as required by Section 2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by Section 8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Developer with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.

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

Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Developer shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §14.

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

14. Arbitration of Disputes.

- (a) Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.

- (b) The Agency and all persons or entities that have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.
- (c) The arbitration shall take place in the City and County of San Francisco.
- (d) Arbitration may be demanded by the Agency, the Developer or the Contractor.
- (e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Developer, or as appropriate to one or the other if the Developer or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §4) and copies of all notices sent or received by the Agency pursuant to §13. Such material shall be made part of the arbitration record.
- (f) One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator, within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within 30 days from appointment.
- (g) Any party to the arbitration whether the party participates in the arbitration or not shall be bound by the decision of the arbitrator whose decision shall be final and binding on all of the parties and any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before 30 days from appointment. The arbitrator shall schedule hearings as necessary to meet this 30 day decision requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.
- (h) Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision and if the arbitrator's decision requires the payment of money the Contractor shall make the required payments and the Developer shall pay the Contractor from money withheld.
- (i) Costs and Expenses. Each party shall bear its own costs and expenses of the arbitration and the costs of the arbitration shall be shared equally among the parties.

15. Non-liability of the Agency. The Developer and each Contractor acknowledge and agree that the procedures hereinafter set forth for dealing with violations of these Labor Standards are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids for the construction of the Improvements, in determining the time for commencement and

DDA

Transbay Block 9

completion of construction and in proceeding with construction work. Accordingly the Developer, and any Contractor, by proceeding with construction expressly waives and is deemed to have waived any and all claims against the Agency for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including but not limited to claims relative to stop work orders, and the commencement, continuance or completion of construction.

SAN FRANCISCO REDEVELOPMENT AGENCY

NOTICE TO EMPLOYEES

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

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

***PREVAILING
WAGE***

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

OVERTIME

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

APPRENTICES

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

PROPER PAY

If you do not receive proper pay, write
Successor Agency to the San Francisco Redevelopment Agency
1 South Van Ness Avenue, Floor 5
San Francisco, CA 94103
or call Contract Compliance Specialist
George Bridges at 415-749-2546

**ATTACHMENT 11
FORM OF GRANT DEED**

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

WHEN RECORDED, MAIL TO:

Block 9 Transbay LLC
c/o Jordan Ritter
Essex Property Trust
925 East Meadow Drive
Palo Alto, CA 94303

Assessor's Block 3736 , Lot120
Commonly known as Transbay Block 9

Space Above This Line Reserved for Recorder's Use

GRANT DEED

The SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, organized and existing under the laws of the State of California, herein called "Grantor," acting to carry out a redevelopment plan under the Community Redevelopment Law of California, hereby **GRANTS** to **Block 9 Transbay LLC., a Delaware Limited Liability Company**, herein called "Grantee," the following described real property situated in the City and County of San Francisco, State of California, hereinafter referred to as the "Property," which property is particularly described in Exhibit "A" attached hereto and made a part hereof. All capitalized terms used in this Grant Deed are either defined herein or are as defined in the Agreement, as defined below.

SUBJECT, however, to the Disposition and Development Agreement, between the Grantor and the Grantee, dated December __, 2014, which is recorded concurrently with this Deed and, hereinafter referred to as the "Agreement," and the following covenants, which covenants shall run with the land:

Grantee covenants and agrees for itself, and its successors and assigns to or of the Property or any part thereof that Grantee, and such successors and assigns, shall:

(i) Not discriminate against or segregate any person or group of persons on account of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Developer or any occupant or user of the Site in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, and Developer itself (or any person or entity claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Site or any part thereof, nor shall Developer or any occupant or user of the Site or any transferee, successor, assign or holder of any interest in the Site or any person or entity claiming under or through such transferee, successor, assign or holder, establish or permit any such practice or practices of discrimination or segregation, including,

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

(ii) Not discriminate against or segregate any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926,12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site nor shall the Developer or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed.

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

Authorized by Successor Agency Resolution No. XX-2014, adopted _____, 2014.

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

By: _____
Tiffany J. Bohee
Executive Director

APPROVED AS TO FORM:
DENNIS J. HERRERA, CITY ATTORNEY

By: _____

Heidi J. Gewertz
Deputy City Attorney

GRANTEE:

Block 9 Transbay, LLC.,
a Delaware Limited Liability Company

By: TMG AVANT, LLC
a Delaware limited liability company,
Its Managing Manager

By: TMG Partners,
a California corporation,
Its Manager

By: _____
Name: _____
Title: _____

By: Essex Portfolio, L.P.,
a California limited partnership
Member

By: Essex Property Trust, Inc.,
a Maryland corporation,
its general partner

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Property Legal Description

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

PARCEL ONE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE SOUTHWESTERLY LINE OF FIRST STREET; AND RUNNING THENCE NORTHWESTERLY ALONG SAID LINE OF FIRST STREET, 48 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 48 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET; AND THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID LINE OF FOLSOM STREET, 100 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 348.

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF CLEMENTINA STREET AND THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHEASTERLY ALONG SAID LINE OF FIRST STREET, 107 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 107 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; AND THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF CLEMENTINA STREET, 100 FEET TO THE POINT OF BEGINNING.

BEING PART OF 100 VARA BLOCK NUMBER 348.

PARCEL THREE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 100 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF FOLSOM STREET, 75 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID SOUTHEASTERLY LINE OF CLEMENTINA STREET, 75 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA LOT NO. 55.

PARCEL FOUR:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 175 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 1ST STREET; RUNNING THENCE SOUTHWESTERLY AND ALONG SAID LINE OF FOLSOM STREET, 50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF CLEMENTINA STREET, 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA LOT NO. 55.

PARCEL FIVE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 225 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID LINE OF FOLSOM STREET, 25 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID LINE OF CLEMENTINA STREET, 25 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA BLOCK NO. 348.

EXCEPTING THEREFROM PARCELS TWO, THREE, FOUR AND FIVE, ALL THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED OCTOBER 18, 1954, IN VOLUME 6469, PAGE 496, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, DISTANT THEREON NORTH 44° 52' 05" WEST, 53.09 FEET FROM THE MOST SOUTHERLY CORNER OF SAID STATE'S PARCEL; THENCE CONTINUING ALONG SAID SOUTHWESTERLY LINE, NORTH 44° 52' 05" WEST, 101.91 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET, 40 FEET WIDE; THENCE ALONG LAST SAID LINE, NORTH 45° 07' 55" EAST, 181.61 FEET TO A POINT DISTANT THEREON SOUTH 45° 07' 55" WEST, 68.55 FEET FROM THE INTERSECTION OF SAID LINE OF CLEMENTINA STREET WITH THE SOUTHWESTERLY LINE OF FIRST STREET; THENCE FROM A TANGENT THAT BEARS SOUTH 23° 20' 57" WEST, ALONG A CURVE TO THE LEFT WITH A RADIUS OF 796 FEET, THROUGH AN ANGLE OF 15° 01' 58", AN ARC LENGTH OF 208.85 FEET TO THE POINT OF COMMENCEMENT.

PARCEL SIX:

COMMENCING AT THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED RECORDED NOVEMBER 7, 1952, IN VOLUME 6035, AT PAGE 505, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL, SOUTH 45° 07' 55" WEST, 25.01 FEET TO THE NORTHEASTERLY LINE OF ECKER STREET; THENCE ALONG LAST SAID LINE, NORTH 44° 52' 05" WEST, 33.58 FEET TO A LINE CONCENTRIC WITH AND DISTANT WESTERLY, MEASURED RADially, 28 FEET FROM THE "BO + MO" LINE OF THE DEPARTMENT OF PUBLIC WORKS' SURVEY FOR THE STATE FREEWAY IN SAN FRANCISCO, ROAD IV-SF-224-SF; THENCE ALONG SAID CONCENTRIC LINE, FROM A TANGENT THAT BEARS NORTH 6° 01' 58" EAST, ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 796 FEET, THROUGH AN ANGLE OF 2° 17' 01", AN ARC DISTANCE OF 31.73 FEET TO THE NORTHEASTERLY LINE OF SAID PARCEL; THENCE ALONG LAST SAID LINE, SOUTH 44° 52' 05" EAST, 53.09 FEET TO THE POINT OF COMMENCEMENT.

BEING A PORTION OF 100 VARA LOT NO. 55 IN BLOCK NO. 348.

APN: LOT 120, BLOCK 3736

ATTACHMENT 12
FORM OF NOTICE OF EXCLUSIVE RIGHT OF REPURCHASE

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

WHEN RECORDED, MAIL TO:

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

Assessor's Block 3736, Lot 120
Commonly known as Transbay Block 9

Space Above This Line Reserved for Recorder's Use

NOTICE OF EXCLUSIVE RIGHT OF REPURCHASE

This NOTICE OF EXCLUSIVE RIGHT OF REPURCHASE is made pursuant to a Disposition and Development Agreement dated ____, 2014 and recorded on ____, 2014, in the Office of the Recorder of the City and County of San Francisco, as Document No. _____, of the Official Records (the "DDA"), by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, organized and existing under the laws of the State of California (the "Agency"), and Block 9 Transbay, LLC a Delaware Limited Liability Company (the "Owner"), which covered the development of certain real property situated in the City and County of San Francisco (the "City"), State of California, which property is particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"). The Agency and the Owner hereby serve notice as follows:

WITNESSETH:

WHEREAS, the Owner is the owner of the Property, and has granted the Agency an exclusive right of repurchase pursuant to Section 8.02 (a) of the DDA (the "Exclusive Right of Repurchase"), which entitles the Agency to have an Exclusive Right to Repurchase the Site (both as defined in the DDA) from the Owner upon Owner's default under Section 8.01 (c) of the DDA; and

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

WHEREAS, the Exclusive Right of Repurchase shall terminate, when the Owner has commenced construction on the Site per the Schedule of Performance in the DDA.

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

IN WITNESS HEREOF, the Agency and the Owner have executed this Notice of Exclusive Right of Repurchase this ____ day of _____, 2014.

Authorized by Successor Agency Resolution
No. XX-2014, adopted _____, 2014

AGENCY:

Successor Agency to the Redevelopment Agency
of the City and County of San Francisco, a public
body, organized and existing under the laws of
the State of California

By _____
Tiffany J. Bohee
Executive Director

OWNER:

Block 9 Transbay, LLC
a Delaware Limited Liability Company

By: _____
Its:

APPROVED AS TO FORM:
DENNIS J. HERRERA, CITY ATTORNEY

By _____
Heidi J. Gewertz
Deputy City Attorney

EXHIBIT "A"

Property Legal Description

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

PARCEL ONE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE SOUTHWESTERLY LINE OF FIRST STREET; AND RUNNING THENCE NORTHWESTERLY ALONG SAID LINE OF FIRST STREET, 48 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 48 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET; AND THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID LINE OF FOLSOM STREET, 100 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 348.

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF CLEMENTINA STREET AND THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHEASTERLY ALONG SAID LINE OF FIRST STREET, 107 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 107 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; AND THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF CLEMENTINA STREET, 100 FEET TO THE POINT OF BEGINNING.

BEING PART OF 100 VARA BLOCK NUMBER 348.

PARCEL THREE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 100 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF FOLSOM STREET, 75 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID SOUTHEASTERLY LINE OF CLEMENTINA STREET, 75 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA LOT NO. 55.

PARCEL FOUR:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 175 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 1ST STREET; RUNNING THENCE SOUTHWESTERLY AND ALONG SAID LINE OF FOLSOM STREET, 50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF CLEMENTINA STREET, 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA LOT NO. 55.

PARCEL FIVE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 225 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID LINE OF FOLSOM STREET, 25 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID LINE OF CLEMENTINA STREET, 25 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA BLOCK NO. 348.

EXCEPTING THEREFROM PARCELS TWO, THREE, FOUR AND FIVE, ALL THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED OCTOBER 18, 1954, IN VOLUME 6469, PAGE 496, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, DISTANT THEREON NORTH 44° 52' 05" WEST, 53.09 FEET FROM THE MOST SOUTHERLY CORNER OF SAID STATE'S PARCEL; THENCE CONTINUING ALONG SAID SOUTHWESTERLY LINE, NORTH 44° 52' 05" WEST, 101.91 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET, 40 FEET WIDE; THENCE ALONG LAST SAID LINE, NORTH 45° 07' 55" EAST, 181.61 FEET TO A POINT DISTANT THEREON SOUTH 45° 07' 55" WEST, 68.55 FEET FROM THE INTERSECTION OF SAID LINE OF CLEMENTINA STREET WITH THE SOUTHWESTERLY LINE OF FIRST STREET; THENCE FROM A TANGENT THAT BEARS SOUTH 23° 20' 57" WEST, ALONG A CURVE TO THE LEFT WITH A RADIUS OF 796 FEET, THROUGH AN ANGLE OF 15° 01' 58", AN ARC LENGTH OF 208.85 FEET TO THE POINT OF COMMENCEMENT.

PARCEL SIX:

COMMENCING AT THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED RECORDED NOVEMBER 7, 1952, IN VOLUME 6035, AT PAGE 505, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL, SOUTH 45° 07' 55" WEST, 25.01 FEET TO THE NORTHEASTERLY LINE OF ECKER STREET; THENCE ALONG LAST SAID LINE, NORTH 44° 52' 05" WEST, 33.58 FEET TO A LINE CONCENTRIC WITH AND DISTANT WESTERLY, MEASURED RADially, 28 FEET FROM THE "BO + MO" LINE OF THE DEPARTMENT OF PUBLIC WORKS' SURVEY FOR THE STATE FREEWAY IN SAN FRANCISCO, ROAD IV-SF-224-SF; THENCE ALONG SAID CONCENTRIC LINE, FROM A TANGENT THAT BEARS NORTH 6° 01' 58" EAST, ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 796 FEET, THROUGH AN ANGLE OF 2° 17' 01", AN ARC DISTANCE OF 31.73 FEET TO THE NORTHEASTERLY LINE OF SAID PARCEL; THENCE ALONG LAST SAID LINE, SOUTH 44° 52' 05" EAST, 53.09 FEET TO THE POINT OF COMMENCEMENT.

BEING A PORTION OF 100 VARA LOT NO. 55 IN BLOCK NO. 348.

APN: LOT 120, BLOCK 3736

**ATTACHMENT 13
FORM OF NOTICE OF TERMINATION**

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

WHEN RECORDED, MAIL TO:

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

Assessor's Block 3736, Lot 120
Commonly known as Transbay Block 9

Space Above This Line Reserved for Recorder's Use

NOTICE OF TERMINATION

This NOTICE OF TERMINATION is made pursuant to a Disposition and Development Agreement dated _____ and recorded on _____, 2014, in the Office of the Recorder of the City and County of San Francisco, as Instrument/File No. __-_____-__, Reel ____, Image ____ of the Official Records (the "DDA"), by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, organized and existing under the laws of the State of California (the "Agency"), and Block 9 Transbay LLC., a Delaware Limited Liability Company (the "Owner"), which covered the development of certain real property situated in the City and County of San Francisco (the "City"), State of California, which property is particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"). The Agency and the Owner hereby serve notice as follows:

WITNESSETH:

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

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

WHEREAS, per Section 4.13 of the DDA, the Agency is issuing to Owner, in recordable form, this Notice of Termination which confirms that the Agency has conclusively determined that the construction obligations of the Owner as specified in said DDA, have been fully performed and the Improvements completed in accordance therewith; and

WHEREAS, the Agency's issuance of this Notice of Termination does not relieve Owner, its successors and assigns, or any other person or entity from any and all City requirements or conditions to occupancy of any Improvements, which City requirements or conditions must be complied with separately; and

WHEREAS, per Section 4.07(b) of the DDA, the Agency's determination regarding said construction obligations is not directed to, and thus the Agency assumes no responsibility for, engineering or structural matters or compliance with City building codes and regulations or applicable state or federal law relating to construction standards; and

WHEREAS, per Article 5 the following provision survives the Agency's issuance of this Notice of Termination:

Section 5.03, which requires the Owner to abide by the provisions contained in Section 5.03, Nondiscrimination.

NOW, THEREFORE, as provided for in Section 4.13 (a) in said DDA, the Agency and the Owner hereby agree to terminate the DDA (SAVE and EXCEPT for the Section of Articles 5 cited above), and which remaining portions of said DDA shall have no further force or effect on the Property.

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

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

Authorized by Successor Agency Resolution AGENCY:
No. XX-2014, adopted, _____, 2014

APPROVED AS TO FORM:
Dennis J. Herrera

Successor Agency to the Redevelopment
Agency of the City and County of San
Francisco, a public body, corporate and politic

By _____
Heidi J. Gewertz
Deputy City Attorney

By _____
Tiffany J. Bohee
Executive Director

OWNER:

Block 9 Transbay LLC
A Delaware Limited Liability Company

By: _____

Its:

EXHIBIT "A"

Property Legal Description

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

PARCEL ONE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE SOUTHWESTERLY LINE OF FIRST STREET; AND RUNNING THENCE NORTHWESTERLY ALONG SAID LINE OF FIRST STREET, 48 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 48 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET; AND THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID LINE OF FOLSOM STREET, 100 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 348.

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BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF CLEMENTINA STREET AND THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHEASTERLY ALONG SAID LINE OF FIRST STREET, 107 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 107 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; AND THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF CLEMENTINA STREET, 100 FEET TO THE POINT OF BEGINNING.

BEING PART OF 100 VARA BLOCK NUMBER 348.

PARCEL THREE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 100 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF FOLSOM STREET, 75 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID SOUTHEASTERLY LINE OF CLEMENTINA STREET, 75 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA LOT NO. 55.

PARCEL FOUR:

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BEING PART OF 100 VARA LOT NO. 55.

PARCEL FIVE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 225 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID LINE OF FOLSOM STREET, 25 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID LINE OF CLEMENTINA STREET, 25 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA BLOCK NO. 348.

EXCEPTING THEREFROM PARCELS TWO, THREE, FOUR AND FIVE, ALL THAT PORTION DESCRIBED AS FOLLOWS:

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PARCEL SIX:

COMMENCING AT THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED RECORDED NOVEMBER 7, 1952, IN VOLUME 6035, AT PAGE 505, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL, SOUTH 45° 07' 55" WEST, 25.01 FEET TO THE NORTHEASTERLY LINE OF ECKER STREET; THENCE ALONG LAST SAID LINE, NORTH 44° 52' 05" WEST, 33.58 FEET TO A LINE CONCENTRIC WITH AND DISTANT WESTERLY, MEASURED RADially, 28 FEET FROM THE "BO + MO" LINE OF THE DEPARTMENT OF PUBLIC WORKS' SURVEY FOR THE STATE FREEWAY IN SAN FRANCISCO, ROAD IV-SF-224-SF; THENCE ALONG SAID CONCENTRIC LINE, FROM A TANGENT THAT BEARS NORTH 6° 01' 58" EAST, ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 796 FEET, THROUGH AN ANGLE OF 2° 17' 01", AN ARC DISTANCE OF 31.73 FEET TO THE NORTHEASTERLY LINE OF SAID PARCEL; THENCE ALONG LAST SAID LINE, SOUTH 44° 52' 05" EAST, 53.09 FEET TO THE POINT OF COMMENCEMENT.

BEING A PORTION OF 100 VARA LOT NO. 55 IN BLOCK NO. 348.

APN: LOT 120, BLOCK 3736

**ATTACHMENT 14
FORM OF DECLARATION OF SITE RESTRICTIONS**

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

WHEN RECORDED, MAIL TO:

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

Assessor's Block 3736, Lot 120
Recorder's Use

Space Above This Line Reserved for
Commonly known as Transbay Block 9

DECLARATION OF SITE RESTRICTIONS

The following are the covenants and restrictions affecting the Property (as hereinafter defined) of Block 9 Transbay LLC, a Delaware limited liability company, the owner of that certain property commonly known as Transbay Block 9. Block 9 is an approximately 31,564-square-foot parcel on Folsom Street between Essex and First Streets, located two blocks south of the future Transbay Transit Center and within the Transbay Redevelopment Project Area in the City and County of San Francisco, State of California.

THIS DECLARATION OF SITE RESTRICTIONS ("Declaration") is made as of the _____ day of _____, 2014, by the undersigned, hereinafter called the "Owner."

WITNESSETH:

WHEREAS, the Owner owns Lot 120 in Assessor Block 3736 (the "Property") in that certain Redevelopment Area in the City and County of San Francisco, State of California, covered by the Redevelopment Plan for the Transbay Redevelopment Project Area, filed in the Office of the Recorder of the City and County of San Francisco, State of California, as Document No. 2006I224836, filed on August 4, 2006, hereinafter referred to as the "Plan" or the "Redevelopment Plan;" and

WHEREAS, the California Community Redevelopment Law requires that adequate safeguards be imposed so that the work of redevelopment will be carried out pursuant to the Redevelopment Plan, and provides for the retention of controls and the establishment of restrictions and covenants running with land sold or leased for private use; and

WHEREAS, for the purpose of providing adequate safeguards that the work of redevelopment will be carried out pursuant to the Redevelopment Plan and to ensure the best use and the most appropriate development and improvement of the property described in the Redevelopment Plan; to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to guard against the erection thereon of poorly designed or proportioned structures; to ensure the highest and best development of said property; to encourage and secure the erection of attractive structures thereon, with appropriate locations on building sites; to prevent haphazard and inharmonious improvement of building sites; to secure and maintain proper setbacks from streets and adequate free space between structures; and, in general, to provide adequately for a high type and quality of improvement on said property, and thereby to enhance the value of investments made by purchasers of building sites therein, the Owner is desirous of subjecting the real property hereinafter described to the covenants, conditions and restrictions hereinafter set forth, each and all of which is and are for the benefit of said property and for each owner thereof and shall inure to the benefit of said property and for each owner thereof and pass with said property and each and every parcel thereof and shall apply to and bind the successors in interest and any owner thereof.

NOW, THEREFORE, the Owner hereby declares that the real property described and referred to in Clause 1 hereof, is and shall be held, transferred, sold, and conveyed, subject to the covenants and restrictions, hereinafter set forth:

1. Property Subject to This Declaration

The real property which is, and shall be, held, conveyed, transferred and sold, subject to the covenants and restrictions with respect to the various portions thereof set forth in the various clauses and subdivisions of this Declaration is located in the City and County of San Francisco, State of California, and is more particularly described as all that certain real property situated in the City and County of San Francisco (the "City"), State of California, and is more particularly described in Exhibit "A" attached hereto and made a part hereof.

2. Incorporation of Redevelopment Plan by Reference

The Redevelopment Plan for the Transbay Redevelopment Project Area, was approved and adopted by the Board of Supervisors of the City and County of San Francisco on June 21, 2005 by Ordinance 124-05, and as amended by Ordinance No. 99-06 adopted on May 9, 2006, and copies of which have been filed in the Office of the Recorder of the City and County of San Francisco, State of California. Each and every term, condition, and provision set forth in said Redevelopment Plan that is applicable to the Property is hereby incorporated by reference in and made a part of this Declaration of Restrictions with the same force and effect as though set forth in full herein.

3. Maintenance

All buildings and improvements constructed in the Transbay Redevelopment Project Area ("Project Area") shall be maintained in compliance with the laws of the State of California and the Ordinances and Regulations of the City and County of San Francisco.

4. Nondiscrimination Provisions

There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, national origin, ancestry, sex, age, gender identity, disability including AIDS or HIV status, marital or domestic partner status, or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises subject to this Declaration, nor shall any grantee or any claiming through him or her establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises described. All deeds, leases, subleases, or contracts shall contain or shall be deemed to contain a covenant by the grantee, and his or her heirs, executors, administrators and assigns to the above effect.

5. Land Use Restrictions

For the duration of the Redevelopment Plan, the Owner shall devote the Property and the improvements thereon only to the uses permitted by the Redevelopment Plan, and this Declaration of Site Restrictions The Property is zoned “Zone 1: Transbay Downtown Residential” in the Redevelopment Plan.

6. General Provisions

a. Term

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them during the effective period of the Redevelopment Plan, which remains in effect until June 21, 2035, as of the date this Declaration is executed; unless an instrument, describing property in the Project Area, has been recorded agreeing to change said covenants, provided, however, that covenants contained in paragraph 3 hereof shall run in perpetuity and the covenants contained in paragraph 4 hereof shall run until the expiration or termination of the Redevelopment Plan. These covenants shall be deemed automatically extended during the effective period of any extension of the Redevelopment Plan. After the expiration or termination of the Redevelopment Plan, the use and subsequent development or redevelopment of the Property will become subject to the City’s land use ordinances and policies, including but not limited to the City’s Planning Code.

b. Enforcement

In the event of any breach of any of the covenants contained herein, it shall be the duty of the Agency to endeavor immediately to remedy such breach by conference, conciliation and persuasion. In the case of failure so to remedy such breach, or in advance thereof, if in the judgment of the Agency circumstances so warrant, said breach shall be enjoined or abated by appropriate proceedings brought by the Agency.

The Agency, on its own behalf or on behalf of any owner or owners, singly or collectively, or any real property in the Project Area covered by these restrictions, or any such owner or owners may, at any time, prosecute any proceedings in law or in equity in case of any violation or attempt to violate any of the covenants contained herein.

c. Variances

Where, owing to special conditions, a literal enforcement of these restrictions in regard to the physical standards and requirements as referred to in paragraph 4 hereof would result in unnecessary hardship, involve practical difficulties, or would constitute an unreasonable limitation beyond the spirit and purposes of these restrictions, the Agency shall have the power upon appeal in specific cases to authorize such variation or modification of the terms of these restrictions as will not be contrary to the public interest and so that the spirit of these restrictions shall be observed and justice done, provided that in no instance will any adjustments be granted that will change the land use of the Redevelopment Plan. Other basic requirements of the Redevelopment Plan shall not be eliminated but adjustments thereof may be permitted, provided such adjustments are consistent with the general purposes and intent of the Redevelopment Plan.

d. Foreclosure and Enforcement of Liens

The provisions of this Declaration do not limit the rights of the obligees thereunder to foreclose or otherwise to enforce any mortgage, deed of trust, or other encumbrance upon the property, nor shall a breach of this Declaration impair or invalidate the lien of any such mortgage, deed of trust or other encumbrance or the rights of such obligees to pursue any remedies for the enforcement of any lien or encumbrance upon the Property; provided, however, that in the event of a foreclosure sale under any such mortgage, deed of trust, or other lien or encumbrance or a sale pursuant to any power of sale contained in any such mortgage or deed of trust, the purchaser or purchasers and their successors and assigns, and the Property, shall be and shall continue to be, subject to all of the conditions, restrictions, and covenants herein provided for.

e. Amendment

If at any time the Redevelopment Plan is amended in any manner as is now or hereafter permitted by law, this Declaration may be amended accordingly.

f. Dissolution

In the event that the Agency is dissolved or its designation changed by or pursuant to law prior to carrying out the Redevelopment Plan, its powers, duties, rights, and functions under this Declaration shall be transferred pursuant to any applicable provisions of such laws.

g. Separability of Provisions

If any provision of this Declaration of Site Restrictions or the application of such provision to any owner or owners or parcel of land is held invalid, the validity of the remainder of this Declaration of Site Restrictions and the applicability of such provision to any other owner or owners or parcel of land shall not be affected thereby.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the day and year first written above.

OWNER:

BLOCK 9 TRANSBAY LLC
a Delaware limited liability company

By: TMG AVANT, LLC,
a Delaware limited liability company,
Its Managing Member

By: TMG Partners,
a California corporation,
Its Manager

By: _____
Name: _____
Title: _____

By: ESSEX PORTFOLIO, L.P.,
a California limited partnership
Member

By: Essex Property Trust, Inc.,
a Maryland corporation,
its general partner

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Property Legal Description

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

PARCEL ONE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE SOUTHWESTERLY LINE OF FIRST STREET; AND RUNNING THENCE NORTHWESTERLY ALONG SAID LINE OF FIRST STREET, 48 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 48 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET; AND THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID LINE OF FOLSOM STREET, 100 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 348.

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF CLEMENTINA STREET AND THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHEASTERLY ALONG SAID LINE OF FIRST STREET, 107 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 107 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; AND THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF CLEMENTINA STREET, 100 FEET TO THE POINT OF BEGINNING.

BEING PART OF 100 VARA BLOCK NUMBER 348.

PARCEL THREE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 100 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF FOLSOM STREET, 75 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID SOUTHEASTERLY LINE OF CLEMENTINA STREET, 75 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA LOT NO. 55.

PARCEL FOUR:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 175 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 1ST STREET; RUNNING THENCE SOUTHWESTERLY AND ALONG SAID LINE OF FOLSOM STREET, 50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF CLEMENTINA STREET, 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA LOT NO. 55.

PARCEL FIVE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 225 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID LINE OF FOLSOM STREET, 25 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID LINE OF CLEMENTINA STREET, 25 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA BLOCK NO. 348.

EXCEPTING THEREFROM PARCELS TWO, THREE, FOUR AND FIVE, ALL THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED OCTOBER 18, 1954, IN VOLUME 6469, PAGE 496, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, DISTANT THEREON NORTH 44° 52' 05" WEST, 53.09 FEET FROM THE MOST SOUTHERLY CORNER OF SAID STATE'S PARCEL; THENCE CONTINUING ALONG SAID SOUTHWESTERLY LINE, NORTH 44° 52' 05" WEST, 101.91 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET, 40 FEET WIDE; THENCE ALONG LAST SAID LINE, NORTH 45° 07' 55" EAST, 181.61 FEET TO A POINT DISTANT THEREON SOUTH 45° 07' 55" WEST, 68.55 FEET FROM THE INTERSECTION OF SAID LINE OF CLEMENTINA STREET WITH THE SOUTHWESTERLY LINE OF FIRST STREET; THENCE FROM A TANGENT THAT BEARS SOUTH 23° 20' 57" WEST, ALONG A CURVE TO THE LEFT WITH A RADIUS OF 796 FEET, THROUGH AN ANGLE OF 15° 01' 58", AN ARC LENGTH OF 208.85 FEET TO THE POINT OF COMMENCEMENT.

PARCEL SIX:

COMMENCING AT THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED RECORDED NOVEMBER 7, 1952, IN VOLUME 6035, AT PAGE 505, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL, SOUTH 45° 07' 55" WEST, 25.01 FEET TO THE NORTHEASTERLY LINE OF ECKER STREET; THENCE ALONG LAST SAID LINE, NORTH 44° 52' 05" WEST, 33.58 FEET TO A LINE CONCENTRIC WITH AND DISTANT WESTERLY, MEASURED RADially, 28 FEET FROM THE "BO + MO" LINE OF THE DEPARTMENT OF PUBLIC WORKS' SURVEY FOR THE STATE FREEWAY IN SAN FRANCISCO, ROAD IV-SF-224-SF; THENCE ALONG SAID CONCENTRIC LINE, FROM A TANGENT THAT BEARS NORTH 6° 01' 58" EAST, ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 796 FEET, THROUGH AN ANGLE OF 2° 17' 01", AN ARC DISTANCE OF 31.73 FEET TO THE NORTHEASTERLY LINE OF SAID PARCEL; THENCE ALONG LAST SAID LINE, SOUTH 44° 52' 05" EAST, 53.09 FEET TO THE POINT OF COMMENCEMENT.

BEING A PORTION OF 100 VARA LOT NO. 55 IN BLOCK NO. 348.

APN: LOT 120, BLOCK 3736

ATTACHMENT 15

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

AMENDED AND RESTATED RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Taxable Parcel in the City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center) shall be levied and collected according to the tax liability determined by the Administrator through the application of the appropriate amount or rate for Square Footage within Taxable Buildings, as described below. All Taxable Parcels in the CFD shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to the CFD unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

“**Act**” means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the California Government Code.

“**Administrative Expenses**” means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City and TJPA carrying out duties with respect to CFD No. 2014-1 and the Bonds, including, but not limited to, levying and collecting the Special Tax, the fees and expenses of legal counsel, charges levied by the City Controller’s Office and/or the City Treasurer and Tax Collector’s Office, costs related to property owner inquiries regarding the Special Tax, costs associated with appeals or requests for interpretation associated with the Special Tax and this RMA, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements for the Bonds and the Special Tax, costs associated with foreclosure and collection of delinquent Special Taxes, and all other costs and expenses of the City and TJPA in any way related to the establishment or administration of the CFD.

“**Administrator**” means the Director of the Office of Public Finance who shall be responsible for administering the Special Tax according to this RMA.

“**Affordable Housing Project**” means a residential or primarily residential project, as determined by the Zoning Authority, within which all Residential Units are Below Market Rate Units. All Land Uses within an Affordable Housing Project are exempt from the Special Tax, as provided in Section G and are subject to the limitations set forth in Section D.4 below.

“Airspace Parcel” means a parcel with an assigned Assessor’s Parcel number that constitutes vertical space of an underlying land parcel.

“Apartment Building” means a residential or mixed-use Building within which none of the Residential Units have been sold to individual homebuyers.

“Assessor’s Parcel” or **“Parcel”** means a lot or parcel, including an Airspace Parcel, shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

“Assessor’s Parcel Map” means an official map of the County Assessor designating Parcels by Assessor’s Parcel number.

“Authorized Facilities” means those public facilities authorized to be funded by the CFD as set forth in the CFD formation proceedings.

“Base Special Tax” means the Special Tax per square foot that is used to calculate the Maximum Special Tax that applies to a Taxable Parcel pursuant to Sections C.1 and C.2 of this RMA. The Base Special Tax shall also be used to determine the Maximum Special Tax for any Net New Square Footage added to a Taxable Building in the CFD in future Fiscal Years.

“Below Market Rate Units” or **“BMR Units”** means all Residential Units within the CFD that have a deed restriction recorded on title of the property that (i) limits the rental price or sales price of the Residential Unit, (ii) limits the appreciation that can be realized by the owner of such unit, or (iii) in any other way restricts the current or future value of the unit.

“Board” means the Board of Supervisors of the City, acting as the legislative body of CFD No. 2014-1.

“Bonds” means bonds or other debt (as defined in the Act), whether in one or more series, issued, incurred, or assumed by the CFD related to the Authorized Facilities.

“Building” means a permanent enclosed structure that is, or is part of, a Conditioned Project.

“Building Height” means the number of Stories in a Taxable Building, which shall be determined based on the highest Story that is occupied by a Land Use. If only a portion of a Building is a Conditioned Project, the Building Height shall be determined based on the highest Story that is occupied by a Land Use regardless of where in the Building the Taxable Parcels are located. If there is any question as to the Building Height of any Taxable Building in the CFD, the Administrator shall coordinate with the Zoning Authority to make the determination.

“Certificate of Exemption” means a certificate issued to the then-current record owner of a Parcel that indicates that some or all of the Square Footage on the Parcel has prepaid the Special Tax obligation or has paid the Special Tax for thirty Fiscal Years and, therefore, such Square Footage shall, in all future Fiscal Years, be exempt from the levy of Special Taxes in the CFD. The Certificate of Exemption shall identify (i) the Assessor’s Parcel number(s) for the Parcel(s)

on which the Square Footage is located, (ii) the amount of Square Footage for which the exemption is being granted, (iii) the first and last Fiscal Year in which the Special Tax had been levied on the Square Footage, and (iv) the date of receipt of a prepayment of the Special Tax obligation, if applicable.

“Certificate of Occupancy” or **“COO”** means the first certificate, including any temporary certificate of occupancy, issued by the City to confirm that a Building or a portion of a Building has met all of the building codes and can be occupied for residential and/or non-residential use. For purposes of this RMA, “Certificate of Occupancy” shall not include any certificate of occupancy that was issued prior to January 1, 2013 for a Building within the CFD; however, any subsequent certificates of occupancy that are issued for new construction or expansion of the Building shall be deemed a Certificate of Occupancy and the associated Parcel(s) shall be categorized as Taxable Parcels if the Building is, or is part of, a Conditioned Project and a Tax Commencement Letter has been provided to the Administrator for the Building.

“CFD” or **“CFD No. 2014-1”** means the City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center).

“Child Care Square Footage” means, collectively, the Exempt Child Care Square Footage and Taxable Child Care Square Footage within a Taxable Building in the CFD.

“City” means the City and County of San Francisco.

“Conditioned Project” means a Development Project that is required to participate in funding Authorized Facilities through the CFD.

“Converted Apartment Building” means a Taxable Building that had been designated as an Apartment Building within which one or more Residential Units are subsequently sold to a buyer that is not a Landlord.

“Converted For-Sale Unit” means, in any Fiscal Year, an individual Market Rate Unit within a Converted Apartment Building for which an escrow has closed, on or prior to June 30 of the preceding Fiscal Year, in a sale to a buyer that is not a Landlord.

“County” means the City and County of San Francisco.

“CPC” means the Capital Planning Committee of the City and County of San Francisco, or if the Capital Planning Committee no longer exists, “CPC” shall mean the designated staff member(s) within the City and/or TJPA that will recommend issuance of Tax Commencement Authorizations for Conditioned Projects within the CFD.

“Development Project” means a residential, non-residential, or mixed-use development that includes one or more Buildings, or portions thereof, that are planned and entitled in a single application to the City.

“Exempt Child Care Square Footage” means Square Footage within a Taxable Building that, at the time of issuance of a COO, is determined by the Zoning Authority to be reserved for one or more licensed child care facilities. If a prepayment is made in association with any Taxable Child Care Square Footage, such Square Footage shall also be deemed Exempt Child Care Square Footage beginning in the Fiscal Year following receipt of the prepayment.

“Exempt Parking Square Footage” means the Square Footage of parking within a Taxable Building that, pursuant to Sections 151.1 and 204.5 of the Planning Code, is estimated to be needed to serve Land Uses within a building in the CFD, as determined by the Zoning Authority. If a prepayment is made in association with any Taxable Parking Square Footage, such Square Footage shall also be deemed Exempt Parking Square Footage beginning in the Fiscal Year following receipt of the prepayment.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“For-Sale Residential Square Footage” or **“For-Sale Residential Square Foot”** means Square Footage that is or is expected to be part of a For-Sale Unit. The Zoning Authority shall make the determination as to the For-Sale Residential Square Footage within a Taxable Building in the CFD. For-Sale Residential Square Foot means a single square-foot unit of For-Sale Residential Square Footage.

“For-Sale Unit” means (i) in a Taxable Building that is not a Converted Apartment Building: a Market Rate Unit that has been, or is available or expected to be, sold, and (ii) in a Converted Apartment Building, a Converted For-Sale Unit. The Administrator shall make the final determination as to whether a Market Rate Unit is a For-Sale Unit or a Rental Unit.

“Indenture” means the indenture, fiscal agent agreement, resolution, or other instrument pursuant to which CFD No. 2014-1 Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

“Initial Annual Adjustment Factor” means, as of July 1 of any Fiscal Year, the Annual Infrastructure Construction Cost Inflation Estimate published by the Office of the City Administrator’s Capital Planning Group and used to calculate the annual adjustment to the City’s development impact fees that took effect as of January 1 of the prior Fiscal Year pursuant to Section 409(b) of the Planning Code, as may be amended from time to time. If changes are made to the office responsible for calculating the annual adjustment, the name of the inflation index, or the date on which the development fee adjustment takes effect, the Administrator shall continue to rely on whatever annual adjustment factor is applied to the City’s development impact fees in order to calculate adjustments to the Base Special Taxes pursuant to Section D.1 below. Notwithstanding the foregoing, the Base Special Taxes shall, in no Fiscal Year, be increased or decreased by more than 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, (iii) Taxable Child Care Square Footage, (iv) Square Footage in a residential care facility that is staffed by licensed medical professionals, and (v) any other Square Footage within a Taxable Building that does not fall within the definition provided for other Land Uses in this RMA. Notwithstanding the foregoing, street-level retail bank branches, real estate brokerage offices, and other such ground-level uses that are open to the public shall be categorized as Retail Square Footage pursuant to the Planning Code. Office/Hotel Square Foot means a single square-foot unit of Office/Hotel Square Footage.

For purposes of this RMA, “Office/Hotel Square Footage” shall also include Square Footage that is or is expected to be part of a non-residential structure that constitutes a place of lodging, providing temporary sleeping accommodations and related facilities. All Square Footage that shares an Assessor’s Parcel number within such a non-residential structure, including Square Footage of restaurants, meeting and convention facilities, gift shops, spas, offices, and other related uses shall be categorized as Office/Hotel Square Footage. If there are separate Assessor’s Parcel numbers for these other uses, the Administrator shall apply the Base Special Tax for Retail Square Footage to determine the Maximum Special Tax for Parcels on which a restaurant, gift shop, spa, or other retail use is located or anticipated, and the Base Special Tax for Office/Hotel Square Footage shall be used to determine the Maximum Special Tax for Parcels on

which other uses in the building are located. The Zoning Authority shall make the final determination as to the amount of Office/Hotel Square Footage within a building in the CFD.

“Planning Code” means the Planning Code of the City and County of San Francisco, as may be amended from time to time.

“Proportionately” means that the ratio of the actual Special Tax levied in any Fiscal Year to the Maximum Special Tax authorized to be levied in that Fiscal Year is equal for all Taxable Parcels.

“Rental Residential Square Footage” or **“Rental Residential Square Foot”** means Square Footage that is or is expected to be used for one or more of the following uses: (i) Rental Units, (ii) any type of group or student housing which provides lodging for a week or more and may or may not have individual cooking facilities, including but not limited to boarding houses, dormitories, housing operated by medical institutions, and single room occupancy units, or (iii) a residential care facility that is not staffed by licensed medical professionals. The Zoning Authority shall make the determination as to the amount of Rental Residential Square Footage within a Taxable Building in the CFD. Rental Residential Square Foot means a single square-foot unit of Rental Residential Square Footage.

“Rental Unit” means (i) all Market Rate Units within an Apartment Building, and (ii) all Market Rate Units within a Converted Apartment Building that have yet to be sold to an individual homeowner or investor. “Rental Unit” shall not include any Residential Unit which has been purchased by a homeowner or investor and subsequently offered for rent to the general public. The Administrator shall make the final determination as to whether a Market Rate Unit is a For-Sale Unit or a Rental Unit.

“Retail Square Footage” or **“Retail Square Foot”** means Square Footage that is or, based on the Certificate of Occupancy, will be Square Footage of a commercial establishment that sells general merchandise, hard goods, food and beverage, personal services, and other items directly to consumers, including but not limited to restaurants, bars, entertainment venues, health clubs, laundromats, dry cleaners, repair shops, storage facilities, and parcel delivery shops. In addition, all Taxable Parking Square Footage in a Building, and all street-level retail bank branches, real estate brokerages, and other such ground-level uses that are open to the public, shall be categorized as Retail Square Footage for purposes of calculating the Maximum Special Tax pursuant to Section C below. The Zoning Authority shall make the final determination as to the amount of Retail Square Footage within a Taxable Building in the CFD. Retail Square Foot means a single square-foot unit of Retail Square Footage.

“Residential Unit” means an individual townhome, condominium, live/work unit, or apartment within a Building in the CFD.

“Residential Use” means (i) any and all Residential Units within a Taxable Building in the CFD, (ii) any type of group or student housing which provides lodging for a week or more and may or may not have individual cooking facilities, including but not limited to boarding houses,

dormitories, housing operated by medical institutions, and single room occupancy units, and (iii) a residential care facility that is not staffed by licensed medical professionals.

“**RMA**” means this Rate and Method of Apportionment of Special Tax.

“**Special Tax**” means a special tax levied in any Fiscal Year to pay the Special Tax Requirement.

“**Special Tax Requirement**” means the amount necessary in any Fiscal Year to: (i) pay principal and interest on Bonds that are due in the calendar year that begins in such Fiscal Year; (ii) pay periodic costs on the Bonds, including but not limited to, credit enhancement, liquidity support and rebate payments on the Bonds, (iii) create and/or replenish reserve funds for the Bonds to the extent such replenishment has not been included in the computation of the Special Tax Requirement in a previous Fiscal Year; (iv) cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year; (v) pay Administrative Expenses; and (vi) pay directly for Authorized Facilities. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by: (i) interest earnings on or surplus balances in funds and accounts for the Bonds to the extent that such earnings or balances are available to apply against such costs pursuant to the Indenture; (ii) in the sole and absolute discretion of the City, proceeds received by the CFD from the collection of penalties associated with delinquent Special Taxes; and (iii) any other revenues available to pay such costs as determined by the Administrator.

“**Square Footage**” means, for any Taxable Building in the CFD, the net saleable or leasable square footage of each Land Use on each Taxable Parcel within the Building, as determined by the Zoning Authority. If a building permit is issued to increase the Square Footage on any Taxable Parcel, the Administrator shall, in the first Fiscal Year after the final building permit inspection has been conducted in association with such expansion, work with the Zoning Authority to recalculate (i) the Square Footage of each Land Use on each Taxable Parcel, and (ii) the Maximum Special Tax for each Taxable Parcel based on the increased Square Footage. The final determination of Square Footage for each Land Use on each Taxable Parcel shall be made by the Zoning Authority.

“**Story**” or “**Stories**” means a portion or portions of a Building, except a mezzanine as defined in the City Building Code, included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between the surface of the floor and the ceiling next above it.

“**Taxable Building**” means, in any Fiscal Year, any Building within the CFD that is, or is part of, a Conditioned Project, and for which a Certificate of Occupancy was issued and a Tax Commencement Authorization was received by the Administrator on or prior to June 30 of the preceding Fiscal Year. If only a portion of the Building is a Conditioned Project, as determined by the Zoning Authority, that portion of the Building shall be treated as a Taxable Building for purposes of this RMA.

“Tax Commencement Authorization” means a written authorization issued by the Administrator upon the recommendations of the IPIC and CPC in order to initiate the levy of the Special Tax on a Conditioned Project that has been issued a COO.

“Taxable Child Care Square Footage” means the amount of Square Footage determined by subtracting the Exempt Child Care Square Footage within a Taxable Building from the total net leasable square footage within a Building that is used for licensed child care facilities, as determined by the Zoning Authority.

“Taxable Parcel” means, within a Taxable Building, any Parcel that is not exempt from the Special Tax pursuant to law or Section G below. If, in any Fiscal Year, a Special Tax is levied on only Net New Square Footage in a Taxable Building, only the Parcel(s) on which the Net New Square Footage is located shall be Taxable Parcel(s) for purposes of calculating and levying the Special Tax pursuant to this RMA.

“Taxable Parking Square Footage” means Square Footage of parking in a Taxable Building that is determined by the Zoning Authority not to be Exempt Parking Square Footage.

“TJPA” means the Transbay Joint Powers Authority.

“Zoning Authority” means either the City Zoning Administrator, the Executive Director of the San Francisco Office of Community Investment and Infrastructure, or an alternate designee from the agency or department responsible for the approvals and entitlements of a project in the CFD. If there is any doubt as to the responsible party, the Administrator shall coordinate with the City Zoning Administrator to determine the appropriate party to serve as the Zoning Authority for purposes of this RMA.

B. DATA FOR CFD ADMINISTRATION

On or after July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Taxable Parcels in the CFD. In order to identify Taxable Parcels, the Administrator shall confirm which Buildings in the CFD have been issued both a Tax Commencement Authorization and a COO.

The Administrator shall also work with the Zoning Authority to confirm: (i) the Building Height for each Taxable Building , (ii) the For-Sale Residential Square Footage, Rental Residential Square Footage, Office/Hotel Square Footage, and Retail Square Footage on each Taxable Parcel, (iii) if applicable, the number of BMR Units and aggregate Square Footage of BMR Units within the Building, (iv) whether any of the Square Footage on a Parcel is subject to a Certificate of Exemption, and (v) the Special Tax Requirement for the Fiscal Year. In each Fiscal Year, the Administrator shall also keep track of how many Fiscal Years the Special Tax has been levied on each Parcel within the CFD. If there is Initial Square Footage and Net New Square Footage on a Parcel, the Administrator shall separately track the duration of the Special Tax levy in order to ensure compliance with Section F below.

In any Fiscal Year, if it is determined by the Administrator that (i) a parcel map or condominium plan for a portion of property in the CFD was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created parcels into the then current tax roll), and (ii) the Assessor does not yet recognize the newly-created parcels, the Administrator shall calculate the Special Tax that applies separately to each newly-created parcel, then applying the sum of the individual Special Taxes to the Assessor's Parcel that was subdivided by recordation of the parcel map or condominium plan.

C. DETERMINATION OF THE MAXIMUM SPECIAL TAX

1. Base Special Tax

Once the Building Height of, and Land Use(s) within, a Taxable Building have been identified, the Base Special Tax to be used for calculation of the Maximum Special Tax for each Taxable Parcel within the Building shall be determined based on reference to the applicable table(s) below:

FOR-SALE RESIDENTIAL SQUARE FOOTAGE

<i>Building Height</i>	<i>Base Special Tax Fiscal Year 2013-14*</i>
1 – 5 Stories	\$4.71 per For-Sale Residential Square Foot
6 – 10 Stories	\$5.02 per For-Sale Residential Square Foot
11 – 15 Stories	\$6.13 per For-Sale Residential Square Foot
16 – 20 Stories	\$6.40 per For-Sale Residential Square Foot
21 – 25 Stories	\$6.61 per For-Sale Residential Square Foot
26 – 30 Stories	\$6.76 per For-Sale Residential Square Foot
31 – 35 Stories	\$6.88 per For-Sale Residential Square Foot
36 – 40 Stories	\$7.00 per For-Sale Residential Square Foot
41 – 45 Stories	\$7.11 per For Sale Residential Square Foot
46 – 50 Stories	\$7.25 per For-Sale Residential Square Foot
More than 50 Stories	\$7.36 per For-Sale Residential Square Foot

RENTAL RESIDENTIAL SQUARE FOOTAGE

<i>Building Height</i>	<i>Base Special Tax Fiscal Year 2013-14*</i>
1 – 5 Stories	\$4.43 per Rental Residential Square Foot
6 – 10 Stories	\$4.60 per Rental Residential Square Foot
11 – 15 Stories	\$4.65 per Rental Residential Square Foot
16 – 20 Stories	\$4.68 per Rental Residential Square Foot
21 – 25 Stories	\$4.73 per Rental Residential Square Foot
26 – 30 Stories	\$4.78 per Rental Residential Square Foot
31 – 35 Stories	\$4.83 per Rental Residential Square Foot
36 – 40 Stories	\$4.87 per Rental Residential Square Foot
41 – 45 Stories	\$4.92 per Rental Residential Square Foot
46 – 50 Stories	\$4.98 per Rental Residential Square Foot
More than 50 Stories	\$5.03 per Rental Residential Square Foot

OFFICE/HOTEL SQUARE FOOTAGE

<i>Building Height</i>	<i>Base Special Tax Fiscal Year 2013-14*</i>
1 – 5 Stories	\$3.45 per Office/Hotel Square Foot
6 – 10 Stories	\$3.56 per Office/Hotel Square Foot
11 – 15 Stories	\$4.03 per Office/Hotel Square Foot
16 – 20 Stories	\$4.14 per Office/Hotel Square Foot
21 – 25 Stories	\$4.25 per Office/Hotel Square Foot
26 – 30 Stories	\$4.36 per Office/Hotel Square Foot
31 – 35 Stories	\$4.47 per Office/Hotel Square Foot
36 – 40 Stories	\$4.58 per Office/Hotel Square Foot
41 – 45 Stories	\$4.69 per Office/Hotel Square Foot
46 – 50 Stories	\$4.80 per Office/Hotel Square Foot
More than 50 Stories	\$4.91 per Office/Hotel Square Foot

RETAIL SQUARE FOOTAGE

<i>Building Height</i>	<i>Base Special Tax Fiscal Year 2013-14*</i>
N/A	\$3.18 per Retail Square Foot

* *The Base Special Tax rates shown above for each Land Use shall escalate as set forth in Section D.1 below.*

2. *Determining the Maximum Special Tax for Taxable Parcels*

Upon issuance of a Tax Commencement Authorization and the first Certificate of Occupancy for a Taxable Building within a Conditioned Project that is not an Affordable Housing Project, the

Administrator shall coordinate with the Zoning Authority to determine the Square Footage of each Land Use on each Taxable Parcel. The Administrator shall then apply the following steps to determine the Maximum Special Tax for the next succeeding Fiscal Year for each Taxable Parcel in the Taxable Building:

- Step 1.* Determine the Building Height for the Taxable Building for which a Certificate of Occupancy was issued.
- Step 2.* Determine the For-Sale Residential Square Footage and/or Rental Residential Square Footage for all Residential Units on each Taxable Parcel, as well as the Office/Hotel Square Footage and Retail Square Footage on each Taxable Parcel.
- Step 3.* ***For each Taxable Parcel that includes only For-Sale Units***, multiply the For-Sale Residential Square Footage by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 4.* ***For each Taxable Parcel that includes only Rental Units***, multiply the Rental Residential Square Footage by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 5.* ***For each Taxable Parcel that includes only Residential Uses other than Market Rate Units***, net out the Square Footage associated with any BMR Units and multiply the remaining Rental Residential Square Footage (if any) by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 6.* ***For each Taxable Parcel that includes only Office/Hotel Square Footage***, multiply the Office/Hotel Square Footage on the Parcel by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 7.* ***For each Taxable Parcel that includes only Retail Square Footage***, multiply the Retail Square Footage on the Parcel by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 8.* ***For Taxable Parcels that include multiple Land Uses***, separately determine the For-Sale Residential Square Footage, Rental Residential Square Footage, Office/Hotel Square Footage, and/or Retail Square Footage. Multiply the Square Footage of each Land Use by the applicable Base Special Tax from Section C.1, and sum the individual amounts to determine the aggregate Maximum Special Tax for the Taxable Parcel for the first succeeding Fiscal Year.

D. CHANGES TO THE MAXIMUM SPECIAL TAX

1. *Annual Escalation of Base Special Tax*

The Base Special Tax rates identified in Section C.1 are applicable for fiscal year 2013-14. Beginning July 1, 2014 and each July 1 thereafter, the Base Special Taxes shall be adjusted by the Initial Annual Adjustment Factor. The Base Special Tax rates shall be used to calculate the Maximum Special Tax for each Taxable Parcel in a Taxable Building for the first Fiscal Year in which the Building is a Taxable Building, as set forth in Section C.2 and subject to the limitations set forth in Section D.3.

2. *Adjustment of the Maximum Special Tax*

After a Maximum Special Tax has been assigned to a Parcel for its first Fiscal Year as a Taxable Parcel pursuant to Section C.2 and Section D.1, the Maximum Special Tax shall escalate for subsequent Fiscal Years beginning July 1 of the Fiscal Year after the first Fiscal Year in which the Parcel was a Taxable Parcel, and each July 1 thereafter, by two percent (2%) of the amount in effect in the prior Fiscal Year. In addition to the foregoing, the Maximum Special Tax assigned to a Taxable Parcel shall be increased in any Fiscal Year in which the Administrator determines that Net New Square Footage was added to the Parcel in the prior Fiscal Year.

3. *Converted Apartment Buildings*

If an Apartment Building in the CFD becomes a Converted Apartment Building, the Administrator shall rely on information from the County Assessor, site visits to the sales office, data provided by the entity that is selling Residential Units within the Building, and any other available source of information to track sales of Residential Units. In the first Fiscal Year in which there is a Converted For-Sale Unit within the Building, the Administrator shall determine the applicable Base Maximum Special Tax for For-Sale Residential Units for that Fiscal Year. Such Base Maximum Special Tax shall be used to calculate the Maximum Special Tax for all Converted For-Sale Units in the Building in that Fiscal Year. In addition, this Base Maximum Special Tax, escalated each Fiscal Year by two percent (2%) of the amount in effect in the prior Fiscal Year, shall be used to calculate the Maximum Special Tax for all future Converted For-Sale Units within the Building. Solely for purposes of calculating Maximum Special Taxes for Converted For-Sale Units within the Converted Apartment Building, the adjustment of Base Maximum Special Taxes set forth in Section D.1 shall not apply. All Rental Residential Square Footage within the Converted Apartment Building shall continue to be subject to the Maximum Special Tax for Rental Residential Square Footage until such time as the units become Converted For-Sale Units. The Maximum Special Tax for all Taxable Parcels within the Building shall escalate each Fiscal Year by two percent (2%) of the amount in effect in the prior Fiscal Year.

4. *BMR Unit/Market Rate Unit Transfers*

If, in any Fiscal Year, the Administrator determines that a Residential Unit that had previously been designated as a BMR Unit no longer qualifies as such, the Maximum Special Tax on the

new Market Rate Unit shall be established pursuant to Section C.2 and adjusted, as applicable, by Sections D.1 and D.2. If a Market Rate Unit becomes a BMR Unit after it has been taxed in prior Fiscal Years as a Market Rate Unit, the Maximum Special Tax on such Residential Unit shall not be decreased unless: (i) a BMR Unit is simultaneously redesignated as a Market Rate Unit, and (ii) such redesignation results in a Maximum Special Tax on the new Market Rate Unit that is greater than or equal to the Maximum Special Tax that was levied on the Market Rate Unit prior to the swap of units. If, based on the Building Height or Square Footage, there would be a reduction in the Maximum Special Tax due to the swap, the Maximum Special Tax that applied to the former Market Rate Unit will be transferred to the new Market Rate Unit regardless of the Building Height and Square Footage associated with the new Market Rate Unit.

5. *Changes in Land Use on a Taxable Parcel*

If any Square Footage that had been taxed as For-Sale Residential Square Footage, Rental Residential Square Footage, Office/Hotel Square Footage, or Retail Square Footage in a prior Fiscal Year is rezoned or otherwise changes Land Use, the Administrator shall apply the applicable subsection in Section C.2 to calculate what the Maximum Special Tax would be for the Parcel based on the new Land Use(s). If the amount determined is greater than the Maximum Special Tax that applied to the Parcel prior to the Land Use change, the Administrator shall increase the Maximum Special Tax to the amount calculated for the new Land Uses. If the amount determined is less than the Maximum Special Tax that applied prior to the Land Use change, there will be no change to the Maximum Special Tax for the Parcel. Under no circumstances shall the Maximum Special Tax on any Taxable Parcel be reduced, regardless of changes in Land Use or Square Footage on the Parcel, including reductions in Square Footage that may occur due to demolition, fire, water damage, or acts of God. In addition, if a Taxable Building within the CFD that had been subject to the levy of Special Taxes in any prior Fiscal Year becomes all or part of an Affordable Housing Project, the Parcel(s) shall continue to be subject to the Maximum Special Tax that had applied to the Parcel(s) before they became part of the Affordable Housing Project. All Maximum Special Taxes determined pursuant to Section C.2 shall be adjusted, as applicable, by Sections D.1 and D.2.

6. *Prepayments*

If a Parcel makes a prepayment pursuant to Section H below, the Administrator shall issue the owner of the Parcel a Certificate of Exemption for the Square Footage that was used to determine the prepayment amount, and no Special Tax shall be levied on the Parcel in future Fiscal Years unless there is Net New Square Footage added to a Building on the Parcel. Thereafter, a Special Tax calculated based solely on the Net New Square Footage on the Parcel shall be levied for up to thirty Fiscal Years, subject to the limitations set forth in Section F below. Notwithstanding the foregoing, any Special Tax that had been levied against, but not yet collected from, the Parcel is still due and payable, and no Certificate of Exemption shall be issued until such amounts are fully paid. If a prepayment is made in order to exempt Taxable Child Care Square Footage on a Parcel on which there are multiple Land Uses, the Maximum Special Tax for the Parcel shall be recalculated based on the exemption of this Child Care Square Footage which shall, after such prepayment, be designated as Exempt Child Care Square Footage and remain exempt in all Fiscal Years after the prepayment has been received.

E. METHOD OF LEVY OF THE SPECIAL TAX

Each Fiscal Year, the Special Tax shall be levied Proportionately on each Taxable Parcel up to 100% of the Maximum Special Tax for each Parcel for such Fiscal Year until the amount levied on Taxable Parcels is equal to the Special Tax Requirement.

F. COLLECTION OF SPECIAL TAX

The Special Taxes for CFD No. 2014-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that prepayments are permitted as set forth in Section H below and provided further that the City may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods.

The Special Tax shall be levied and collected from the first Fiscal Year in which a Parcel is designated as a Taxable Parcel until the principal and interest on all Bonds have been paid, the City's costs of constructing or acquiring Authorized Facilities from Special Tax proceeds have been paid, and all Administrative Expenses have been paid or reimbursed. Notwithstanding the foregoing, the Special Tax shall not be levied on any Square Footage in the CFD for more than thirty 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) Square Footage for which a prepayment has been received and a Certificate of Exemption issued, (ii) Below Market Rate Units except as otherwise provided in Sections D.3 and D.4, (iii) Affordable Housing Projects, including all Residential Units, Retail Square Footage, and Office Square Footage within buildings that are part of an Affordable Housing Project, except as otherwise provided in Section D.4, and (iv) Exempt Child Care Square Footage.

H. PREPAYMENT OF SPECIAL TAX

The Special Tax obligation applicable to Square Footage in a building may be fully prepaid as described herein, provided that a prepayment may be made only if (i) the Parcel is a Taxable Parcel, and (ii) there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment. Any prepayment made by a Parcel owner must satisfy the Special Tax obligation associated with all Square Footage on the Parcel that is subject to the Special Tax at the time the prepayment is calculated. An owner of an Assessor's Parcel intending to prepay the Special Tax obligation shall provide the City with written notice of intent to prepay. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for the Square Footage on such Assessor's Parcel. Prepayment must be made not less than 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Special Taxes. The Prepayment Amount for a Taxable Parcel shall be calculated as follows:

- Step 1:* Determine the Square Footage of each Land Use on the Parcel.
- Step 2:* Determine how many Fiscal Years the Square Footage on the Parcel has paid the Special Tax, which may be a separate total for Initial Square Footage and Net New Square Footage on the Parcel. If a Special Tax has been levied, but not yet paid, in the Fiscal Year in which the prepayment is being calculated, such Fiscal Year will be counted as a year in which the Special Tax was paid, but a Certificate of Exemption shall not be issued until such Special Taxes are received by the City's Office of the Treasurer and Tax Collector.
- Step 3:* Subtract the number of Fiscal Years for which the Special Tax has been paid (as determined in Step 2) from 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.

ATTACHMENT 16

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

WHEN RECORDED, MAIL TO:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco One South Van Ness Ave., 5th Floor San Francisco, CA 94103

Attention: Executive Director

(Space above this Line Reserved for Recorder's Use)

Dated: _____

DECLARATION OF RESTRICTIONS

Transbay Block 9 (Lot 120, Assessor's Block 3736) Affordable Housing – _____ Street

THIS DECLARATION OF RESTRICTIONS ("Declaration") is made as of _____, 2015, by BLOCK 9 TRANSBAY LLC, a Delaware limited liability company, ("Developer"), in favor of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, hereafter referred to as the Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State of California ("OCII"), including any successors or assigns. The restrictions and covenants stated herein shall bind the Developer and its successors and assigns ("Covenantor") and shall be enforceable by OCII and its successors and assigns, which will include the Mayor's Office of Housing and Community Development ("Covenantee").

A. OCII and Developer are entering into a Disposition and Development Agreement dated as of _____ (the "DDA" or "Agreement"), for the transfer of fee title of the real property described in Exhibit A attached hereto and incorporated herein by reference (the fee interest in the land, the "Property") for the development of a residential project with up to 545 total units (the "Project") comprised of up to 436 market-rate units (the "Market Rate Units") and 109 units affordable to households earning up to 50% Area Median Income, which is equivalent to 20% of 545 total units, (the "BMR Units" or the "Affordable Project"). The Agreement is incorporated by reference in this Declaration as though fully set forth in this Declaration. Definitions and rules of interpretation set forth in the Agreement apply to this Declaration.

B. Pursuant to the Agreement, Developer has agreed to comply with certain restrictions contained herein commencing on the date on which the Declaration is recorded in the Recorder's Office of San Francisco County, and continuing for the life of the Project and in no event less than 55 years (the "Compliance Term").

C. Under Section 34176(e) of the California Health and Safety Code, restrictions on the use of real property for the benefit of low- and moderate-income households are Housing Assets that OCII will transfer to the Mayor's Office of Housing and Community Development ("MOHCD") as the Housing Successor upon completion of the Project.

NOW, THEREFORE, DEVELOPER AGREES AND COVENANTS AS FOLLOWS:

1. BMR UNITS.

1.1 BMR Units. The occupancy of one hundred and nine (109) BMR Units in the Project located on the Property shall be restricted to housing for low income persons households at Affordable Rents, as described in Section 3.3 below.

1.2 Term. BMR Units shall remain available at Affordable Rents for the Compliance Term.

1.3 Placement of Units. The BMR Units shall be integrated on a non-discriminatory basis throughout the lower 21 floors of the Project, with the final selection and distribution of BMR Unit location subject to the review and approval of the OCII Executive Director which approval may only be denied, conditioned, or delayed on a reasonable basis.

1.4 Size and Finishes of Units. In addition and consistent with the Inclusionary Housing Requirement in the Redevelopment Plan and the Request For Proposal, BMR Units shall be provided in the same proportion to the Market Rate Units in the Project in the mix of unit types (based solely on the number of bedrooms in a unit), and shall occupy twenty percent (20%) of the net area of the residential portion of the Project. The interior features of the BMR Units shall be equivalent to those in Market Rate Units in the lower 21 floors of the Project, and shall be of good quality and consistent with current standards for new multi-family rental housing.

2. MARKETING PLAN AND TENANT SELECTION PLAN

2.1 Marketing Plan. By construction loan closing, Covenantor must deliver to OCII for OCII's and MOHCD's review and approval which approval shall not be unreasonably withheld, conditioned, or delayed, a draft affirmative marketing plan for initial and ongoing marketing, that includes early outreach to potential BMR Unit tenants as well as a plan to provide, or make referrals to, services to potential BMR Unit tenants to improve their ability to become successful tenants of the BMR Units (the "Marketing Plan") and a written Tenant selection procedure for initial and ongoing renting of the BMR Units (the "Tenant Selection Plan"), all in compliance with the restrictions set forth in this Declaration and in form and substance reasonably acceptable to OCII and MOHCD. The Tenant Selection Plan must include

minimum income requirements that are no more restrictive than requiring a minimum income that is two times the rent, and must include tenant based rent subsidies as income. Additionally ability to pay rent based on rental history of paying a similar or higher rent or other demonstrable methods of rent payment such as participation in money management shall be considered mitigating circumstances related to minimum income and must be evaluated prior to denial of housing. Prior to the completion of the Project and the transfer of these covenants to MOHCD, Covenantor must obtain OCII's approval, which approval shall not be unreasonably withheld, conditioned, or delayed, of reasonable alterations to the Marketing Plan or the Tenant Selection Plan. Developer must obtain MOHCD's approval, which approval shall not be unreasonably withheld, conditioned, or delayed of reasonable alterations to the Marketing Plan or the Tenant Selection Plan after the transfer of these covenants to MOHCD. Covenantor must market and rent the BMR Units in the manner set forth in the Marketing Plan and the Tenant Selection Plan (both of which must include the preference requirements described below in Section 2.2). Before marketing any BMR Units, Developer must provide to OCII before transfer of the covenants, and to MOHCD after transfer of the covenants, with updated implementation and contact information.

2.2 Affirmative Marketing Plan Requirements. Covenantor's Marketing Plan must address how Covenantor intends to market vacant BMR Units and any opportunity for placement on the Waiting List, as defined in 2.3. The Marketing Plan shall include as many of the following elements as are appropriate to the Affordable Project, as reasonably determined by OCII and consistent with OCII and MOHCD policies and procedures related to marketing of affordable units, and shall include Covenantor's plan to provide assistance to applicants throughout the marketing process:

(a) First preference, in the following order of priority for (1) Successor Agency Certificate of Preference Holders ("COP") under the Property Owner and Occupant Preference Program, as reprinted September 11, 2008 and effective October 1, 2008, as approved by Agency Resolution No. 57-2008; (2) Ellis Act Housing Preference ("EAHP") certificate holders in conformance with both priorities listed above and the policies established for the EAHP Program under OCII Resolution No. 64-2014 ((Aug. 5, 2014); (3) San Francisco residents; and, (4) members of the general public. These preferences shall only be included so long as the application of such elements will not cause the Affordable Project to be in violation of the Fair Housing Act, the requirements of the tax exempt bond law and regulations, and/or the low income housing tax credit law and regulations.

(b) Specifically for COP and EAHP certificate holders, the Covenantor shall make support services staff available to provide assistance throughout the application process, as it may be needed, with the goal of maximizing COP and EAHP participation to the extent possible. The Covenantor shall ensure that COP and EAHP holders are aware that such assistance is available.

(c) A reasonable accommodations policy that indicates how Covenantor intends to market BMR Units to disabled individuals, including an indication of the types of accessible BMR Units in the Affordable Project, the procedure for applying, and a policy giving disabled individuals a priority in the occupancy of accessible BMR Units.

(d) Advertising in local neighborhood newspapers, community-oriented radio stations, on the internet and in other media that are likely to reach low-income households. All advertising must display the Equal Housing Opportunity logo.

(d) Notices to neighborhood-based, nonprofit housing corporations and other low-income housing advocacy organizations that maintain waiting lists or make referrals for below-market-rate housing.

(e) Notices to the San Francisco Housing Authority (the "SFHA").

(f) Notices to MOHCD.

(g) To the extent practicable, without holding BMR Units off the market, the community outreach efforts listed above must take place before advertising vacant BMR Units or open spots on the Waiting List to the general public.

(h) An acknowledgement that, with respect to vacant BMR Units, the marketing elements listed above shall only be implemented if there are no qualified applicants interested or available from the Waiting List.

2.3 Marketing Records. Covenantor must keep records of: (a) activities implementing the affirmative marketing plan; (b) advertisements; and (c) other community outreach efforts. These records shall be retained for not more than three (3) years.

2.4 Waiting List. Covenantor's Tenant Selection Plan must contain, at a minimum, policies and criteria that provide for the selection of tenants from a written waiting list in the chronological order of their application (the "Waiting List"). The Tenant Selection Plan may allow an applicant to refuse an available Unit for good cause without losing standing on the Waiting List but shall limit the number of refusals without cause as approved by MOHCD, which approval shall not be unreasonably withheld, conditioned, or delayed. Covenantor shall at all times maintain the Waiting List. Upon the vacancy of any Unit, Borrower shall first attempt to select the new Tenant for such BMR Unit from the Waiting List, and shall only market the BMR Unit to the general public after determining that no applicants from the Waiting List qualify for such Unit. The Waiting List must be kept on file at the Affordable Project at all times.

3. AFFORDABILITY AND OTHER LEASING RESTRICTIONS.

3.1 Term of Leasing Restrictions. Covenantor acknowledges and agrees that the covenants and other leasing restrictions set forth in this Declaration will remain in full force and effect for the Compliance Term.

3.2 Developer's Covenant.

(a) Covenantor covenants to rent all BMR Units at all times to households certified as Qualified Tenants. "Qualified Tenants" means a tenant household, earning no more than the maximum permissible annual income level of 50% of Area Median Income as determined by the U.S. Department of Housing and Urban Development ("HUD") for the San Francisco area, adjusted solely for household size at initial occupancy.)

(b) A Tenant who is a Qualified Tenant at initial occupancy may not be required to vacate the BMR Unit due to subsequent rises in household income, except as provided in Section 3.3 (b). After the over-income Tenant (as defined by a Tenant exceeding the Area Median Income in Section 3.2 (a)) vacates the BMR Unit, the vacant BMR Unit must be rented only to Qualified Tenants.

3.3 Rent Restrictions.

(a) Maximum Rent charged to each Qualified Tenant may not exceed 30% of the applicable Median Income set forth above, adjusted for assumed household size, or the fair market rent established by the San Francisco Housing Authority for Qualified Tenants holding Section 8 vouchers or certificates.

(b) Unless prohibited under any applicable Law, each residential lease must provide for termination of the lease upon 120 days' prior written notice in the event that Covenantor's annual income certification indicates that the Tenant's household income exceeds 120 percent of Median Income subject to the requirements of Section 42 of the Internal Revenue Code.

(c) Annual Rent increases for BMR Units will be limited as follows:

(i) for all BMR Units annual Rent increases will be limited to the lesser of: (A) the amount which would result in a rent equal to the maximum rent permitted for the unit under this Section or (B) the amount which corresponds to the percentage of the annual increase in Median Income published by HUD; and,

(ii) for BMR Units occupied by over-income Tenants whose income is not less than sixty percent (60%) of the applicable Area Median Income, rent charged shall not exceed thirty percent (30%) of sixty percent (60%) of the applicable Area Median Income, or per the applicable tax credit regulatory agreement requirements.

(d) With the MOHCD's prior written approval and in accordance with maximum rent limitations set forth in this Section and all applicable restrictions, rent increases for BMR Units exceeding the amounts permitted under this Section will be permitted to recover increases in Project Expenses, but in no event may single or aggregate increases exceed ten percent (10%) per year, unless such an increase is contemplated in a MOHCD-approved temporary relocation plan or when the increase is caused by an increase in certified income.

MOHCD approval for such rent increases that are necessary to meet all approved Project Expenses and financial obligations shall not be unreasonably withheld.

3.4 Certification.

(a) As a condition to initial occupancy, each person who desires to be a Qualified Tenant in the Project must be required to sign and deliver to Covenantor a certification in which the prospective Qualified Tenant certifies that he/she or his/her household qualifies as a Qualified Tenant. In addition, each person must be required to provide any other information, documents or certifications deemed necessary by OCII or MOHCD to substantiate the prospective Tenant's income.

(b) Each Qualified Tenant in the Project must recertify to Covenantor on an annual basis his/her household income.

(c) Income certifications with respect to each Qualified Tenant who resides in a BMR Unit or resided therein during the immediately preceding calendar year must be maintained on file at Covenantor's principal office, and Covenantor must file or cause to be filed copies thereof with MOHCD promptly upon request by the MOHCD.

3.5 Form of Lease. The form of lease for Tenants must provide for termination of the lease and consent to immediate eviction for failure to qualify as a Qualified Tenant if the Tenant has made any material misrepresentation in the initial income certification. The term of the lease must be for a period of not less than one (1) year. Covenantor may not terminate the tenancy or refuse to renew any lease of a BMR Unit except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Laws or other good cause. Any termination or refusal to renew the lease for a BMR Unit must be preceded by not less than thirty (30) days' written notice to the Tenant specifying the grounds for the action except in exigent circumstances, based on an actual risk to life and safety to other tenants, are determined in good faith by Covenantor, in which case not less than three (3) days' notice may be given. The form of lease for any BMR Unit that has received an allocation of tax credits must provide that the Tenant agrees that the lease may be terminated upon 120 days' notice if the Tenant's certified household income exceeds 120 percent of Median Income and must specify that it may only be terminated in accordance with the requirements of Section 42 of the Internal Revenue Code.

3.6 Nondiscrimination. Covenantor agrees:

(a) not to discriminate against or permit discrimination against any person or group of persons because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability, gender identity, height, weight, source of income or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC) in the operation and use of the Project except to the extent permitted by law or required by any other funding source for the Project. Covenantor agrees not to discriminate against or permit discrimination against Tenants using Section 8 certificates or vouchers or assistance through other rental subsidy programs; and

(b) not to discriminate against or segregate any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site nor shall the Covenantor or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed.

3.7 Security Deposits. Security deposits may be required of Tenants only in accordance with applicable state law and this Agreement. Any security deposits collected must be segregated from all other funds of the Project in an Account held in trust for the benefit of the Tenants and disbursed in accordance with California law. The balance in the trust Account must at all times equal or exceed the aggregate of all security deposits collected plus accrued interest thereon, less any security deposits returned to Tenants.

4. COVENANTS.

4.1 Restrictions. The restrictions set forth in this Declaration shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof and their successors and assigns.

5. REMEDIES.

During the term of the DDA and prior to the transfer of the housing restrictions in this Declaration to MOHCD as described in Recital C, in the event Covenantor fails to comply with the covenants described herein, OCII, shall give Covenantor written notice of such failure which notice shall specify in detail all alleged failures to comply. Covenantor shall have thirty (30) days from Covenantor's receipt of such written notice from OCII to so comply or such additional time as is reasonably necessary to comply. If Covenantor fails to cure the alleged failures within the thirty (30) day period or such longer period as allowed hereunder, OCII, at its option, may exercise any rights available under the DDA, or at equity or in law, including, without limitation, instituting an action for specific performance. The prevailing party in any such action to enforce the terms of this Declaration shall be entitled to recover its reasonable attorney's fees and costs incurred in such action, including any arbitration or mediation thereof, and all appeals.

Subsequent to the transfer of housing restrictions in this Declaration to MOHCD as described in Recital C, in the event that Covenantor fails to comply with the covenants described herein, MOHCD shall give Covenantor written notice of such failure which notice shall specify in detail all alleged failures to comply. Covenantor shall have thirty (30) days from Covenantor's receipt of such written notice from MOHCH to comply or such additional time as is reasonable necessary to comply. If Covenantor fails to cure the alleged failures within the thirty (30) day period or such longer period as allowed hereunder, MOHCD at its option may exercise any rights available at equity or in law, including, without limitation, instituting an action for specific performance. The prevailing party in any such action to enforce the terms of this Declaration shall be entitled to recover its reasonable attorney's fees and costs incurred in such action, including any arbitration or mediation thereof, and all appeals.

6. GOVERNING LAW.

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

IN WITNESS WHEREOF, Developer has executed this instrument the day and year first hereinabove written.

"DEVELOPER"

BLOCK 9 TRANSBAY LLC
a Delaware limited liability company

By: TMG AVANT LLC,
a Delaware limited liability company, Member

By: TMG Partners,
a California corporation, Manager

By: _____
Name: _____
Title: _____

By: ESSEX PORTFOLIO, L.P.,
a California limited partnership
Member

By: Essex Property Trust, Inc.,
a Maryland corporation,
its general partner

By: _____
Name: _____
Title: _____

**EXHIBIT A
LEGAL DESCRIPTION**

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

PARCEL ONE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE SOUTHWESTERLY LINE OF FIRST STREET; AND RUNNING THENCE NORTHWESTERLY ALONG SAID LINE OF FIRST STREET, 48 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 48 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET; AND THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID LINE OF FOLSOM STREET, 100 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 348.

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF CLEMENTINA STREET AND THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHEASTERLY ALONG SAID LINE OF FIRST STREET, 107 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 107 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; AND THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF CLEMENTINA STREET, 100 FEET TO THE POINT OF BEGINNING.

BEING PART OF 100 VARA BLOCK NUMBER 348.

PARCEL THREE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 100 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF FOLSOM STREET, 75 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID SOUTHEASTERLY LINE OF CLEMENTINA STREET, 75 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA LOT NO. 55.

PARCEL FOUR:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 175 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 1ST STREET; RUNNING THENCE SOUTHWESTERLY AND ALONG SAID LINE OF FOLSOM STREET, 50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF CLEMENTINA STREET, 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA LOT NO. 55.

PARCEL FIVE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 225 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID LINE OF FOLSOM STREET, 25 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID LINE OF CLEMENTINA STREET, 25 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA BLOCK NO. 348.

EXCEPTING THEREFROM PARCELS TWO, THREE, FOUR AND FIVE, ALL THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED OCTOBER 18, 1954, IN VOLUME 6469, PAGE 496, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, DISTANT THEREON NORTH 44° 52' 05" WEST, 53.09 FEET FROM THE MOST SOUTHERLY CORNER OF SAID STATE'S PARCEL; THENCE CONTINUING ALONG SAID SOUTHWESTERLY LINE, NORTH 44° 52' 05" WEST, 101.91 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET, 40 FEET WIDE; THENCE ALONG LAST SAID LINE, NORTH 45° 07' 55" EAST, 181.61 FEET TO A POINT DISTANT THEREON SOUTH 45° 07' 55" WEST, 68.55 FEET FROM THE INTERSECTION OF SAID LINE OF CLEMENTINA STREET WITH THE SOUTHWESTERLY LINE OF FIRST STREET; THENCE FROM A TANGENT THAT BEARS SOUTH 23° 20' 57" WEST, ALONG A CURVE TO THE LEFT WITH A RADIUS OF 796 FEET, THROUGH AN ANGLE OF 15° 01' 58", AN ARC LENGTH OF 208.85 FEET TO THE POINT OF COMMENCEMENT.

PARCEL SIX:

COMMENCING AT THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED RECORDED NOVEMBER 7, 1952, IN VOLUME 6035, AT PAGE 505, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL, SOUTH 45° 07' 55" WEST, 25.01 FEET TO THE NORTHEASTERLY LINE OF ECKER STREET; THENCE ALONG LAST SAID LINE, NORTH 44° 52' 05" WEST, 33.58 FEET TO A LINE CONCENTRIC WITH AND DISTANT WESTERLY, MEASURED RADIALLY, 28 FEET FROM THE "BO + MO" LINE OF THE DEPARTMENT OF PUBLIC WORKS' SURVEY FOR THE STATE FREEWAY IN SAN FRANCISCO, ROAD IV-SF-224-SF; THENCE ALONG SAID CONCENTRIC LINE, FROM A TANGENT THAT BEARS NORTH 6° 01' 58" EAST, ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 796 FEET, THROUGH AN ANGLE OF 2° 17' 01", AN ARC DISTANCE OF 31.73 FEET TO THE NORTHEASTERLY LINE OF SAID PARCEL; THENCE ALONG LAST SAID LINE, SOUTH 44° 52' 05" EAST, 53.09 FEET TO THE POINT OF COMMENCEMENT.

BEING A PORTION OF 100 VARA LOT NO. 55 IN BLOCK NO. 348.

APN: LOT 120, BLOCK 3736

Form No. 1402.06
ALTA Owner's Policy (6-17-06)
1100302P050600



Policy Page 1
Policy Number: 705206

OWNER'S POLICY OF TITLE INSURANCE

ISSUED BY

First American Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection
 if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental

police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.

First American Title Insurance Company

Dennis J. Gilmore
President

Jeffrey S. Robinson
Secretary

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

- (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in

Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance.
To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay. Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
 - (i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
 - (ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs,

attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
 - (i) the Amount of Insurance; or
 - (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
 - (i) the Amount of Insurance shall be increased by 10%, and
 - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.
If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

- (b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 1 First American Way, Santa Ana, CA 92707, Attn: Claims Department.

POLICY OF TITLE INSURANCE



SCHEDULE A

First American Title Insurance Company

Name and Address of the issuing Title Insurance Company:
First American Title Insurance Company
1737 North First Street, Suite 500
San Jose, CA 95112

File No.: **NCS-705206-SC**

Policy No.: **705206**

Address Reference: Block 9 Transbay, San Francisco, CA

Amount of Insurance: \$43,600,000.00

Date of Policy: Date and Time of Recording

1. Name of Insured:

Block 9 Transbay LLC, a Delaware limited liability company

2. The estate or interest in the Land that is insured by this policy is:

A Fee.

3. Title is vested in:

Block 9 Transbay LLC, a Delaware limited liability company

4. The Land referred to in this policy is described as follows:

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

PARCEL ONE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE SOUTHWESTERLY LINE OF FIRST STREET; AND RUNNING THENCE NORTHWESTERLY ALONG SAID LINE OF FIRST STREET, 48 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 48 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET; AND THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID LINE OF FOLSOM STREET, 100 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 348.

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF CLEMENTINA STREET AND THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHEASTERLY ALONG SAID LINE OF FIRST STREET, 107 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 107 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; AND THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF CLEMENTINA STREET, 100 FEET TO THE POINT OF BEGINNING.

BEING PART OF 100 VARA BLOCK NUMBER 348.

PARCEL THREE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 100 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF FOLSOM STREET, 75 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID SOUTHEASTERLY LINE OF CLEMENTINA STREET, 75 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA LOT NO. 55.

PARCEL FOUR:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 175 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 1ST STREET; RUNNING THENCE SOUTHWESTERLY AND ALONG SAID LINE OF FOLSOM STREET, 50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF CLEMENTINA STREET, 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA LOT NO. 55.

PARCEL FIVE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF FOLSOM STREET, DISTANT THEREON 225 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIRST STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID LINE OF FOLSOM STREET, 25 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 155 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID LINE OF CLEMENTINA STREET, 25 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 155 FEET TO THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA BLOCK NO. 348.

EXCEPTING THEREFROM PARCELS TWO, THREE, FOUR AND FIVE, ALL THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED OCTOBER 18, 1954, IN VOLUME 6469, PAGE 496, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, DISTANT THEREON NORTH 44° 52' 05" WEST, 53.09 FEET FROM THE MOST SOUTHERLY CORNER OF SAID STATE'S PARCEL; THENCE CONTINUING ALONG SAID SOUTHWESTERLY LINE, NORTH 44° 52' 05" WEST, 101.91 FEET TO THE SOUTHEASTERLY LINE OF CLEMENTINA STREET, 40 FEET WIDE; THENCE ALONG LAST SAID LINE, NORTH 45° 07' 55" EAST, 181.61 FEET TO A POINT DISTANT THEREON SOUTH 45° 07' 55" WEST, 68.55 FEET FROM THE INTERSECTION OF SAID LINE OF CLEMENTINA STREET WITH THE SOUTHWESTERLY LINE OF FIRST STREET; THENCE FROM A TANGENT THAT BEARS SOUTH 23° 20' 57" WEST, ALONG A CURVE TO THE LEFT WITH A RADIUS OF 796 FEET, THROUGH AN ANGLE OF 15° 01' 58", AN ARC LENGTH OF 208.85 FEET TO THE POINT OF COMMENCEMENT.

PARCEL SIX:

COMMENCING AT THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED RECORDED NOVEMBER 7, 1952, IN VOLUME 6035, AT PAGE 505, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL, SOUTH 45° 07' 55" WEST, 25.01 FEET TO THE

NORTHEASTERLY LINE OF ECKER STREET; THENCE ALONG LAST SAID LINE, NORTH 44° 52' 05" WEST, 33.58 FEET TO A LINE CONCENTRIC WITH AND DISTANT WESTERLY, MEASURED RADIALLY, 28 FEET FROM THE "BO + MO" LINE OF THE DEPARTMENT OF PUBLIC WORKS' SURVEY FOR THE STATE FREEWAY IN SAN FRANCISCO, ROAD IV-SF-224-SF; THENCE ALONG SAID CONCENTRIC LINE, FROM A TANGENT THAT BEARS NORTH 6° 01' 58" EAST, ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 796 FEET, THROUGH AN ANGLE OF 2° 17' 01", AN ARC DISTANCE OF 31.73 FEET TO THE NORTHEASTERLY LINE OF SAID PARCEL; THENCE ALONG LAST SAID LINE, SOUTH 44° 52' 05" EAST, 53.09 FEET TO THE POINT OF COMMENCEMENT.

BEING A PORTION OF 100 VARA LOT NO. 55 IN BLOCK NO. 348.

APN: LOT 120, BLOCK 3736

NOTICE: This is a pro-forma policy furnished to or on behalf of the party to be insured. It neither reflects the present status of title, nor is it intended to be a commitment to insure. The inclusion of endorsements as part of the pro-forma policy in no way evidences the willingness of the Company to provide any affirmative coverage shown therein.

SCHEDULE B

File No.: **NCS-705206-SC**

Policy No.: **705206**

EXCEPTIONS FROM COVERAGE

This Policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2014-2015.
2. The herein described property lies within the boundaries of a Mello-Roos Community Facilities District ("CFD"), as follows:

CFD No.: 90 1
For: School Facility Repair and Maintenance

This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes of the City and County of San Francisco. The tax may not be prepaid.

Further information may be obtained by contacting:

Chief Financial Officer
San Francisco Unified School District
135 Van Ness Ave. - Room 300
San Francisco, CA 94102
Phone (415) 241-6542

No amounts are due or owing as of Date of Policy.

3. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California, solely to the extent arising from a change of ownership to the Insured, or commencement of construction occurring on or after the Date of Policy.
4. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document;

Reserved by: San Francisco Welding & Steel Fabricating Co., a co-partnership
Purpose: Ingress and Egress at ground level
Recorded: July 23, 1954, Book 6418, Page 557, of Official Records
5. The fact that said land is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the redevelopment plan) as disclosed by a document.

Redevelopment
Agency: Transbay Project Area

Recorded: August 04, 2006, Instrument No. 2006-I224836-00, of Official Records

"Declaration of Restrictions" thereunder, recorded August 04, 2006, Instrument No. 2006 I224839, Official Records.

"Statement of Eminent Domain Limitations" thereunder, recorded December 31, 2007, Instrument No. 2007-I512986, Official Records.

6. Intentionally Deleted
7. Any rights, interests, or claims which may exist or arise by reason of the following matters disclosed by Survey:

Job No.: S-8789

Dated: September 8, 2014

Prepared by: Benjamin B. Ron at Martin M. Ron Associates Land Surveyors

Matters shown: A). The fact that a chain link fence (CLF) is located partially on said land and partially on adjoining land at various locations and distances;

Encroachment(s) into or onto Ecker Street:

B). 0.04' OV. @ WALL

Encroachment(s) into or onto said land from adjoining land known as Lot 16:

C). 0.2' +/- OV. @ VARIOUS BLDG. TRIM

Encroachment(s) into or onto said land from adjoining land known as Lots 124-155:

D). 0.39' OV. MAXIMUM @ DRAINPIPE 7' HIGH;

E). 0.26' OV. MAXIMUM @ DRAINPIPE 7' HIGH

**COVENANTS, CONDITIONS AND RESTRICTIONS -
IMPROVED LAND - OWNER'S POLICY ENDORSEMENT**

Issued by

First American Title Insurance Company

Attached to Policy No.: 705206

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only,
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
 - b. Enforced removal of an Improvement as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
 - c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
 - c. except as provided in Section 3.c, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Form 50-10801 (7-1-14) Page 11 of 31

ALTA 9.2-06 Covenants, Conditions and Restrictions Improved Land - Owner's
Policy (Rev. 4-2-12)

EASEMENT - DAMAGE OR ENFORCED REMOVAL ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy Number.: 705206

The Company insures against loss or damage sustained by the Insured if the exercise of the granted or reserved rights to use or maintain the easement(s) referred to in the Exception(s) 4 of Schedule B results in:

- (1) damage to an existing building located on the Land, or
- (2) enforced removal or alteration of an existing building located on the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

CC&R'S, VIOLATIONS ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 705206

The Company insures against loss or damage sustained by reason of any existing violations on the Land of the covenants, conditions and restrictions referred to in paragraph 5 of Schedule B.

As used in this endorsement, the words "covenants, conditions or restrictions" do not refer to or include any covenant, condition or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions or substances except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**ACCESS AND ENTRY
ENDORSEMENT**

Issued by

First American Title Insurance Company

Attached to Policy No.: 705206

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have both actual vehicular and pedestrian access to and from First Street, Clementina Street and Folsom Street (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

SAME AS SURVEY ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 705206

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by Benjamin B. Ron at Martin M. Ron Associates Land Surveyors dated September 8, 2014, and designated Job No. S-8789.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

LOCATION ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 705206

The Company insures against loss or damage sustained by the Insured by reason of the failure of vacant land known as 510 Folsom Street, San Francisco, CA, to be located on the Land at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

ENDORSEMENT

Attached to Policy No. 705206

Issued by

First American Title Insurance Company

The Company insures against loss or damage sustained by reason of the failure of the Land described as Parcel(s) One thru Six in Schedule A to constitute a lawfully created parcel according to the Subdivision Map Act (Section 66410, et seq., of the California Government Code) and local ordinances adopted pursuant thereto.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

CLTA Form 116.7-06 (03-09-07)
ALTA - Owner or Lender

**COMMERCIAL ENVIRONMENTAL
PROTECTION LIEN ENDORSEMENT**

Issued by

First American Title Insurance Company

Attached to Policy No.: 705206

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

ENDORSEMENT

Attached to Policy No. 705206

Issued by

First American Title Insurance Company

The Policy is hereby amended by deleting paragraph no. 14 from the Conditions of the Policy.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and prior endorsements, if any, nor does it extend the effective date of the policy and prior endorsements or increase the face amount thereof.

Deletion of Arbitration - 06

ENDORSEMENT

Attached to Policy No. 705206

Issued By

First American Title Insurance Company

Marketability - Special Endorsement

The Company hereby insures the Insured against loss or damage sustained or incurred by reason of the unmarketability of the title to the estate or interest by reason of any violations on the Land, occurring prior to acquisition of title to the estate or interest by the Insured, of covenants, conditions or restrictions shown in Schedule B.

No coverage is provided under this endorsement as to any covenant, condition or restriction or other provision relating to environmental protection.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated:

ENDORSEMENT

Attached to Policy No. 705206

Issued By

First American Title Insurance Company

Special Sears Endorsement - Future Insurance

The Company agrees that if upon the completion of the improvements on the land or within five (5) years after the date of this policy, whichever first occurs, application is made to increase the face amount of the policy and/or to issue a new policy to the then insured under the policy, and/or to issue a policy to such mortgagee(s), trustee(s) under deed(s) of trust, beneficiary(ies) of deed(s) of trust, parties to sale and leaseback or other types of financial transactions hereinafter severally and collectively, as indicated by the context, referred to as lending institution, as may be designated by the then insured under the policy, it will issue additional title insurance coverage insuring such title and/or interest as may then exist in the insured and/or lending institution(s) in and to said premises, not to exceed the value of the land and the improvements constructed thereon on the date of said application and the Company shall then extend its examination of the title to the then current date and such additional title insurance coverage shall also be subject to such matters, if any, first created and first appearing in the public records subsequent to the effective date of this policy, and/or matters or events which both occurred and became known to either the insured or the Company subsequent to the effective date of this policy, and the Company will increase its liability to the requested amount upon payment of its usual charges for such additional insurance coverage; and further provided, however, that the Company shall not be obligated to issue additional insurance coverage which would exceed the amount of usual reinsurance retention of the Company, which shall not, for the purposes of this Endorsement, in any case be less than \$350,000,000.00, if, after the exercise of its reasonable efforts, the Company is unable to obtain such reinsurance or co-insurance as may be required in order for it to issue the full amount of additional insurance for which application is made.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated:

ENDORSEMENT

Attached to Policy No. 705206

Issued By

First American Title Insurance Company

Successor Insured/Fairway Endorsement

The Company hereby agrees with the insured limited liability company that this Policy and the coverage provided to the insured limited liability company hereunder shall not be deemed to have lapsed, or to have been forfeited, or to have been terminated because of the occurrence, subsequent to the Date of the Policy, of either of the following events (provided that the insured limited liability company has not been dissolved or discontinued by reason of the following events pursuant to applicable state law):

1. any one or more transfers of all or any part of the interests or any one or more member of the insured limited liability company, or
2. the admission or withdrawal of any individual or entity as a member in the insured limited liability company, or
3. a change in any member's interest in capital or profits of, or as a member in, the insured limited liability company.

The Company hereby further agrees that the definition of Insured contained in Paragraph 1(a) of the Conditions and Stipulations of the policy shall include the following successors in interest to the named insured of the estate or interest described in Schedule A (reserving, however all rights and defenses as to any successor that the Company would have against the named insured):

1. any grantee of the named insured which is an owner of a membership interest of a member (a "Grantee Member") in the named insured limited liability company which receives title to the land described in Schedule A of the Policy as a result of the dissolution of the named insured limited liability company; or
2. any corporate successor to a Grantee Member who becomes a successor by operation of law (as opposed to purchase) by reason of dissolution, merger, consolidation or corporate reorganization; or
3. any corporate grantee of a Grantee Member, or of a corporate successor covered under (b) above which receives title to the land described in Schedule A of the policy, provided the corporate grantee is either a wholly owned subsidiary of the corporate successor or of its parent corporation.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated:

F.A. Special
Lack of Signatures

ENDORSEMENT

Attached to Policy No. 705206

Issued By

First American Title Insurance Company

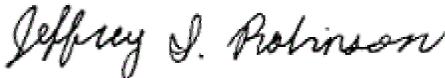
The Company hereby assures the Insured that the Company will not deny liability under the policy or any endorsements issued therewith solely on the grounds that the policy and/or endorsement(s) were issued electronically and/or lack signatures in accordance with Paragraph 15 (c) of the Conditions.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

First American Title Insurance Company



Dennis J. Gilmore
President



Jeffrey S. Robinson
Secretary

ZONING-LAND UNDER DEVELOPMENT ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 705206

File No.:

1. For purposes of this endorsement:
 - a. "Improvement" means a building, structure, road, walkway, driveway, curb, subsurface utility or water well existing at Date of Policy or to be built or constructed according to the Plans that is or will be located on the Land, but excluding crops, landscaping, lawns, shrubbery, or trees.
 - b. "Plans" means those Schematic Design Submission plans made by Fougeron Architecture and GLS Landscape Architecture dated November 19, 2014 consisting of 85 sheets, as such plans may be subsequently revised and finally approved by the Office of Community Investment and Infrastructure of the City and County of San Francisco.
2. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy
 - a. according to applicable zoning ordinances and amendments, the Land is not classified Zone Transbay Downtown Residential District (TB-DTR);
 - b. the following use or uses are not allowed under that classification: A 545 unit multifamily apartment complex and related amenities with a parking garage of not less than 286 striped spaces, and not less than 6,465 square feet of commercial space
 - c. There shall be no liability under paragraph 2.b. if the use or uses are not allowed as the result of any lack of compliance with any condition, restriction, or requirement contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.c. does not modify or limit the coverage provided in Covered Risk 5.
3. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction either prohibiting the use of the Land, with any existing Improvement, as specified in paragraph 2.b. or requiring the removal or alteration or loss of use of the Improvement, because, at Date of Policy, the zoning ordinances and amendments have been violated with respect to any of the following matters:
 - a. Area, width, or depth of the Land as a building site for the Improvement
 - b. Floor space area of the Improvement
 - c. Setback of the Improvement from the property lines of the Land
 - d. Height of the Improvement
 - e. Number of parking spaces; or
 - f. Density
4. There shall be no liability under this endorsement based on:
 - a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;
 - b. the refusal of any person to purchase, lease or lend money on the Title covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls.

Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Date:

By:

Authorized Countersignature

Form 50-10798 (7-1-14) Page 26 of 31

ALTA 3.2-06 Zoning - Land Under Development-Modified (4-2-12)

**EASEMENT - DAMAGE OR ENFORCED
REMOVAL ENDORSEMENT**

Issued by

First American Title Insurance Company

Attached to Policy No.: 705206

The Company hereby insures the Insured against loss resulting from the following:

- (1) Damage to the existing improvements, including lawns, shrubbery, trees and parking on the Land;
- (2) Interference with the continuing use, as presently utilized, of the existing improvements on the Land, including lawns, shrubbery, trees and parking, occasioned by the exercise of any rights, interest and/or claims and/or the creation of any rights, interests and/or claims made by reason of the facts and/or matters referred to in Paragraph 7A through 7E of Schedule B, or occasioned by the exercise of the right to use or maintain the easements referred to in Paragraph 4 of Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**CONTIGUITY - MULTIPLE
PARCELS ENDORSEMENT**

Issued by

First American Title Insurance Company

Attached to Policy No.: 705206

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land described in Schedule A, including the parcels or portions of parcels described herein, taken as a tract, comprises one contiguous parcel of land without strips, gaps or gores.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**SINGLE TAX PARCEL
ENDORSEMENT**

Issued by

First American Title Insurance Company

Attached to Policy No.: 705206

The Company insures against loss or damage sustained by the Insured by reason of the Land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate taxes.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**CONTIGUITY - MULTIPLE
PARCELS ENDORSEMENT**

Issued by

First American Title Insurance Company

Attached to Policy No.: 705206

The Company insures against loss or damage sustained by the Insured by reason of:

1. the failure of Parcels One, Two and Three to be contiguous along their common boundary line; and Parcel Three and Four to be contiguous along their common boundary lines; and Parcel Four and Five to be contiguous along their common boundary lines; and Parcel Five and Six to be contiguous along their common boundary lines; or
2. the presence of any gaps, strips, or gores separating any of the contiguous boundary lines described above.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.



First American Title

Privacy Information

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet. In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site. There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive. FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

Use We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

Accuracy We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

Security We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.