

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.3  
FOR THE MEETING OF: September 8, 2022**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

181 Fremont Street (“181”) is a 58-story mixed use tower adjacent to the southeast side of the Salesforce Transit Center. The proposed resolution would authorize the Executive Director to sign an Agreement for a Surface and Air Rights Easement (“Easement Agreement”) allowing 181 to use four feet of the TJPA’s air space above the San Francisco Municipal Transportation Agency (“SFMTA”) bus lane at the southeast end of the Transit Center for window washing and other maintenance of 181. 181 would pay the TJPA the fair market value of the easement.

**EXPLANATION:**

181 requires a permanent easement (“Easement”) to use the TJPA’s air space on the southeast side of the Salesforce Transit Center to wash and replace windows, caulk, and conduct other maintenance activities on the north façade of 181. The Easement would be within an area on the ground level of the east end of the Salesforce Transit Center leased to the SFMTA for Bus Bays A through E. SFMTA has approved the Easement Agreement conditioned on 181’s entry to a separate Consent Agreement with SFMTA that protects SFMTA’s facilities and operations during 181’s use of the Easement. The Consent Agreement is Exhibit D to the Easement Agreement. The Consent Agreement, among other things, provides that SFMTA will de-energize the Bay E power lines at certain times to allow 181 to conduct maintenance activities in the Easement. The four-foot wide Easement will not interfere with the TJPA’s facilities or operations or the facilities or operations of its tenants.

Key Terms of the Easement Agreement and Consent Agreement

**Easement Area:** 137.5’ length (width of the 181 Fremont property), extending vertically from the ground to the sky, and extending approximately four feet north of the Transit Center’s southern property line.

**No Interference:** 181’s use of the Easement will not interfere with the TJPA’s facilities or operations or the facilities or operations of its tenants.

**Duration of Easement:** The Easement is perpetual.

**Regular Maintenance:** 181 may use the Easement for two two-week periods twice per year and two-five-week periods twice per year for regularly scheduled maintenance.

**Limitations/Exclusions:** Work beneath the pedestrian bridge connecting 181 to Salesforce Park that requires de-energizing the overhead power lines for SFMTA buses can be no longer than two hours each occurrence and are limited to twice per year.

**Supervision of Maintenance:** 181 must designate a Worker in Charge to ensure safety of workers and the public in the Easement area and communicate with Transit Center facilities and security staff.

**No Entry Zone:** When using the Easement, 181 shall deploy stanchions, zipcords, traffic cones, and/or fencing to demarcate a No Entry Zone below the platform used for maintenance activities to ensure the safety of workers and the public below the platform.

**Notice of Maintenance:** 181 shall give notice to the TJPA's Facility Director and the Security Operations Center at least five days before starting regularly scheduled use of the Easement.

**Unscheduled/Emergency Maintenance:** If 181 demonstrates to the TJPA that it needs additional access beyond regularly scheduled maintenance, the TJPA may approve the additional use in its discretion. Additional use shall also be conditioned on 181's payment of the fair market rent for the additional access as determined by the TJPA.

**Calendar and Notices:** 181 shall provide to the TJPA an annual regular maintenance calendar for the next twelve months by January 15<sup>th</sup> of each year. At least three weeks prior to using the Easement, 181 shall give notice to the TJPA of the extent of work anticipated and the equipment and materials that will be used.

**Other Permits:** 181 shall coordinate with the SFMTA to secure any other permits required for 181's use of the Easement and give the TJPA notice of any permits obtained.

**Payments:** 181 shall purchase the Easement for \$36,000, which is the value conclusion of the TJPA's appraisal. 181 shall also pay the cost of the TJPA's appraisal and shall reimburse the TJPA for approximately \$29,000 in attorney's fees the TJPA incurred to draft and negotiate the Easement Agreement.

**Release and Indemnification:** 181 releases claims against the TJPA for injury arising from 181's use of the Easement and will indemnify the TJPA from claims against the TJPA by third parties for injury arising from 181's use of the Easement.

**Insurance:** 181 shall provide an insurance policy covering claims for damage to the TJPA's facilities and injury to third persons or property with a limit of at least \$10 million for each occurrence and aggregate occurrences per year, escalated at \$750,000 per year, and naming the TJPA, its member agencies, and Salesforce, Inc. as additional insureds.

**RECOMMENDATION:**

Authorize the Executive Director to execute the Easement Agreement with 181 and the Consent Agreement with 181 and the City consistent with the attached documents.

**ENCLOSURES:**

1. Resolution
2. Agreement for Surface and Air Rights Easement with Attachments

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, 181 Fremont Office LLC and 181 Fremont Street Master Association (collectively “181”) own a 58-story mixed use tower adjacent to the southeast portion of the TJPA’s Salesforce Transit Center (Transit Center); and

WHEREAS, 181 requires access to the air space adjacent to the northern façade of 181 Fremont to conduct maintenance such as window washing, window replacement, caulking and other maintenance activities; and

WHEREAS, 181 has requested that the TJPA convey a perpetual air rights easement four feet wide over the Transit Center from the ground to the sky along the Transit Center’s southeastern boundary with 181 Fremont to allow 181 to maintain its north façade; and

WHEREAS, TJPA Staff has negotiated the Agreement for Surface and Air Rights Easement with 181 (“Easement Agreement”); and

WHEREAS, The Easement Agreement provides 181 access to conduct façade maintenance activities subject to clearly defined limits, payment obligations to TJPA, and notification requirements, as outlined in the Easement Agreement; and

WHEREAS, The Easement Agreement will not interfere with the TJPA’s facilities or operations or the facilities or operations of its tenants; and

WHEREAS, 181 has approved the Easement Agreement; and

WHEREAS, The TJPA leases the ground level of the Transit Center adjacent to 181 Fremont to the City and County of San Francisco, acting by and through its San Francisco Municipal Transportation Agency (“SFMTA”), for bus operations; and

WHEREAS, The SFMTA has been a party to the negotiations for the Easement Agreement and has approved the Easement Agreement; and

WHEREAS, Exhibit D to the Easement Agreement is a Consent Agreement between 181 and the SFMTA providing that 181’s use of the Easement will not interfere with SFMTA’s facilities or operations and provides other protections to the SFMTA; and

WHEREAS, TJPA Staff was a party to the negotiations for the Consent Agreement and deems the Consent Agreement to be consistent with and complimentary to the Easement Agreement; now, therefore, be it

RESOLVED, That the TJPA Board authorizes the Executive Director to execute the Easement Agreement with 181 Fremont and the Consent Agreement, consistent with the documents presented to the Board; and, be it

FURTHER RESOLVED, That the TJPA Board authorizes the Executive Director to take all actions and execute all documents as he deems reasonably necessary to implement the Easement Agreement.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of September 8, 2022.

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Secretary, Transbay Joint Powers Authority

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:  
Transbay Joint Powers Authority  
425 Mission Street, Suite 250  
San Francisco, CA 94105  
Attn: Adam Van de Water

Recording Fee \$0 (Govt Code § 27383)  
(APN 3719-003, 450, 452-518)

(space above line for Recorder's use only)

## AGREEMENT FOR SURFACE AND AIR RIGHTS EASEMENT

THIS AGREEMENT FOR SURFACE AND AIR RIGHTS EASEMENT (this “**Agreement**”) is made and entered into as of September 8, 2022 by and between the TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created under California Government Code Sections 6500 *et seq.* (the “**TJPA**”), 181 FREMONT OFFICE LLC, a Delaware limited liability company (“**Commercial Owner**), and 181 FREMONT STREET MASTER ASSOCIATION, a California nonprofit mutual benefit corporation (“**Master Association**”, and together with Commercial Owner, collectively, “**181**”). The TJPA and 181 are each individually referred to as a “**Party**” and are collectively referred to as the “**Parties**”.

### RECITALS

This Agreement is entered into by the TJPA and 181 on the basis of the following recitals:

A. The TJPA is the owner of that certain real property located at 425 Mission Street, San Francisco, California (San Francisco Assessor's Block 3719, Lot 3; Block 3720, Lots 10 and 11; and Block 3721, Lots 6, and 124), as shown on Exhibit A-1 attached hereto (collectively, the “**Transit Center Property**”). Block 3719, Lot 3 (“**Lot 3**”) of the Transit Center Property is described in Exhibit A-2.

B. 181 Fremont is a fifty-eight story mixed-use building located adjacent to Lot 3 at 181 Fremont Street, San Francisco, California, (San Francisco Assessor's Block 3719, Lots 450, and 452 through 518) as described in Exhibit B (the “**181 Fremont Property**”). Lot 3 and the 181 Fremont Property are each individually referred to in this Agreement as a “**Property**” and are collectively referred to as the “**Properties**.”

C. The 181 Fremont Property is comprised of two (2) separate vertical parcels, Parcel A and Parcel B, as described and shown on the Condominium Map entitled “Final Map No. 8247”, recorded in the Office of the Recorder of the City and County of San Francisco, State of California, on June 14, 2016, in Book 129 of Condominium Maps, page(s) 174-177. Parcel A consists of five basements levels, floors 1 through 40 and floor 58 of commercial office space and a pedestrian bridge connecting the 181 Fremont Property to the Transit Center Property rooftop park (the “**Commercial Parcel**”). Commercial Owner is the fee owner of the Commercial Parcel. Parcel B consists of floor 41 through 57 and includes 67 residential condominium units (the “**Residential Parcel**”). Commercial Owner and 181 Fremont Residences Association, a California nonprofit mutual benefit corporation representing the owners of the condominiums comprising the Residential

Parcel, are the members of Master Association, which operates the 181 Fremont Property on behalf of such owners, pursuant to the 181 Fremont Master Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement, recorded in the Office of the Assessor-Recorder of the City and County of San Francisco, State of California (“**Official Records**”), on August 1, 2016, as DOC-2016-K300741-00, as amended, which encumbers both the Commercial Parcel and the Residential Parcel. In no event shall any reference to “181” or “Master Association” be deemed to include any individual owners of the condominiums comprising the Residential Parcel. As the operator of the 181 Fremont Property on behalf of the owners, Master Association shall be responsible for performance of the terms, obligations, covenants, and conditions of this Easement Agreement.

D. The TJPA leases a portion of the bus plaza on Lot 3 (“**SFMTA Premises**”) to the City and County of San Francisco (the “**City**”), acting by and through its San Francisco Municipal Transportation Agency (“**SFMTA**”), for public transportation operations under a Transit Center Lease dated June 15, 2018 (as has been and/or may be amended, modified or restated, the “**Lease**”). The SFMTA Premises extend to thirty-five feet above the ground level. Transit vehicles access and depart the SFMTA Premises via five lanes referred to as “Bay A” through “Bay E,” inclusive.

E. The City’s transit vehicles include vehicles that require electricity supplied by overhead power lines. Some of the power lines are located above Bay E, which runs adjacent and parallel to the Property Line between Lot 3 and the 181 Fremont Property (the “**Bay E Power Lines**”).

F. It is necessary for Master Association to perform maintenance at the 181 Fremont Property, including, but not limited to, window washing, window replacement, caulking, and other maintenance activities. These maintenance activities will require entering a portion of the surface and airspace of Lot 3, including a portion of the surface and air space of the SFMTA Premises, and may require de-energizing the Bay E Power Lines.

G. The TJPA and 181 now desire to enter into this Agreement to establish the terms, conditions, rights, and responsibilities for 181’s use of a permanent easement for surface and air rights over Lot 3 and additional terms, and conditions, rights, and responsibilities for 181’s use of the surface and air rights easement within the SFMTA Premises for the Maintenance Activities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the TJPA and 181 agree as follows:

## **1. Definitions**

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

**A. “Easement Area”** shall mean the three-dimensional air space occupied by the Easement conveyed in this Agreement, which is more fully described and depicted in the attached Exhibit C and partially located within the SFMTA Premises. The Easement Area is one hundred thirty-seven and five tenths (137.5) feet long (the entire width of the 181 Fremont Property), extends vertically from the ground level of Lot 3 to the sky, and north from the Property Line three and seventy-four hundredths (3.74) feet (approximately 45 inches) over Lot 3. Block 3720, Lots 10 and

11 and Block 3721, Lots 6, and 124 of the Transit Center Property are not included in the Easement Area.

**B. “Emergency Maintenance”** shall mean maintenance and repairs that must occur immediately to avoid substantial danger to public health or safety or substantial damage to the 181 Fremont Property or the Transit Center Property. The Parties understand and agree that Emergency Maintenance may include Under Bridge Work as may be reasonably required under the circumstances of the emergency consistent with the procedures described herein.

**C. “Equipment”** shall mean the rig used to descend alongside the building at the 181 Fremont Property (“**Rig**”) and/or any vehicles or other equipment that will be brought onto the Easement Area during the course of the Maintenance Activities.

**D. “Force Majeure”** shall mean a matter outside of a Party’s reasonable control that has occurred through no fault of such Party, and may include: strikes; lockouts; labor disputes; acts of God; inability to obtain services, labor, or materials; government moratoria; civil commotions; riots; acts of criminals; fire or other casualty, excluding the Covid-19 pandemic or similar pandemics.

**E. “Maintenance Activities”** shall include Regular Maintenance, Unscheduled Maintenance, and Emergency Maintenance. So long as the TJPA leases any portion of the Easement Area to the City, some Maintenance Activities may only be performed if the SFMTA de-energizes the Bay E Power Lines.

**F. “No Entry Zone”** shall mean the portion of the Easement Area shown on the attached Exhibit E. The vertical dimension of the No Entry Zone shall be between the surface of the Easement Area and ten (10) feet above the Bay E Power Lines. The horizontal dimension of the No Entry Zone shall be twenty-eight (28) inches northwest of the Property Line.

**G. “Permittees”** shall mean all Persons from time to time entitled to exercise the Easement rights in all or any portion of the Easement Area established under this Agreement by the Parties.

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

**I. “Property Line”** shall mean the property line between the Lot 3 and the 181 Fremont Property which based on the dimensions of 181 Fremont on the Effective Date is a straight line from a point .56 feet (approximately 7 inches) northwesterly of the northwest corner of the 181 Fremont building to a point .93 feet (approximately 11 inches) northwesterly of the northeast corner of the 181 Fremont building as shown on the second page of Exhibit C.

**J. “Regular Maintenance”** shall mean window washing and other maintenance along the side of the building adjacent to the Easement Area. The Parties understand and agree that Regular Maintenance is currently anticipated to occur approximately two (2) times each year for approximately two (2) weeks each and two (2) additional times each year for approximately five (5) weeks each; provided that Under Bridge Work shall be limited to a duration of no more than two (2)

hours in each instance (not including set up and dismantling), and each two (2) hour instance can only occur during no more than two (2) Regular Maintenance periods in any given year.

**K. “Under Bridge Work”** shall mean any Maintenance Activities to be performed underneath the bridge covering Bay E of the SFMTA Premises.

**L. “Unscheduled Maintenance”** means Maintenance Activities outside of Regular Maintenance periods that are not an emergency but cannot reasonably be delayed to be performed with the next scheduled Regular Maintenance period. The Parties understand and agree that Unscheduled Maintenance may include Under Bridge Work as may be reasonably required.

**K. “Worker in Charge”** means an employee of Master Association or the Contractor, who must be on-site at the Easement Area to ensure safety in the Easement Area at all times with respect to the Maintenance Activities and cannot engage in any other activities when the Maintenance Activities are performed.

## **2. Surface and Air Rights Easement**

### **A. TJPA Easement**

The TJPA, as owner of Lot 3, grants to 181, on behalf of the owners of the 181 Fremont Property, an appurtenant, permanent, non-exclusive, easement (the “**Easement**”) in, to, over, and across the Easement Area as described in Section 1.A and described and depicted in Exhibit C for occupancy and use as described herein; provided that Master Association, shall cause all Maintenance Activities to be performed in compliance with this Agreement.

i. Scope of Easement. Master Association may occupy and use the Easement Area only for the Maintenance Activities and performing its obligations under this Section 2.A.

ii. No Entry Zone. During Maintenance Activities, Master Association shall prevent persons and vehicles from entering the Easement Area at ground level by clearly demarcating a No Entry Zone with stanchions, zipcords, traffic cones, and/or fencing and warning signs. Master Association shall move the stanchions, zipcords, traffic cones, and/or fencing and warning signs as the platform moves laterally across the north façade of the 181 Fremont Property building to maintain the No Entry Zone at all times in which Master Association maintains a platform suspended from the 181 Fremont Property. Master Association shall prevent any persons performing the Maintenance Activities from driving vehicles or walking on the Easement Area, except for purposes of creating, relocating, and enforcing the No Entry Zone or performing the Maintenance Activities.

iii. Lighting. If Master Association uses the Easement Area before dawn or after sunset, it must provide adequate lighting so that the No Entry Zone is clearly visible.

iv. Compliance with Laws. Master Association shall cause all Maintenance Activities to be done in compliance with all applicable laws and safety orders, including but not limited to 8 California Code of Regulations Section 2946 and the general orders, rules, and recommendations of the Division of Industrial Safety of California, or any successor to that body.



v. Maintenance Periods.

a. Regular Maintenance. Master Association may occupy and use the Easement Area for Regular Maintenance; provided that the Master Association must notify the TJPA's Facility Director and Security Operations Center in writing at least five (5) calendar days prior to beginning Regular Maintenance in accordance with Section 15. During Regular Maintenance, Master Association shall comply with the terms of Section 2.A.i through 2.A.va, the other terms of this Agreement, and, so long as the TJPA leases any portion of the Easement Area to the City, the terms of the unrecorded City Consent as set forth in Exhibit D ("City Consent").

b. Unscheduled Maintenance and Emergency Maintenance. If Master Association demonstrates to the TJPA that Maintenance Activities in addition to the time periods allowed for Regular Maintenance in Section 2.A.v.a are necessary to repair or maintain the 181 Fremont Property in the Easement Area, the TJPA may approve the Unscheduled Maintenance, which approval will not be unreasonably denied, delayed, or conditioned. If the TJPA approves the Unscheduled Maintenance or if Emergency Maintenance is required, Master Association shall pay the TJPA the fair market rent as determined by the TJPA for the period of the Unscheduled Maintenance or Emergency Maintenance. Master Association shall give the TJPA reasonable advance notice of any requests for Unscheduled Maintenance or for any Emergency Maintenance in accordance with Section 15 as the circumstances permit, but in the event of Unscheduled Maintenance, no less than five (5) calendar days prior to beginning occupancy and use. Unscheduled Maintenance or Emergency Maintenance shall be governed by Section 2.B.i.b. If at any time the TJPA no longer leases any portion of the Easement Area to the City, Unscheduled Maintenance or Emergency Maintenance shall be governed by this Section 2.A.v.b. If the TJPA leases all or any portion of the Easement Area to an entity other than the City, Unscheduled Maintenance or Emergency Maintenance in such area shall be governed by Sections 2.A.i through 2.A.v.a and 2.B.iii.

**B. The City Consent; Successor Agency Requirements**

i. So long as the TJPA leases any portion of the Easement Area to the City:

a. for Regular Maintenance, 181, through Master Association, shall comply with the terms of Section 2.A.i through 2.A.v.a and the other terms of this Agreement and the City Consent;

b. for Unscheduled Maintenance and Emergency Maintenance, the terms of the City Consent shall supersede the provisions of Section 2.A.v.b, but all other terms of this Agreement, including Section 2.A.i through 2.A.v.a, shall apply, and 181, through Master Association, shall comply with the terms of the City Consent.

ii. So long as the TJPA leases all or any portion of the Easement Area to any transportation agency other than the City:

a. for Regular Maintenance and Unscheduled Maintenance and Emergency Maintenance outside the area leased to a transportation agency other than the City Master Association shall comply with the terms of this Agreement Section 2.A.i through 2.A.v and the other terms of this Agreement and the Successor Agency Requirements (as defined below);

b. for Unscheduled Maintenance and Emergency Maintenance, the terms of the Successor Agency Requirements shall supersede the provisions of Section 2.A.v.b, but all other terms of this Agreement, including Section 2.A.i through 2.A.v.a, shall apply.

iii. If at any time the TJPA no longer leases any portion of the Easement Area to the City, (A) if the TJPA leases all or any portion of the Easement Area to a public transportation agency, the TJPA and the subsequent lessee shall agree to restrictions and conditions substantially similar to the City Consent (the “**Successor Agency Requirements**”), subject to such modifications required to reflect the processes applicable to the actual user of the portion of the Easement Area, but otherwise substantially similar processes and procedures, and the TJPA and the subsequent lessee shall agree to such restrictions and conditions only if they do not interfere with 181’s rights under this Agreement, or (B) if the TJPA leases all or any portion of the Easement Area to an entity other than a public transportation agency, the TJPA and the subsequent lessee shall agree only to restrictions and conditions that do not interfere with 181’s rights under this Agreement.

### C. Procedure for Maintenance Activities

i. Master Association shall designate an employee or agent (the “**Master Association Representative**”) to provide updates regarding, and to be the coordinator relating to, Maintenance Activities in the Easement Area and any Permits (as defined in the City Consent), and shall provide the contact information for that person to the TJPA. So long as the TJPA leases any portion of the Easement Area to the City, Master Association shall also provide the contact information for the SFMTA Representative (as defined in the City Consent) to the TJPA. Master Association can change the individual serving as the Master Association Representative at any time by providing written notice of that change to the TJPA.

ii. On or before January 15th of each year, the Master Association Representative shall provide to the TJPA a schedule of Regular Maintenance, which shall include a description for each Regular Maintenance activity proposed for the next twelve (12) months. The schedule shall provide the following for all such anticipated Maintenance Activities (“**Work Description**”):

a. a description of the anticipated Maintenance Activities and why they are needed;

b. the anticipated location, dates and times, and duration of each of the Maintenance Activities; and

c. whether any Under Bridge Work will be performed for the described Maintenance Activities. Under Bridge Work will be limited to no more than two (2) two (2)-hour sessions per year and shall occur during Regular Maintenance, but will be as reasonably required for Unscheduled Maintenance and Emergency Maintenance.

iii. When any Maintenance Activities are desired (whether Regular Maintenance or otherwise), the Parties shall use the following procedures (except as set forth in Section 2.C.v):

a. At least three (3) weeks before the commencement of any Regular Maintenance described in the applicable annual schedule, the Master Association Representative

shall send the TJPA a notice (“**Confirmation Notice**”) that (A) confirms that the applicable Work Description remains unchanged, (B) lists the Equipment that will be used (including make and model), and (C) gives the name of the party that will do that Regular Maintenance (“**Contractor**”) and the name, phone number, and email address of the person who will be the Worker in Charge when that Regular Maintenance is being performed. The Master Association Representative must deliver each Confirmation Notice to the TJPA address designated for notice purposes in Section 15 (as that address may be changed through the process described in that Section). So long as the TJPA leases any portion of the Easement Area to the City, the Master Association Representative must deliver the Confirmation Notice to the TJPA at the same time any similar notice is delivered to the SFMTA Representative, together with a copy of that notice to the SFMTA Representative.

b. At least three (3) weeks before the proposed date for any **Unscheduled Maintenance**, the Master Association Representative shall send the TJPA a request (“**Work Request**”) that (A) provides the Work Description for that **Unscheduled Maintenance**, (B) lists the Equipment that will be used (including make and model), and (C) gives the name of the Contractor that will do that **Unscheduled Maintenance** and the name, phone number, and email address of the person who will be the Worker in Charge when that **Unscheduled Maintenance** is being performed. The Master Association Representative must deliver each Work Request to the TJPA address designated for notice purposes in Section 15 (as that address may be changed through the process described in that Section). So long as the TJPA leases any portion of the Easement Area to the City, the Master Association Representative must deliver the Work Request to the SFMTA Representative at the same time the Work Request is delivered to the TJPA. If the TJPA approves the Work Request, the Master Association Representative shall notify the SFMTA Representative.

c. If the Master Association Representative receives a Permit from the SFMTA, the Master Association Representative shall notify the TJPA and provide the TJPA with copies of that Permit (if written).

d. At least one (1) hour before the Maintenance Activities start time specified in an issued Permit, the Master Association Representative shall contact the TJPA Facility Director and Security Operations Center identified in Section 15 to confirm that start time.

e. The Worker in Charge shall immediately notify the TJPA upon the completion of the Maintenance Activities.

iv. Notwithstanding any Work Description provided to the TJPA for Maintenance Activities, the Parties understand and agree that the actual duration of Maintenance Activities will depend on various factors that cannot be fully predicted. If, after any Maintenance Activities begin, the Master Association Representative determines that they will take longer than permitted under this Agreement, the Master Association Representative must notify the TJPA as soon as it makes that determination but no later than forty-eight (48) hours before the end time established pursuant to this Agreement for those Maintenance Activities, and request an extension of the applicable deadline for completion of Maintenance Activities under the terms of this Agreement for those Maintenance Activities (“**Request for Extension**”). The TJPA may approve the Request for Extension, which approval will not be unreasonably denied, delayed, or conditioned, but only if extending the time for completion of the Maintenance Activity will have an adverse impact on the TJPA’s transit operations.

v. Notwithstanding anything to the contrary set forth in this Agreement, if 181 or the Contractor require Emergency Maintenance, the Master Association Representative shall contact the TJPA, and the TJPA shall promptly dispatch an inspector to assess the situation and coordinate with 181 and the appropriate SFMTA divisions to arrange for a mutually-agreeable time for 181 or its contractors to perform the Emergency Maintenance, which will be as soon as reasonably possible in consideration of any other emergency work that the TJPA needs to perform at that time to avoid substantial danger to public health or safety or to the Transit Center Property. If the Worker in Charge determines that the Rig must be set down on level ground in an emergency to protect the safety or security of the public, the workers using the Rig, the Equipment, or the Bay E Power Lines, then the Worker in Charge may permit the Rig to be set down on level ground north of the curb running along the Property Line, but only for as long as necessary to resolve the emergency. If the Worker in Charge allows the Rig to be set down at ground level, the Worker in Charge shall immediately notify the TJPA. The Easement Area is three and seventy-four hundredths (3.74) feet wide to allow 181 or its contractor to set the Rig down north of the curb and still remain within the Easement Area. The Worker in Charge shall not permit the Rig to be set down on the ground other than in an emergency.

### **3. Payment**

#### **A. Purchase Price**

As consideration for the TJPA's grant of the Easement to 181, Master Association shall pay to the TJPA the purchase price for the Easement equal to Thirty-Six Thousand Dollars (\$36,000) ("**Purchase Price**"). The Purchase Price represents the value of 181's use of the Easement Area for Regular Maintenance only. The Purchase Price does not include the value of 181's use of the Easement Area for Unscheduled Maintenance or Emergency Maintenance. 181 shall pay the TJPA fair market rent for its use of the Easement Area for Unscheduled Maintenance or Emergency Maintenance under Section 2.A.v.b.

#### **B. Attorneys' and Consultants' Fees**

Master Association shall pay the TJPA's Attorneys' Fees in connection with the grant of the Easement in the sum of **Thirty-Three Thousand Nine Hundred Ninety-Two Dollars (\$33,992)** ("**Attorneys' Fees**").

#### **C. Closing**

At closing of the sale of the Easement to 181 (the "**Closing**"), Master Association shall pay the Purchase Price and Attorneys' Fees to, or as directed by, the TJPA, in cash or an amount credited by wire transfer of immediately available funds to a national bank in San Francisco, California specified by the TJPA for credit to the escrow account of Chicago Title Insurance Company, 455 Market Street, Suite 2100, San Francisco, California 94105-2420 ("**Title Company**" and "**Escrow Agent**").

### **4. "As Is;" Release.**

**A.** 181 acknowledges and agrees that the Easement is to be sold and conveyed to and accepted by 181 in an "As Is" condition with all faults.

**B.** 181 acknowledges that the Easement conveyed under this Agreement shall be subject to all exceptions listed in Schedule B of the Condition of Title Report for the Transit Center Property issued by Chicago Title Insurance Company on February 27, 2019 (“**COTR**”), and all matters that would otherwise be revealed by an inspection of the Transit Center Property or an ALTA survey on the Closing Date. Escrow Officer’s willingness to issue a policy of title insurance to 181 listing only those exceptions in Schedule B of the COTR (“**Title Policy**”) shall be a 181 Closing Condition as set forth in Section 7.B.

**C.** With the sole exceptions of the TJPA’s representations and warranties in Section 11.A of this Agreement, the TJPA does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to any matters related to the Transit Center Property. In particular, and without limitation, the TJPA makes no representations or warranties with respect to the following matters related to the Easement: the legal use, condition (whether physical, legal, zoning, environmental, or other), encumbrances, occupation, or management of the Easement; value of the Easement and any effect on value as a result of any impact fee, special tax, or assessment that may be imposed; status of, need for, or ability to secure entitlements to use the Easement; the compliance of the Easement with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters; suitability of the Easement for 181’s intended use; or concerning contamination with Hazardous Material (as defined in Section 27) (collectively, “**Condition of The Transit Center Property**”).

**D.** 181 acknowledges that it is entering into this Agreement on the basis of its own investigation of the Condition of The Transit Center Property, including the subsurface conditions. 181 assumes the risk that adverse physical, legal, title, zoning, environmental, or other conditions may not have been revealed by its investigation.

**E.** The TJPA has no obligation to make any repairs or improvements to or prepare the Transit Center Property for any purpose whatsoever prior to conveyance of the Easement to 181. The TJPA has no obligation to obtain a Certificate of Compliance or other evidence of Subdivision Map Act compliance, or zoning or other code change pertaining to the Transit Center Property.

**F.** After Closing, Master Association, at its sole cost and expense, shall comply with all provisions of Environmental Laws (as defined in Section 27) and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Laws on account of or in any way arising out of or in connection with this Agreement and 181 or 181’s Permittees’ use of the Easement, and the TJPA, its member agencies (the City, AC Transit, Caltrain, and the California High Speed Rail Authority), the State of California (“State”), and Salesforce.com and their respective heirs, legal representatives or any other person acting on their behalf, successors and assigns, and each of them (collectively and individually, “**TJPA Parties**”), shall have no responsibility or liability under the Environmental Laws with respect to 181 or 181’s Permittees’ use of the Easement, except where such liability results from the active gross negligence or intentional misconduct of the TJPA Parties. For avoidance of doubt, 181 is not liable or responsible for the remediation of any Hazardous Materials (as defined below) that may be located on or under the Transit Center Property on the Effective Date.

**G.** 181 for itself, its successors and assigns, hereby waives, releases, remises, acquits and forever discharges the TJPA Parties of and from, any and all rights, claims, losses, injuries, costs, damages, causes of action, demands, damages, expenses, penalties, fines or compensation whatsoever, direct or indirect, which 181 now has or which 181 may have in the future (a) on account of or in any way arising out of or in connection with this Agreement, 181's or 181's Permittees' use of the Easement, including the Easement Area, and the Condition of The Transit Center Property, (b) for inverse condemnation related to noise, vibration, fumes, heat, exhaust, lighting, or security from the TJPA's use of the Transit Center Property, but excluding claims for physical damage to the 181 Fremont Property due to the TJPA's construction, maintenance, repair, or demolition of improvements on the Transit Center Property unrelated to the Easement, and (c) for claims by third parties (or any right to seek indemnity or contribution from the TJPA Parties for such third party claims) that arise from a personal injury or any damage occurring from an exposure of the third party to Hazardous Material, or an event involving a third party occurring on the Transit Center Property or emanating from the Transit Center Property each to the extent caused by 181 prior to or after the Effective Date.

This waiver and release is a general release. 181 is aware of California Civil Code Section 1542, which reads as follows:

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

To give full force and effect to the above general release, 181 hereby expressly, knowingly, and voluntarily waives all the rights and benefits of Section 1542 and any other similar law of any jurisdiction. By placing their initials below, 181 specifically acknowledges and confirms the validity of the release made above and the fact that 181 was represented by counsel who explained, at the time this Agreement was made, the consequences of the above releases.

INITIALS: Master Association Initials: \_\_\_\_\_ Commercial Owner Initials: \_\_\_\_\_

## **5. Indemnity.**

Master Association shall indemnify, protect, defend, and hold harmless the TJPA Parties (each, "**TJPA Indemnitee**" and collectively, "**TJPA Indemnitees**") from and against any and all claims, demands, losses (including, but not limited to, diminution in value), liabilities, damages, costs and expenses, consequential damages, reasonable attorneys' fees and costs, and fees of consultants and experts, laboratory costs, and related costs of Indemnitee) (collectively, "**Losses**") all to the extent arising out of the death of any person or any accident, injury, loss, or physical damage whatsoever to any person or to the property of any person on account of or in any way arising out of or in connection with this Agreement, or 181 or 181's Permittees' use of the Easement, including the Easement Area; provided, however, that 181 shall have no obligation to indemnify the TJPA Indemnitees for Losses arising from the active gross negligence or willful misconduct of a TJPA Indemnitee. Where the gross negligence or willful misconduct of the TJPA or the TJPA Indemnitees is a cause of, but is not the sole cause of, Losses, Master Association shall indemnify the TJPA Indemnitees according to 181's share of fault, as applicable. Master Association agrees to

defend the TJPA Indemnitees against any claims for Losses that are within the scope of the indemnity provisions of this Agreement even if such claims may be groundless, fraudulent, or false. Master Association's duty to pay for the defense of a TJPA Indemnitee shall arise immediately upon service of process on the TJPA Indemnitee. Master Association's duty to pay for the defense of a TJPA Indemnitee shall not be contingent on the ultimate determination of the TJPA Indemnitee's liability for the Loss.

## **6. Insurance.**

Master Association shall at its sole cost name the TJPA Parties as additional insureds under a policy of Commercial General Liability Insurance covering Master Association's use of the Easement ("**Master Association Policy**"). The Master Association Policy shall:

**A.** be effective within ten (10) days after the Effective Date ("**Insurance Effective Date**") and shall be renewed annually (prior to expiration). Not less than ten (10) days before the Insurance Effective Date, Master Association shall deliver to the TJPA a certificate or certificates of insurance in a form reasonably satisfactory to the TJPA, evidencing the coverage required hereunder, and shall deliver such proof of insurance ten (10) days before every anniversary of the Insurance Effective Date;

**B.** have a limit of at least Ten Million Dollars (\$10,000,000) for each occurrence and aggregate occurrences per year, which may be accomplished by primary and excess layers, subject to an escalation of Seven Hundred Fifty Thousand Dollars (\$750,000) on each five- (5-) year anniversary of the Insurance Effective Date;

**C.** be a separate policy from Master Association's other insurance policies or shall have a per location endorsement consistent with the limits described in this Section 6;

**D.** cover all of the following claims and losses ("**Covered Claims**"): bodily injury and property damage (including claims and losses arising from criminal acts committed by any Person, including but not limited to, claims and losses based on an allegation of inadequate, or a failure of, security, subject to exclusions then customarily contained in Commercial General Liability Insurance policies); independent contractors; and personal injury arising from or based on the design, materials, construction, installation, maintenance, operation of, condition of, or use of the 181 Fremont Property;

**E.** be issued by an insurance company duly authorized to do business in the State of California and with a current rating of A-VIII or better by Best's Key Rating Guide;

**F.** require Master Association, as the primary insured, to pay or cause others to pay any deductible or retention;

**G.** require a defense and indemnity of the named insured and the additional insureds, including the TJPA Parties;

**H.** be primary insurance with respect to the TJPA Parties for all Covered Claims, and any insurance or self-insurance of the TJPA Parties shall be excess of the Policy and shall not contribute with it;

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

**J.** be endorsed to state that the insurer shall not cancel coverage unless the insurer has given the TJPA thirty (30) days' prior written notice, or ten (10) days prior written notice for Master Association's non-payment of a premium when due.

Master Association shall provide written notice to the TJPA within five (5) business days following notice from Master Association's insurer of any cancellation or modification of the terms of the Master Association Policy and shall replace such Master Association Policy with a Master Association Policy that complies with all of the requirements of this Section 6 within five (5) business days after giving the notice to the TJPA. Master Association shall provide written notice to the TJPA within three (3) business days following Master Association's failure to pay all or part of the premium for the Master Association Policy when due. Master Association's failure to pay all or part of the premium for the Master Association Policy when due shall be an immediate default under this Agreement without any requirement for notice or cure. If Master Association fails to pay a premium for the Master Association Policy when due, the TJPA may, at its election, pay the premium and all interest and penalties, if any, and shall have all legal and equitable remedies against Master Association for reimbursement of the amount paid, whether or not Master Association gives written notice to the TJPA of the failure to pay the premium.

If Master Association fails to carry a policy of Commercial General Liability Insurance meeting the requirements of this Section 6 during any period which Master Association is required to carry such insurance pursuant to this Section 6, then Master Association shall perform the duties which would have been performed by the carrier had Master Association carried such a policy as herein required, but only to the extent of the duties which such carrier would have had to perform.

The Master Association Policy may, at Master Association's option, also apply to the 181 Fremont Property, so long as the Policy has a per location endorsement that satisfies all requirements of this Section 6. The Master Association Policy may be satisfied in whole or in part by the insurance required to be maintained under that certain 181 Fremont Pedestrian Bridge Easement Agreement, dated as of October 15, 2013, by and between the TJPA and Master Association (as successor in interest to 181 Fremont Street LLC, a Delaware limited liability company), and recorded in the Official Records on January 10, 2014 as DOC-2014-J823664-00 (the "**Bridge Easement**"), if the Bridge Easement policy satisfies all requirements of Section 6.A-J and the Master Association Policy shall not be in addition to the insurance required under the terms of the Bridge Easement.

**7. Escrow.**

**A. Opening of Escrow**

No later than five (5) business days after the TJPA Board of Directors approves this Agreement, the Parties shall open an escrow by depositing an executed counterpart of this Agreement with Escrow Agent. This Agreement, as supplemented by each party's escrow instructions to Escrow Agent, shall serve as instructions to Escrow Agent for consummation of the purchase and sale contemplated hereby. The Parties agree to execute such additional or



supplementary instructions as may be appropriate to enable 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.

**B. 181 Closing Conditions**

The following are conditions precedent to 181's obligation to purchase the Easement at Closing (collectively, "**181 Closing Conditions**"):

- i. the TJPA Board shall have authorized the TJPA Executive Director to execute this Agreement;
- ii. Escrow Agent shall be irrevocably prepared to record this Agreement at Closing;
- iii. Title Company shall be prepared to issue the Title Policy to Master Association at Closing;
- iv. The City, 181, and the TJPA shall have executed the City Consent; and
- v. all of the TJPA's representations and warranties in Section 11.A shall have been true and correct in all material respects when made and shall be true and correct in all material respects as of the Closing Date.

The 181 Closing Conditions are solely for the benefit of 181.

If, on or before the Closing Date, any of the 181 Closing Conditions is not satisfied for any reason other than 181's fault, 181 shall have the right in its sole discretion either to waive in writing the 181 Closing Condition in question and proceed with the sale or, in the alternative, terminate this Agreement. If, by the Closing Date, any 181 Closing Conditions has not been satisfied and 181 has not waived in writing the 181 Closing Condition(s), and the failure of the 181 Closing Condition is due to some affirmative act or negligent omission of the TJPA, then 181 shall have the right to terminate this Agreement by written notice to the TJPA, and the Parties will have no further rights or obligations hereunder, except as otherwise provided herein.

Without limiting the other obligations of the TJPA regarding Closing as expressly provided in this Agreement, the TJPA and 181 shall cooperate in good faith to do all acts as may be reasonably required by each of them to cause the fulfillment of any 181 Closing Conditions, but without assuming any new liability not contemplated by this Agreement.

**C. The TJPA's Closing Conditions**

The following are conditions precedent to the TJPA's obligation to sell the Easement at Closing (collectively, "**TJPA Closing Conditions**," and together with the 181 Closing Conditions, "**Closing Conditions**"):

- i. Master Association shall have delivered to the Escrow Agent the Purchase Price, the Attorneys' Fees, the Closing Costs (as defined in Section 8), and any other funds as are necessary to close escrow consistent with the terms of this Agreement;
- ii. Escrow Agent shall be prepared to record this Agreement at Closing;
- iii. The City, 181, and the TJPA shall have executed the City Consent; and
- iv. all of 181's representations and warranties in Section 11.B shall have been true and correct in all material respects when made and shall be true and correct in all material respects as of the Closing Date.

The TJPA Closing Conditions are solely for the benefit of the TJPA.

If, on or before the Closing Date, any of the TJPA Closing Conditions is not satisfied for any reason other than the TJPA's fault, the TJPA shall have the right in its sole discretion either to waive in writing the TJPA Closing Condition in question and proceed with the sale or, in the alternative, terminate this Agreement. If, by the Closing Date, any TJPA Closing Conditions has not been satisfied and the TJPA has not have waived in writing the TJPA Closing Condition(s), then the TJPA shall have the right to terminate this Agreement by written notice to 181, and the Parties will have no further rights or obligations hereunder, except as otherwise provided herein.

Without limiting the other obligations of 181 regarding Closing as expressly provided in this Agreement, 181 and the TJPA shall cooperate in good faith to do all acts as may be reasonably required by each of them to cause the fulfillment of any of the TJPA Closing Conditions, but without assuming any new liability not contemplated by this Agreement.

#### **D. Closing Date**

The date on which the TJPA and 181 close on the sale of the Easement shall be the "**Closing Date**." The TJPA and 181 are obligated to close on the sale of the Easement under the terms and conditions of this Agreement on or before the earlier of (1) the thirtieth (30th) day after the TJPA Board approves this Agreement, and (2) October 8, 2022 ("**Outside Closing Date**"), unless the Parties, each in its sole and absolute discretion, have agreed in writing to an extension of the Outside Closing Date. The Parties may mutually agree to an earlier Closing Date. The Closing Date shall be the Effective Date (as defined in Section 17).

Not later than the business day immediately preceding the Closing Date, the Parties shall each deposit into Escrow all documents and items such party is obligated to deposit into Escrow in accordance with this Agreement.

#### **8. Closing Costs.**

Master Association shall bear all cost and responsibility for all title, escrow, and closing fees and costs, including, but not limited to, the cost of any transfer or other taxes, surveys, appraisals, environmental review, title policy premiums and endorsements, and escrow, document, and recording fees (collectively "**Closing Costs**").

## **9. Defaults and Remedies.**

In the event of any breach or default of any Party of any term or provision of this Agreement which is not cured by the defaulting Party (i) within thirty (30) days after receipt of written notice thereof from the non-defaulting Party, or (ii) within three (3) days after such notice in the event of an immediate and serious danger to person or property (or, in all cases, within such additional period of time as is reasonably necessary in light of the nature of the breach or default and the acts which are necessary to cure such breach or default, provided that the defaulting Party commences the cure within the required cure period and thereafter diligently prosecutes such cure to completion), the non-defaulting Party shall have any and all rights and remedies available at law or in equity, including without limitation, the right to demand and have specific performance and the right to actual damages (subject to proof). Except as otherwise provided herein and subject to the limitations herein, the rights and remedies of the Parties under this Agreement shall be cumulative. In the event of a breach or default by the TJPA, the TJPA shall not be liable for damages to 181. The remedies of 181 against the TJPA for breach or default shall be equitable only.

## **10. Limitation of Liability.**

No individual director, officer, agent, or employee of 181 or any of its members or affiliates will be personally liable to the TJPA in an event of default by 181 or for any amount that may become due to the TJPA or on any obligations under the terms of this Agreement. No individual director, officer, official, agent or employee of the TJPA or its member agencies, including the City, will be personally liable to 181 in an event of default by the TJPA or for any amount that may become due to 181 or on any obligations under the terms of this Agreement.

## **11. Representations and Warranties.**

### **A. Representations and Warranties of TJPA**

The TJPA represents and warrants to 181, to the best of the TJPA's actual knowledge, as of the Effective Date defined in Section 17, as follows:

i. Authority. The TJPA is the legal and equitable owner of the Transit Center Property, with full requisite power and authority to execute and deliver this Agreement and carry out and perform all of the terms and covenants of this Agreement. Persons signing this Agreement for the TJPA have all requisite power and legal authority to do so.

ii. Valid Execution. The execution and delivery of this Agreement by the TJPA has been duly and validly authorized by all necessary action. This Agreement is a legal, valid, and binding obligation of the TJPA. All documents executed by the TJPA and delivered to 181 at Closing are, or at Closing will be, duly authorized, executed, and delivered by the TJPA and will be legal, valid, and binding obligations of the TJPA.

### **B. Representations and Warranties of 181**

181 represents and warrants to the TJPA, to the best of 181's actual knowledge, as of the Effective Date, as follows:

i. Authority. Commercial Owner is the legal and equitable owner of the Commercial Parcel, with full requisite power and authority to execute and deliver this Agreement and carry out and perform all of the terms and covenants of this Agreement. Master Association has all requisite power and authority to execute and deliver this Agreement and carry out and perform all of the terms and covenants of this Agreement. Persons signing this Agreement for 181 have all requisite power and legal authority to do so.

ii. Valid Existence; Good Standing. Commercial Owner is duly organized and validly existing under the laws of the State of Delaware and is in good standing in the State of Delaware and the State of California to the extent required by applicable law. Master Association is duly organized and validly existing under the laws of the State of California and is in good standing in the State of California to the extent required by applicable law.

iii. No Limitation on Ability to Perform. There is no operating agreement, organization document, or any other agreement or law that in any way prohibits, limits, or otherwise affects the right or power of 181 to enter into and perform all of the terms and covenants of this Agreement. Neither 181, or any member of 181, is a party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that could prohibit, limit, or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person or entity is required for the due execution, delivery and performance by 181 of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or threatened suits or proceedings or undischarged judgments affecting 181, or any member of 181, before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Agreement, the ability of 181 to perform the transactions contemplated by this Agreement, or the business, operations, assets or condition of 181 or any member of 181.

iv. Valid Execution. The execution and delivery of this Agreement by 181 has been duly and validly authorized by all necessary action. This Agreement is a legal, valid, and binding obligation of 181. All documents executed by 181 and delivered to the TJPA at Closing are, or at Closing will be, duly authorized, executed, and delivered by 181 and will be legal, valid, and binding obligations of 181.

v. Defaults. The execution, delivery, and performance of this Agreement (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which 181, or any member of 181, is a party or by which 181, or a member of 181, may be bound or affected, (B) to 181's knowledge, any law, statute, ordinance, regulation, or (C) the articles of organization or the operating agreement of 181, or any member of 181n, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of 181, or any member of 181.

vi. Meeting Financial Obligations; Material Adverse Change. 181, and any member of 181, are meeting their respective current liabilities as they mature; no federal or state tax liens have been filed against any of them; and neither 181, nor any member of 181, is in default or claimed default under any agreement for borrowed money. 181 shall, within three (3) business days, notify the TJPA of any material adverse change in the financial condition of 181, or any member of 181, that would prevent performance of 181's obligations under this Agreement.

vii. Conflicts of Interest. 181 is familiar with and does not know of any facts that constitute a violation of Sections 87100 *et seq.* of the California Government Code, which provides that no member, official or employee of the TJPA may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects her or his personal interest or the interests of any corporation, partnership, or association in which she or he is interested directly or indirectly.

viii. Skill and Capacity. 181, and any member of 181, has the skill, resources, and financial capacity to use the Easement consistent with this Agreement. Master Association shall employ or contract with such persons as may be necessary or appropriate to enable Master Association to perform its obligations under this Agreement in a timely manner.

ix. Not Prohibited from Doing Business. Neither 181, or any member of 181, have been debarred or otherwise prohibited from doing business with any local, state, or federal governmental agency to the extent such debarment or prohibition would prevent 181 from performing its obligations under this Agreement in a timely manner.

x. Business Licenses. 181, and any member of 181, has obtained all licenses required to conduct its business in San Francisco and is not in default of any fees or taxes due to the City.

xi. No Claims. As of the Effective Date, 181, and any member of 181, do not have any claims against any TJPA Party.

### **C. Continued Accuracy**

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

## **12. Assignment; Effect of Transfer.**

**A.** Anything else in this Agreement to the contrary notwithstanding, the TJPA may freely transfer direct or indirect interests in the Transit Center Property, or any portion thereof, without the necessity of any consent by the any other Party. Prior to such transfer, the TJPA shall notify 181 of the transfer. In the event that either Party transfers or otherwise conveys its entire interest in the Property, such Party shall, as to the other Party, thereupon be released and discharged from any and all obligations in connection with the Transit Center Property arising under this Agreement with respect to the period after the date of such transfer or conveyance; but shall remain liable for all obligations arising under this Agreement with respect to the period prior to such transfer or conveyance; and the transferee (including, without limitation, any transferee who acquires its interest by foreclosure, trustee's sale or otherwise, regardless of the terms of any promissory note, mortgage, or deed of trust agreement between the Party and any lender or trustee of a lender) shall assume all rights and obligations with respect to such Property under this Agreement with respect to the period of ownership by such transferee; including any ongoing breach that continues following the date of transfer, subject to the limitations of liability and other provisions of this Agreement.

**B.** Commercial Owner may freely transfer direct or indirect interests in the Commercial Parcel, or any portion thereof, without the necessity of any consent by the TJPA. Any owner of a residential condominium unit located within the Residential Parcel may freely transfer direct or indirect ownership interests in a residential condominium, or any portion thereof, without the necessity of any consent by the TJPA relating to this Agreement.

**13. Force Majeure.**

If any Person is delayed or hindered in or prevented from the performance of any act required hereunder because of any event of Force Majeure, performance of such act shall be excused for the period of the Force Majeure event, and the period for the performance of such act shall be extended for an equivalent period. A pandemic shall not constitute an event of force majeure.

**14. Running with the Land.**

It is the intent of the Parties that each and all of the easements, rights, obligations, covenants, conditions, and restrictions set forth in this Agreement touch and concern and shall affect, relate to, and run with the land that comprises the 181 Fremont Property and every portion thereof, and shall apply to 181, and any member of 181. The Easement is imposed on Lot 3 as an equitable servitude and covenant burdening Lot 3 in favor of the 181 Fremont Property and constitute an equitable servitude and covenant running with the land pursuant to applicable law. The rights of the TJPA and the obligations of 181, and any member of 181, under this Agreement are an equitable servitude and covenant burdening the 181 Fremont Property in favor of Lot 3 and constitute an equitable servitude and covenant running with the land pursuant to applicable law. Nothing contained herein shall apply to or bind the individual owners of the residential condominium units located within the Residential Parcel.

**15. Notices.**

**A.** Addresses for Notices. A notice or communication under this Agreement by either Party to the other shall be sufficiently given or delivered if personally delivered or dispatched by registered or certified mail, postage prepaid, return receipt requested, email, or reputable overnight courier service and addressed as follows:

If to the TJPA:

Transbay Joint Powers Authority  
425 Mission Street, Suite 250  
San Francisco, CA 94105  
Attn: Executive Director  
Telephone: (415) 597-4620  
Email: info@tjpa.org

with copies to:

Transbay Joint Powers Authority  
425 Mission Street, Suite 250  
San Francisco, CA 94105  
Attn: Facility Director and Security Operations Center  
Telephone: (415) 597-4620  
Email: security@tjpa.org and info@tjpa.org

Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102  
Attn: Andrew Schwartz  
Telephone: (415) 552-7272  
Email: schwartz@smwlaw.com

If to Master Association:

181 Fremont Street Master Association  
c/o Jay Paul Company  
Four Embarcadero Center, Suite 3620  
San Francisco, CA 94111  
Attn: Janette D'Elia  
Telephone: (415) 263-7400  
Email: jdelia@jaypaul.com

With a copy to:

Rachel B. Horsch  
Pillsbury Winthrop Shaw Pittman LLP  
Four Embarcadero Center, 22nd Floor  
San Francisco, CA 94111  
(415) 983-1193  
Email: [Rachel.Horsch@Pillsburylaw.com](mailto:Rachel.Horsch@Pillsburylaw.com)

If to Commercial Owner:

181 Fremont Office LLC  
c/o Jay Paul Company  
Four Embarcadero Center, Suite 3620  
San Francisco, CA 94111  
Attn: Janette D'Elia  
Telephone: (415) 263-7400  
Email: jdelia@jaypaul.com

With a copy to:

Rachel B. Horsch  
Pillsbury Winthrop Shaw Pittman LLP  
Four Embarcadero Center, 22nd Floor  
San Francisco, CA 94111  
(415) 983-1193  
Email: [Rachel.Horsch@Pillsbury.com](mailto:Rachel.Horsch@Pillsbury.com)

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

- i. the Section of this Agreement under which the notice is given and the action or response required, if any; and
- ii. if applicable, the period of time within which the recipient of the notice must respond thereto.

**C. Change of Address.** Any mailing or email address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days before the effective date of the change.

**D. Effective Date of Notices.** All notices under this Agreement shall be deemed given, received, made, or communicated on the date the notice is actually delivered to the office of the person to whom it is addressed or, if mailed or sent by overnight courier, on the delivery date or attempted delivery date shown on the return receipt. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of a copy of the notice.

## **16. Estoppel Certificates.**

Each Party, within ten (10) business days after written request of any other Party, shall issue to such other Party an estoppel certificate stating: (i) whether the Party to whom the request has been directed knows of any default under this Agreement, and if there are known defaults, specifying the nature thereof; (ii) whether, to the knowledge of the Party to whom the request has been directed, this Agreement has been modified or amended in any way, and if it has been so modified or amended, stating the nature of such modification or amendment; and (iii) whether to the knowledge of the Party to whom the request has been directed, this Agreement is in full force and effect as of the date of the estoppel certificate.

## **17. Effective Date.**

The Easement under this Agreement shall become effective and binding upon each of the Properties and each of the Parties hereto, including their respective successors, assigns and successors-in-interest to all or any portion of each of the Properties, upon the execution and acknowledgement of this Agreement by all Parties and the recordation of this Agreement in the Official Records at the Closing under Section 7.D (“**Effective Date**”). This Agreement shall be recorded in the Official Records at the Closing.



**18. Severability.**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction or under, any circumstance shall as to such jurisdiction or circumstance be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction or under any other circumstances.

**19. Non-Waiver.**

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

**20. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California. The Parties agree that all actions or proceedings arising directly or indirectly under this Agreement shall be litigated in courts located within the County of San Francisco, State of California, and the Parties agree that any service of process in such action or proceeding may be made by personal service upon the other wherever the other may then be located, or by certified or registered mail directed to the Party at the address set forth in this Agreement.

**21. Attorneys' Fees.**

If any Party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all reasonable costs and expenses incurred by the other Party on account of such default or in enforcing or establishing its rights under this Agreement. including court costs and reasonable attorneys' fees and costs. Any such attorneys' fees and costs incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees and costs obligation is not to be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys for the TJPA shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the TJPA's attorneys' services were rendered who practice in the City of San Francisco, notwithstanding the TJPA's use of its own attorneys or the City Attorney.

**22. No Third Party Beneficiaries or Duties.**

This Agreement is for the exclusive benefit of the Parties and not for the benefit of any other Person (including any member of the public) and shall not be deemed to have conferred any rights, express or implied, upon any other Person. Nothing in this Agreement shall be deemed or constructed to create any duty or liability to any third party or to describe any standard of care owed to any third party.

**23. Amendments.**

This Agreement may be amended, extended, supplemented, changed, or revoked only by the written agreement of all Parties hereto, which amendment, extension, supplement change, or revocation shall be effective and binding upon the whole of the Properties upon the recordation of same in the Official Records.

**24. Entire Agreement.**

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

**25. Interpretation of Agreement.**

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

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

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

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

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

**F. No Presumption against Drafter.** This Agreement has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition,

each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

## **26. Relationship of the Parties.**

The subject of this Agreement is a grant of an interest in publicly-owned real property to the adjoining private property owner with no Party acting as the agent of any other Party in any respect. None of the provisions in this Agreement shall be deemed to render the TJPA a partner in 181's business, or joint venturer or member in any joint enterprise with 181.

## **27. Compliance with Laws.**

Master Association and its respective agents and representatives shall conduct all activities within the Easement Area in a safe, prudent, and professional manner in accordance with commercial reasonable construction and maintenance practices. Master Association and its respective agents and representatives shall, with respect to any work within the Easement Area, promptly comply with (a) all laws, statutes, ordinances, codes, rules, regulations, requirements, or orders of municipal, state, and federal authorities now in force or that may later be in force, including, but not limited to, Environmental Laws (as defined below) and those relating to the generation, use, storage, handling, treatment, transportation, or disposal of Hazardous Materials (as defined below), provided that 181 shall have no obligations concerning any Hazardous Materials located on the Transit Center Property that were not released by 181; (b) the condition of any permit, occupancy certificate, license, or other approval issued by public officers; and (c) with any liens, encumbrances, easements, covenants, conditions, restrictions, and servitudes (if any) of record, or of which 181 has notice.

**“Environmental Laws”** means all federal, state, and local laws, regulations, and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Material Environmental Release or reporting requirements, Hazardous Material use or storage, and employee or community right-to-know requirements related to the work being performed under this Agreement.

**“Hazardous Materials”** shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA,” also commonly known as the “Superfund” law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of improvements or are naturally occurring substances on or about real property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and “source,” “special nuclear” and “by-product” material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

**28. Conflicts of Interest.**

Through its execution of this Agreement, 181 acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the San Francisco Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Master Association becomes aware of any such fact during the term of this Agreement, Master Association shall promptly notify the TJPA.

**29. Notification of Limitations on Contributions.**

Through its execution of this Agreement, 181 acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City or the TJPA for the selling or leasing of any land or building to or from the City or the TJPA, whenever such transaction would require approval by a board on which a City elective officer or member of the TJPA Board sits, from making any campaign contribution to the City elective officer or a member of the TJPA Board at any time from the submission of a proposal for such contract until either (i) the termination of negotiations for such contract, or (ii) twelve (12) months has elapsed from the date the contract is approved by the City or the TJPA.

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

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

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

**30. Counterparts.**

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

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

**COMMERCIAL OWNER:**

181 FREMONT OFFICE LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Its:

**MASTER ASSOCIATION:**

181 FREMONT STREET MASTER  
ASSOCIATION, a California nonprofit mutual  
benefit corporation

By: \_\_\_\_\_  
Name:  
Its:

**TJPA:**

TRANSBAY JOINT POWERS AUTHORITY,  
a joint powers authority created under California  
Government Code Sections 6500 *et seq.*

By: \_\_\_\_\_  
Name: Adam Van de Water  
Its: Executive Director  
APPROVED AS TO FORM:



By: \_\_\_\_\_  
Counsel for the TJPA

Transbay Joint Powers Authority  
Board of Directors

Resolution

No.: \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_

\_\_\_\_\_  
Secretary, TJPA Board

Chicago Title Insurance Company agrees to act as Escrow Agent in accordance with the terms of this Agreement and to act as the “reporting person” for the transaction pursuant to Section 6045(e) of the Federal Tax Code and the regulations promulgated thereunder. Chicago Title Insurance Company’s failure to execute below shall not invalidate this Agreement between the TJPA and Buyer.

**ESCROW AGENT:**

CHICAGO TITLE INSURANCE COMPANY

By: \_\_\_\_\_

Name:

Its:

Date: \_\_\_\_\_

## **AIR RIGHTS EASEMENT AGREEMENT**

### **LIST OF EXHIBITS**

Exhibit A	Description of Transit Center Property
Exhibit B	Description of 181 Fremont Property
Exhibit C	Easement Area
Exhibit D	City Consent to Grant of Easement
Exhibit E	No Entry Zone



**ACKNOWLEDGMENT**

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

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

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

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

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

**ACKNOWLEDGMENT**

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

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

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

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

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

**ACKNOWLEDGMENT**

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

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

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

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

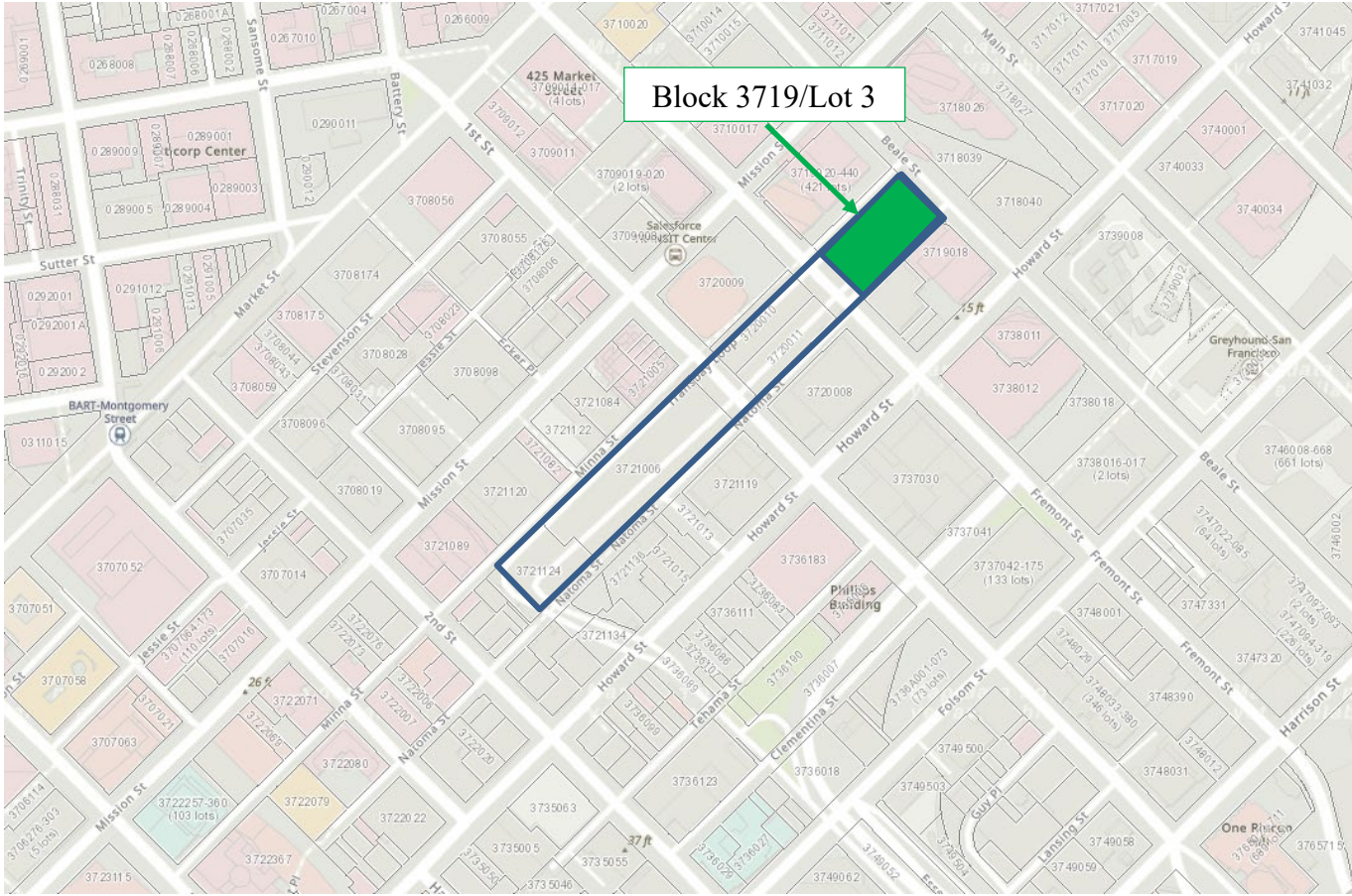
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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

**EXHIBIT A--1**

**DEPICTION OF TRANSIT CENTER PROPERTY**



**EXHIBIT A-2**

**LEGAL DESCRIPTION OF LOT 3**

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

CO-OP PARCEL D

PARCEL ONE:

All that parcel of Land (State Parcel No. 386) conveyed to the State of California by instrument recorded July 22, 1937, in Volume 3157, Page 465, Official Records of the City and County of San Francisco and described therein as follows:

Commencing at a point on the Northeasterly line of Fremont Street distant thereon 183 feet 4 inches Southeasterly from the Southeasterly line of Mission Street; running thence Southeasterly and along said line of Fremont Street 45 feet 10 inches; thence at a right angle Northeasterly 137 feet 6 inches; thence at a right angle Northwesterly 45 feet 10 inches; thence at a right angle Southwesterly 137 feet 6 inches to the point of commencement.

Being Beach & Water Lot No. 359 in 100 Vara Block No. 335

PARCEL TWO:

All that Parcel of Land (State Parcel No. 387) conveyed to the State of California by instrument recorded April 24, 1937, in Volume 3122, Page 256, Official Records of the City and County of San Francisco and described therein as follows:

Commencing at a point on the Northeasterly line of Fremont Street distant thereon 229 feet 2 inches Southeasterly from the Southeasterly line of Mission Street; running thence Southeasterly and along said line of Fremont Street 137 feet 6 inches; thence at a right angle Northeasterly 137 feet 6 inches; thence at a right angle Northwesterly 137 feet 6 inches; thence at a right angle Southwesterly 137 feet 6 inches to the point of commencement.

Being Beach & Water Lots Nos. 364, 369 and 374 in Block No. 335

PARCEL THREE:

All that Parcel of Land (State Parcel No. 388) conveyed to the State of California by instrument recorded August 22, 1936, in Volume 3007, Page 134, Official Records of the City and County of San Francisco and described therein as follows:

Beginning at a point on the Southwesterly line of Beale Street, distant thereon 183 feet 4 inches Southeasterly from the Southeasterly line of Mission Street; running thence Southeasterly along said line of Beale Street 45 feet and 10 inches; thence at a right angle Southwesterly 137 feet and 6 inches; thence at a right angle Northwesterly 45 feet and 10 inches; thence at a right angle Northeasterly 137 feet and 6 inches to the point of beginning.

Being part of 100 Vara Block No. 335

PARCEL FOUR:

All that Parcel of Land (State Parcel No. 389) conveyed to the State of California by instrument recorded June 3, 1937, in Volume 3147, Page 196, Official Records of the City and County of San Francisco and described therein as follows:

Beginning at a point on the Southwesterly line of Beale Street, distant thereon 229 feet and 2 inches Southeasterly from the Southeasterly line of Mission Street; and running thence Southeasterly along said Southwesterly line of Beale Street 137 feet and 6 inches; thence at a right angle southwesterly 137 feet and 6 inches; thence at a right angle Northwesterly 137 feet and 6 inches; thence at a right angle Northeasterly 137 feet and 6 inches to the point of beginning.

Being part of 100 Vara Block No. 335

PARCEL FIVE:

All that Parcel of Land (State Parcel No. 392) conveyed to the State of California by instrument recorded November 12, 1941, in Volume 3833, Page 35, Official Records of the City and County of San Francisco and described therein as follows:

Commencing at a point on the Southwesterly line of Beale Street, distant thereon 163 feet 4 inches Northwesterly from the Northwesterly line of Howard Street; running thence Northwesterly along said line of Beale Street 20 feet; thence at right angle Southwesterly 10 feet; thence Southeasterly in a direct line 22 feet 4-3/8 inches to the point of commencement.

Being part of Beach and Water Lot No. 380 in 100 Vara Block No, 335,

**EXHIBIT B**

**LEGAL DESCRIPTION OF 181 FREMONT PROPERTY**

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

PARCEL A AND PARCEL B, AS DESCRIBED AND SHOWN ON FINAL MAP 8247, RECORDED IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, ON JUNE 14, 2016, IN BOOK 129 OF CONDOMINIUM MAPS, PAGE(S) 174-177.

**EXHIBIT C**  
**EASEMENT AREA**

S-9888  
7-26-22

**LEGAL DESCRIPTION**

"EASEMENT AREA"

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

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF FREMONT STREET (82.50 FEET WIDE), DISTANT THEREON S43°41'50"E 366.67 FEET FROM THE SOUTHEASTERLY LINE OF MISSION STREET (82.50 FEET WIDE), SAID POINT OF BEGINNING BEING THE MOST WESTERLY CORNER OF PARCEL A, AS SAID PARCEL IS SHOWN ON FINAL MAP 8247 FILED FOR RECORD ON JUNE 14, 2016 IN BOOK 129 OF CONDOMINIUM MAPS, AT PAGES 174-177 INCLUSIVE, OFFICIAL RECORDS; THENCE ALONG SAID LINE OF FREMONT STREET N43°41'50"W 3.74 FEET; THENCE N46°18'10"E 137.50 FEET; THENCE S43°41'50"E 3.74 FEET TO THE NORTHWESTERLY LINE OF SAID PARCEL A; THENCE ALONG SAID NORTHWESTERLY LINE S46°18'10"W 137.50 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 335

THE LOWER LIMITS OF THE EASEMENT AREA ARE THE SLOPING PAVEMENT SURFACES AS SHOWN ON THE ATTACHED PLAT. THE UPPER LIMIT IS INFINITY ABOVE.

CONTAINING 514 SQ.FT.

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTION IS THE NORTHEASTERLY LINE OF FREMONT STREET TAKEN TO BE N43°41'50"W AS SHOWN ON SAID FINAL MAP 8247.





**BASIS OF SURVEY**  
 FINAL MAP 8247 RECORDED JUNE 14, 2016  
 IN BOOK 129 OF CONDOMINIUM MAPS, AT  
 PAGES 174-177, OFFICIAL RECORDS.

**BASIS OF BEARINGS**  
 THE EASTERLY LINE OF FREMONT STREET  
 IS TAKEN TO BE N43°41'50"W AS SHOWN  
 ON FINAL MAP 8247.

**BENCHMARK**  
 BM11858, CCSF STANDARD 1/2" DOMED  
 STAINLESS STEEL ANCHOR SCREW WITH  
 WASHER STAMPED "CCSF CONTROL" AT THE  
 NORTHEAST CORNER OF FOLSOM AND BEALE  
 STREETS. ELEVATION = 21,839 FEET CCSF  
 2013 NAVD88 VERTICAL DATUM.

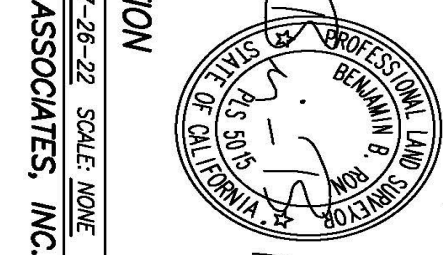
**GENERAL NOTES**

1. DETAILS NEAR PROPERTY LINES  
 MAY NOT BE TO SCALE.
2. DIMENSIONS SHOWN ARE IN  
 FEET AND DECIMALS THEREOF.

**EASEMENT PLAT  
 TO GO WITH  
 LEGAL DESCRIPTION**

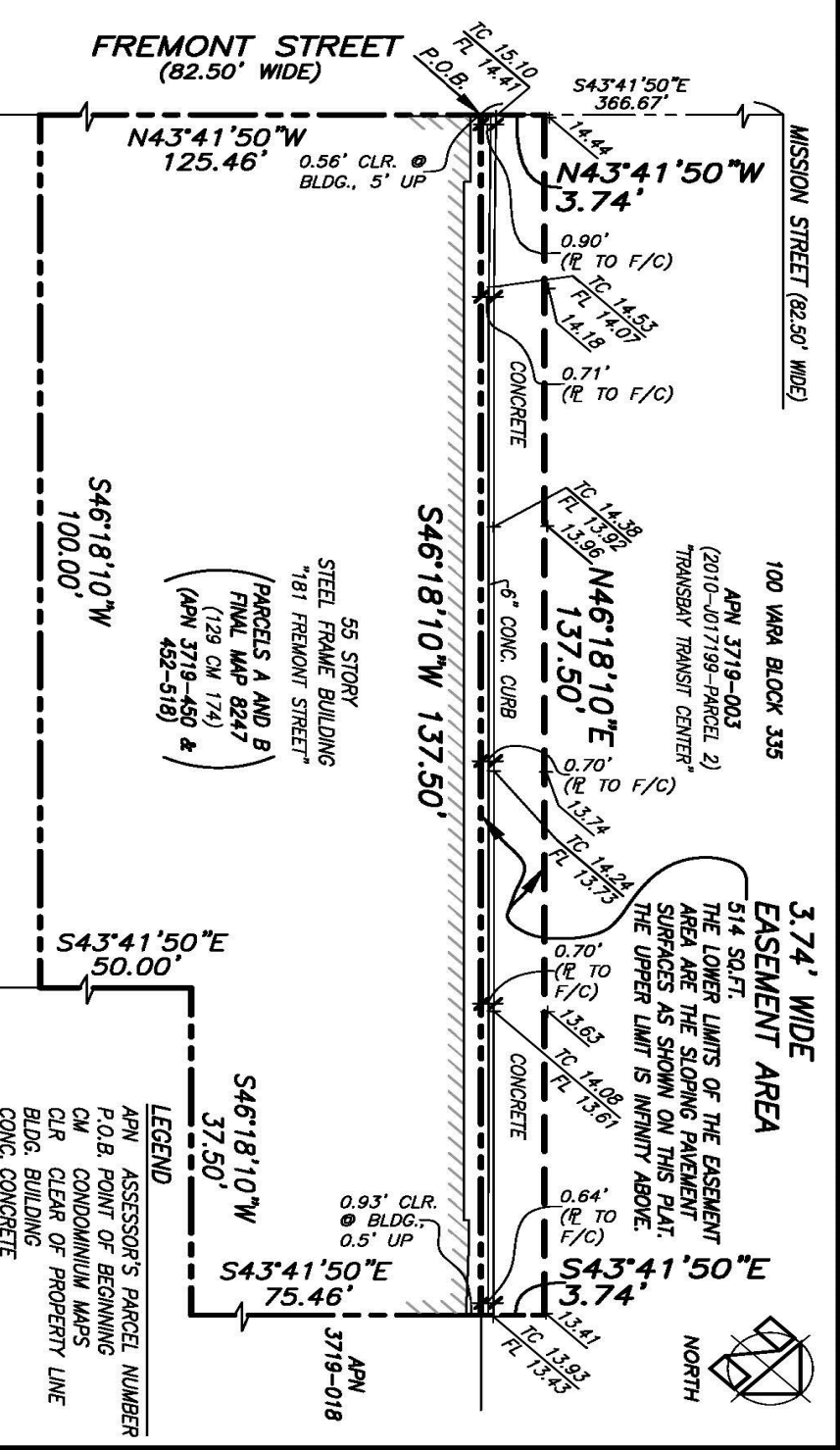
BY: JP CHKD.: BR DATE: 7-26-22 SCALE: NONE SHEET: 1 OF 1 JOB NO.: S-9888

**MARTIN M. RON ASSOCIATES, INC.**  
 LAND SURVEYORS



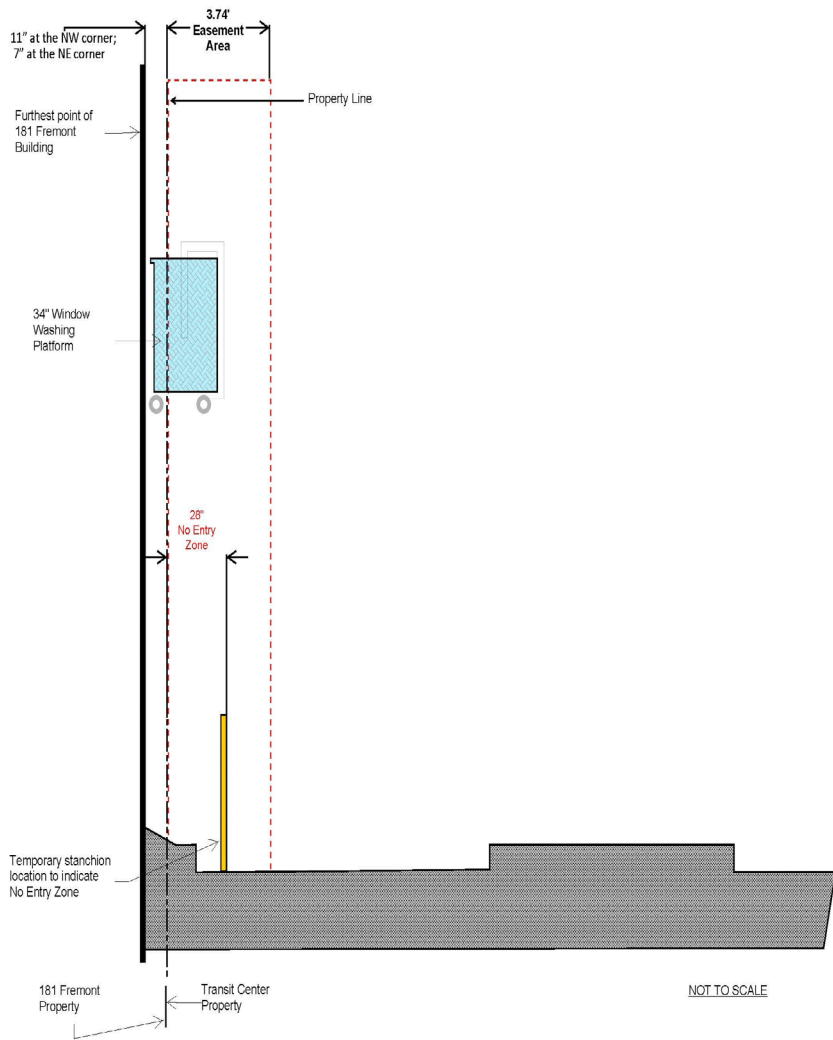
**ASSESSOR'S BLOCK 3719  
 SAN FRANCISCO, CALIFORNIA**

859 HARRISON STREET  
 SAN FRANCISCO, CA. 94107  
 (415) 543-4500  
 S-9888 ESMT PLAT\_REV.dwg



**LEGEND**

APN	ASSESSOR'S PARCEL NUMBER
P.O.B.	POINT OF BEGINNING
CM	CONDOMINIUM MAPS
CLR	CLEAR OF PROPERTY LINE
BLDG.	BUILDING
CONC.	CONCRETE
P	PROPERTY LINE
F/C	FACE OF CURB AT TOP
TC	TOP OF CURB
FL	FLOW LINE
36.2	SPOT ELEVATION
---	PROPERTY LINE
---	EASEMENT LINE
---	BUILDING LINE



## EXHIBIT D

### CITY CONSENT TO GRANT OF EASEMENT

This City Consent to Grant of Easement is made by the City and County of San Francisco, a municipal corporation (the “**City**”), acting by and through the San Francisco Municipal Transportation Agency (the “**SFMTA**”), and agreed to by the Transbay Joint Powers Authority, a joint powers authority created under California Government Code Sections 6500 *et seq.* (the “**TJPA**”), 181 Fremont Office LLC, a Delaware limited liability company (“**Commercial Owner**”), and 181 Fremont Street Master Association, a California nonprofit mutual benefit corporation (“**Master Association**”), as of September 8, 2022 (“**Execution Date**”). City, TJPA, and Master Association shall each be a “**Party**” and collectively, the “**Parties**.”

#### RECITALS

A. The TJPA owns and operates the Salesforce Transit Center in San Francisco, California, San Francisco Assessor’s Block 3719, Lot 3; Block 3720, Lots 10 and 11; and Block 3721, Lots 6, and 124) (the “**Transit Center Property**”). The TJPA leases a portion of Block 3719, Lot 3 (“**Lot 3**”) at the east end of the Transit Center Property to the City for the SFMTA’s public transportation operations under a Transit Center Lease dated June 15, 2018 (as amended, modified or restated, the “**Lease**”). The premises leased to the City under the Lease are depicted in Exhibit A to the Lease and extends to thirty-five feet above the ground level (the “**SFMTA Premises**”). The SFMTA Premises includes a transit lane for SFMTA’s electric transit vehicles (“**Bay E**”), which have electricity supplied to them by overhead power lines (“**Bay E Power Lines**”).

B. The fifty-eight story mixed-use building located adjacent to Lot 3 at 181 Fremont Street, San Francisco, California, (San Francisco Assessor’s Block 3719, Lots 450, and 452 through 518) (the “**181 Fremont Property**”) is comprised of two (2) separate vertical parcels, Parcel A and Parcel B, as described and shown on the Condominium Map entitled “Final Map No. 8247”, recorded in the Office of the Recorder of the City and County of San Francisco, State of California, on June 14, 2016, in Book 129 of Condominium Maps, page(s) 174-177. Parcel A consists of five basements levels, floors 1 through 40 and floor 58 of commercial office space and a pedestrian bridge connecting the 181 Fremont Property to the Transit Center Property rooftop park (the “**Commercial Parcel**”). Commercial Owner is the fee owner of the Commercial Parcel. Parcel B consists of floor 41 through 57 and includes 67 residential condominium units (the “**Residential Parcel**”). Commercial Owner and 181 Fremont Residences Association, a California nonprofit mutual benefit corporation, representing the owners of the condominiums comprising the Residential Parcel, are the members of the Master Association, which operates the 181 Fremont Property on behalf of such owners, pursuant to the 181 Fremont Master Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement, recorded in the Office of the Assessor-Recorder of the City and County of San Francisco, State of California (“**Official Records**”), on August 1, 2016, as DOC-2016-K300741-00, as amended, which encumbers both the Commercial Parcel and the Residential Parcel. In no event shall any reference to “181” or “Master Association” be deemed to include any individual owners of the condominiums comprising the Residential Parcel.

C. Commercial Owner and Master Association (together, “**181**”) own the 181 Fremont Property, and wish to obtain a surface and air rights easement (“**Easement**”) from the TJPA over

Lot 3 and on the terms of the Agreement for Surface and Air Rights Easement (the “**Easement Agreement**”), which is by and among the TJPA, 181, and Master Association, dated September 8, 2022, and recorded in the Official Records of San Francisco County as Instrument No. \_\_\_\_\_ on \_\_\_\_\_, 2022, to perform the Maintenance Activities (as defined in the Easement Agreement). Undefined, capitalized terms used in this Consent shall have the definitions provided in the Easement Agreement.

D. The portion of the Transit Center Property that would be subject to the Easement, Lot 3, is 137.5 feet long, extends vertically from the ground level of the Transit Center Property to the sky, and north from the Property Line between the 181 Fremont Property and Lot 3 three and seventy-four hundredths (3.74) feet (approximately 45 inches) over the Transit Center Property (the “**Easement Area**”). The “**Property Line**” shall mean the property line between Lot 3 and the 181 Fremont Property which based on the dimensions of 181 Fremont on the Effective Date of the Easement Agreement is a straight line from a point .56 feet (approximately 7 inches) northwesterly of the northwest corner of the 181 Fremont building to a point .93 feet (approximately 11 inches) northwesterly of the northeast corner of the 181 Fremont building as shown on the second page of Exhibit C of the Easement Agreement. So long as the TJPA leases any portion of the Easement Area to the City, some Maintenance Activities cannot be performed unless the SFMTA de-energizes the Bay E Power Lines.

E. The Easement Area is described and depicted in Exhibit C of the Easement Agreement. The Maintenance Activities in the Easement Area will affect the SFMTA’s operations and, due to the Bay E Power Lines, require compliance with legal clearance requirements. The City agrees that it has no authority to consent to or grant 181 or Master Association any rights in the Easement Area and pursuant to its rights under the Lease, and the City has authority over de-energizing the Bay E Power Lines for Maintenance Activities in the Easement Area .

## CONSENT

**1. Conditions to Use.** The City consents to the TJPA’s grant of the Easement to 181 pursuant to the Easement Agreement, and entry in the Easement Area by the Permittees (as defined in the Easement Agreement) for the Maintenance Activities on the terms and conditions set forth below.

A. **Maintenance Activities.** The Maintenance Activities shall only be performed in compliance with the requirements of the Easement Agreement and this Consent.

**B. Limitations.**

i. No Entry Zone. Except for purposes of creating, relocating, and enforcing the No Entry Zone, no Permittee may enter the No Entry Zone (including any Permit Holder). During Maintenance Activities, the Master Association shall prevent persons and vehicles from entering the No Entry Zone by causing the clear demarcation of the No Entry Zone with stanchions, zipcords, traffic cones, and/or fencing and warning signs and the Master Association shall cause the relocation of the stanchions, zipcords, traffic cones, and/or fencing and warning signs as the platform moves laterally across the north façade of the 181 Fremont Property building to maintain the No Entry Zone at all times in which a platform is suspended from the 181 Fremont Property. The Master Association shall prevent any persons performing the Maintenance Activities (including the Permit Holder) from

driving vehicles or walking on the Easement Area, except for purposes of creating, relocating, and enforcing the No Entry Zone or performing the Maintenance Activities. The No Entry Zone is shown in Exhibits C (Page 3) and E to the Easement Agreement.

ii. Lighting. If the Master Association or its Permittees (including the Permit Holder) uses the Easement Area before dawn or after sunset, the Master Association shall cause the provision of adequate lighting so that the No Entry Zone is clearly visible.

iii. Compliance with Laws. The Master Association shall cause all Maintenance Activities to be done in compliance with (a) the applicable Work Description (as defined below) or the applicable description of Emergency Work in any emergency clearance permit, and (b) all applicable laws and safety orders, including but not limited to 8 California Code of Regulations Section 2946 and the general orders, rules and recommendations of the Division of Industrial Safety of California, or any successor to that body, the California Public Utilities Commission, and the SFMTA's Safety Division (including its operating rule and procedures), or any successors to those bodies. The SFMTA, acting in its regulatory capacity, shall have sole discretion in interpreting and determining the applicability of the safety orders and the operating rules and procedures to the Maintenance Activities; provided that the SFMTA will interpret and apply them in the same manner it would for any other party performing similar work near the SFMTA's high voltage overhead power lines.

### C. Procedure for Maintenance Activities.

i. The City shall designate an employee or agent (the "**SFMTA Representative**") to receive updates regarding, and to be the coordinator relating to, Maintenance Activities and Permits (as defined below) and shall provide that person's contact information to Master Association. Master Association shall designate an employee or agent (the "**Master Association Representative**") to provide updates regarding, and to be the coordinator relating to, Maintenance Activities in the Easement Area and any Permits, and shall provide the contact information for that person to the City and the TJPA and provide the SFMTA Representative contact information (and any updates to that contact information) to the TJPA. The City can change the individual serving as the SFMTA Representative at any time by providing written notice of that change to the Master Association. Master Association can change the individual serving as the Master Association Representative at any time by providing written notice of that change to the City and the TJPA.

ii. On or before January 15<sup>th</sup> of each year, the Master Association Representative shall provide to the SFMTA Representative and the SFMTA address designated for notice purposes in Section 7 (as that address may be changed through the process described in that Section), a schedule of the upcoming Regular Maintenance, which shall include a description for each Regular Maintenance activity proposed for the next twelve (12) months, confirm the contact information for the Master Association Representative, and request confirmation of the SFMTA Representative contact information. The schedule shall provide the following for all such anticipated Maintenance Activities ("**Work Description**"):

a. a description of the anticipated Maintenance Activities and why they are needed;

b. the anticipated location, dates and times, and duration of each of the Maintenance Activities; and

c. whether any Under Bridge Work will be performed for the described Maintenance Activities (such Under Bridge Work will be limited to two two (2)- hour sessions per year and shall be conducted during Regular Maintenance, but will be as reasonably required for Unscheduled Maintenance and Emergency Maintenance).

iii. When any Maintenance Activities are desired (whether Regular Maintenance or otherwise), the Parties shall use the following procedures (except as set forth in Section 1.C.vi):

a. At least three (3) weeks before the commencement of any Regular Maintenance described in the applicable annual schedule, the Master Association Representative shall send the SFMTA Representative a notice (“**Confirmation Notice**”) that (A) confirms the applicable Work Description remains unchanged, (B) lists the Equipment (defined below) that will be used (including make and model), and (C) gives the name of the company that will be the Permittee (the “**Permit Holder**”) that will do that Regular Maintenance and the name, phone number, and email address of the person who will be the Worker in Charge (as defined below) when that Regular Maintenance is being performed. The Master Association Representative must deliver each Confirmation Notice to the SFMTA address designated for notice purposes in Section 7 below (as that address may be changed through the process described in that Section) at the same time it delivers that Confirmation Notice to the SFMTA Representative.

b. At least three (3) weeks before the proposed date for any Unscheduled Maintenance, the Master Association Representative shall send the SFMTA Representative a request (“**Work Request**”) that (A) provides the Work Description for that Unscheduled Maintenance, (B) lists the Equipment that will be used (including make and model), and (C) gives the name of the Permit Holder that will do that Unscheduled Maintenance and the name, phone number, and email address of the person who will be the Worker in Charge when that Unscheduled Maintenance is being performed. The Master Association Representative must deliver each Work Request to the SFMTA address designated for notice purposes in Section 7 below (as that address may be changed through the process described in that Section) at the same time it delivers that Work Request to the SFMTA Representative. The Master Association Representative shall provide the SFMTA Representative with written evidence that the TJPA has approved the Unscheduled Maintenance before the SFMTA issues a Permit for that Unscheduled Maintenance.

c. Once the SFMTA Representative receives a Confirmation Notice or a Work Request, it shall process a construction clearance permit (or similar permit or approval as may be required) from the applicable SFMTA division (each, “**Permit**”) on behalf of the named Permit Holder. The City shall notify the Master Association Representative within three (3) weeks after receipt of any Confirmation Notice or Work Request if there is a conflict with the requested dates and times due to SFMTA staff capacity. If there is a conflict, the SFMTA Representative will work with the Master Association Representative to find a mutually agreeable time as soon as reasonably possible before or after the originally requested dates (and in no event more than two (2) weeks after the requested dates).

d. The SFMTA Representative shall coordinate any internal SFMTA approvals and coordination required for a Permit, notify Master Association Representative when a Permit has been issued, and provide the Master Association Representative with copies of any written Permit, which Permit shall include a date and time for commencement of the applicable Maintenance Activities established pursuant to Section C.ii above. The Master Association shall provide a copy of any Permit issued by SFMTA to the TJPA.

e. At least one (1) hour before the Maintenance Activities start time specified in an issued Permit, the Master Association Representative shall (or shall cause its Permit Holder to) contact SFMTA Central Control (or such other division indicated on the applicable Permit) at the contact information set forth in the applicable Permit (“**Central Control Contact**”) and the TJPA to confirm that start time. The SFMTA shall then de-energize the Bay E Power Lines by the start time designated in the applicable Permit so that no electricity is conducted through them and shall provide a visual indication that the lines are de-energized for as long as the Bay E Power Lines remain de-energized (e.g., by placing an orange cone on the de-energized Bay E Power Lines); provided that the Worker in Charge shall contact Central Control Contact to confirm that such de-energization has occurred before any of the Maintenance Activities commence.

f. The Worker in Charge shall immediately notify the Central Control Contact upon the completion of Maintenance Activities, and the SFMTA may re-energize the Bay E Power Lines at any time thereafter.

g. Should Maintenance Activities described in a Permit require that Under Bridge Work be performed during the times permitted under this Consent, then, within seventy-two (72) hours after notice from the Master Association Representative, the SFMTA Representative (in consultation with Master Association Representative) shall designate the time periods when Under Bridge Work may occur under that Permit, and the SFMTA shall close Bay E to vehicular traffic during the time period(s) designated by the SFMTA.

iv. Notwithstanding any Work Description provided to the SFMTA Representative for Maintenance Activities, the Parties understand and agree that the actual duration of Maintenance Activities will depend on various factors that cannot be fully predicted. If, after any Maintenance Activities begin, the Master Association Representative determines they will take longer than permitted under the applicable Permit, the Master Association Representative must notify the SFMTA Representative as soon as it makes that determination but no later than forty-eight (48) hours before the end times established in the applicable Permit and pursuant to the terms of the Easement Agreement for those Maintenance Activities, and request an extension of the applicable Permit for those Maintenance Activities. If the extension would extend beyond the deadline for completion of Maintenance Activities under the terms of the Easement Agreement, the Master Association Representative must provide the SFMTA Representative with evidence of the TJPA’s consent to that extension. The SFMTA will take reasonable efforts to accommodate that request if the Maintenance Activities cannot be completed within the period permitted under the applicable Permit for reasons outside of the reasonable control of the Master Association and its applicable Permit Holder, provided that the SFMTA can deny the request if extending that Permit or Maintenance Activity will have a significant adverse impact on the SFMTA’s transit operations. Each time any Maintenance Activities occur, the Master Association Representative must check on

their completion status with its applicable Permit Holder at least fifty (50) hours before the end time specified in the applicable Permit for those Maintenance Activities.

v. As used herein, (a) the “**Worker in Charge**” means an employee of Master Association, or a Master Association contractor, who must be on-site at the Easement Area to ensure safety in the Easement Area at all times with respect to the Maintenance Activities, and cannot engage in any other activities, when the Maintenance Activities are performed and (b) “**Equipment**” means the rig used to descend alongside the building at the 181 Fremont Property (“**Rig**”) and/or any vehicles or other equipment that will be brought onto the Easement Area during the course of the Maintenance Activities.

vi. Notwithstanding anything to the contrary set forth in this Consent, if 181 requires Emergency Maintenance, the Master Association Representative shall contact the SFMTA Representative, the Central Control Contact designated in the most recent Permit (or any other SFMTA division or contact person designated for Emergency Maintenance of whom the Master Association Representative has been provided notice) and the TJPA, and the SFMTA shall promptly dispatch an inspector to assess the situation and coordinate with the appropriate SFMTA divisions to arrange for an Emergency Maintenance clearance permit and a mutually-agreeable time for the Master Association to cause the performance of the Emergency Maintenance, which will be as soon as reasonably possible in consideration of any other emergency work that the SFMTA needs to perform at that time to avoid substantial danger to public health or safety. The SFMTA shall cause the Bay E Power Lines to be de-energized during the mutually-agreeable time in accordance with such Emergency Maintenance clearance permit, and 181 shall cause the compliance with the terms of that clearance permit. If the Worker in Charge determines that the Rig must be set down on level ground in an emergency to protect the safety or security of the public, the workers using the Rig, the Equipment, or the Bay E Power Lines, then the Worker in Charge may permit the Rig to be set down on level ground north of the curb running along the 181 Fremont Property Line, but only for as long as necessary to resolve the emergency. If the Worker in Charge allows the Rig to be set down at ground level, the Worker in Charge shall immediately notify the SFMTA Representative, the Central Control Contact designated in the applicable Permit (or any other SFMTA division or contact person designated for Emergency Maintenance of whom the Master Association Representative has been provided notice), and the TJPA.

**D. Costs.** The City shall be entitled to charge Master Association for the SFMTA costs incurred to de-energize the Bay E Power Lines (including the costs of any inspector or other support person dispatched by the SFMTA to assist in the de-energization process) after any Maintenance Activities are completed. The amount shall be the same amount that the SFMTA would charge any other private party that requires de-energizing of the SFMTA’s power lines to accommodate their work. The SFMTA will not start processing a new Confirmation Notice or Work Request if Master Association has received a bill for prior work but has not yet paid it.

**2. Agreement of 181.** 181 represents and warrants that Recital B of this Consent is true and correct. 181 agrees to the conditions described in Section 1 of this Consent and agrees that the City has the right to prohibit any Permittees from entering the Easement Area if these conditions have not been met at that time. 181 agrees that as long as the SFMTA leases any portion of the Easement Area, the definition of Maintenance Activities in the Easement Agreement will not be amended without the written consent of City.



**3. Agreement of TJPA.** The TJPA has (a) acknowledged that the conditions described in Section 1 of this Consent are consistent with the Easement Agreement, (b) agreed that the SFMTA shall have the right to enforce the obligations of 181 under this Consent as long as the City leases any portion of the Easement Area, and (c) agreed that as long as the SFMTA leases any portion of the Easement Area, the definition of Maintenance Activities in the Easement Agreement will not be amended without the written consent of City.

**4. Limitation on Liability; Waiver of Claims.** The City, including all of its boards, commissions, departments, agencies, and other subdivisions, officers, directors, agents, employees, consultants, contractors, representatives and their respective heirs, legal representatives, successors, and assigns (individually and collectively, the “**City Parties**”), will not be responsible for or liable to 181 or any Permit Holder, and 181 hereby assumes the risk of, and waives and releases the City Parties from all claims for any injury, loss, or damage to any person or property in or about the Easement Area by or from any cause whatsoever (“**Claims**”); provided that nothing in this Section will relieve City Parties from liability caused solely and directly by the active gross negligence or willful misconduct of the City Parties, but the City Parties will not be liable under any circumstances for any consequential, incidental, or punitive damages.

**5. Indemnity.** Master Association will indemnify, defend, and hold harmless the City Parties (individually an “**Indemnified Party**” and collectively, the “**Indemnified Parties**”), from and against from and against any and all claims, demands, losses (including, but not limited to, diminution in value), liabilities, damages, judgments, settlements, liens, fines, penalties, costs and expenses, including reasonable attorneys’ fees and costs, and fees of consultants and experts, laboratory costs, and related costs of any Indemnified Party (collectively, “**Losses**”) all to the extent arising in whole or in part out of the death of any person or any accident, injury, loss, or physical damage whatsoever to any person or to the property of any person on account of or in any way arising out of or in connection with the Easement Agreement, or 181’s or Permittees’ use of the Easement, including the Easement Area or any failure of 181 to comply with its obligations under this Consent or any failure of the Permittees to comply with the requirements of Section 1 of this Consent or the acts or omissions or negligence of any of the Permittees in, on, or about the Easement Area; provided, however, that Master Association shall have no obligation to indemnify the Indemnified Parties for Losses arising from the active gross negligence or willful misconduct of the Indemnified Parties. Where the active gross negligence or willful misconduct of the Indemnified Parties is a cause of, but is not the sole cause of, Losses, Master Association will indemnify the Indemnified Parties, as applicable, according to 181’s share of fault, as applicable. 181’s obligations under this Section will survive the termination of this Consent. Master Association agrees to defend the Indemnified Parties against any claims for Losses that are within the scope of the indemnity provisions of this Consent even if such claims may be groundless, fraudulent, or false. Master Association’s duty to pay for the defense of an Indemnified Party shall arise immediately upon service of process on the Indemnified Party. Master Association’s duty to pay for the defense of an Indemnified Party shall not be contingent on the ultimate determination of the Indemnified Party’s liability for the Loss.

**6. Insurance.** Master Association shall, at its sole cost, carry the insurance described in Section 6 of the Easement Agreement and name the City and County of San Francisco as additional insured on all liability policies described in that Section. If Master Association fails to carry a policy of Commercial General Liability Insurance meeting the requirements of Section 6 of the Easement

Agreement at any time during the term of this Consent, then Master Association shall perform the duties which would have been performed by the carrier had Master Association carried such a policy as required in Section 6 of the Easement Agreement, but only to the extent of the duties which such carrier would have had to perform.

**7. Notices.** Except for notices to be provided to the SFMTA Representative or the Master Association Representative, any notice to be provided by any Party under this Consent shall be sufficiently given or delivered if personally delivered or dispatched by registered or certified mail, postage prepaid, return receipt requested, or reputable overnight courier service, addressed as follows:

If to Master Association: 181 Fremont Street Master Association  
c/o Jay Paul Company  
Four Embarcadero Center, Suite 3620  
San Francisco, CA 94111  
Attn: Janette D'Elia

With a copy to:

Rachel B. Horsch  
Pillsbury Winthrop Shaw Pittman LLP  
Four Embarcadero Center, 22nd Floor  
San Francisco, CA 94111

If to Commercial Owner: 181 Fremont Office LLC  
c/o Jay Paul Company  
Four Embarcadero Center, Suite 3620  
San Francisco, CA 94111  
Attn: Janette D'Elia

With a copy to:

Rachel B. Horsch  
Pillsbury Winthrop Shaw Pittman LLP  
Four Embarcadero Center, 22nd Floor  
San Francisco, CA 94111

If to City: San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Strategic Real Estate  
Re: 181 Fremont Easement

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Real Estate/Finance Team  
Re: 181 Fremont Easement

If to the TJPA:                      Transbay Joint Powers Authority  
425 Mission Street, Suite 250  
San Francisco, CA 94105  
Attn: Security Operations Center  
Telephone: (628) 260-9000

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days before the effective date of the change. All notices under this Consent shall be deemed given, received, made, or communicated on the date the notice is actually delivered to the office of the person to whom it is addressed or, if mailed or sent by overnight courier, on the delivery date or attempted delivery date shown on the return receipt. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of a copy of the notice. Either Party can change its address for notices under this Section by delivering a notice to the other Party in the manner specified in this Section.

**8. Authority.** Each individual executing this Consent on behalf of a Party represents and warrants that he or she is authorized to execute and deliver this Consent on behalf of that Party and that this Consent will be binding upon the Party.

**9. Term.** This Consent shall remain in effect as long as the City leases any portion of the Easement Area.

**10. Assumption of Obligations.** If Master Association no longer exists or is no longer authorized to operate the 181 Fremont Property on behalf of the 181 Fremont Property owners, and no successor association is formed to operate the 181 Fremont Property on behalf of the owners of the 181 Fremont Property, then 181 shall assume the obligations of Master Association under this Consent.

**11. Miscellaneous.** This Consent may not be modified other than by an agreement in writing signed by the Parties or by their respective successors in interest. This Consent will be binding on and inure to the benefit of the Parties and their respective heirs, successors and assigns. This Consent may be executed in one or more counterparts, each of which is an original, but all of which constitute one and the same instrument. This Consent must be construed in accordance with, and will be governed by, California law.

IN WITNESS WHEREOF, this Consent has been executed by the City, the TJPA, and 181 and shall be effective on the later to occur of the date it is fully executed and the date that the Easement Agreement is recorded in the Official Records of San Francisco County.

CITY: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation acting by and through its San Francisco Municipal Transportation Agency

By: \_\_\_\_\_  
Jeffrey Tumlin  
Director of Transportation

Date: \_\_\_\_\_

APPROVED AS TO FORM

DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Carol Wong  
Deputy City Attorney

TJPA: TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created under California Government Code Sections 6500 *et seq.*

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

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Counsel for the TJPA

COMMERCIAL OWNER:

181 FREMONT OFFICE LLC, a Delaware limited liability company

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

MASTER ASSOCIATION:

181 FREMONT STREET MASTER ASSOCIATION, a California nonprofit mutual benefit corporation

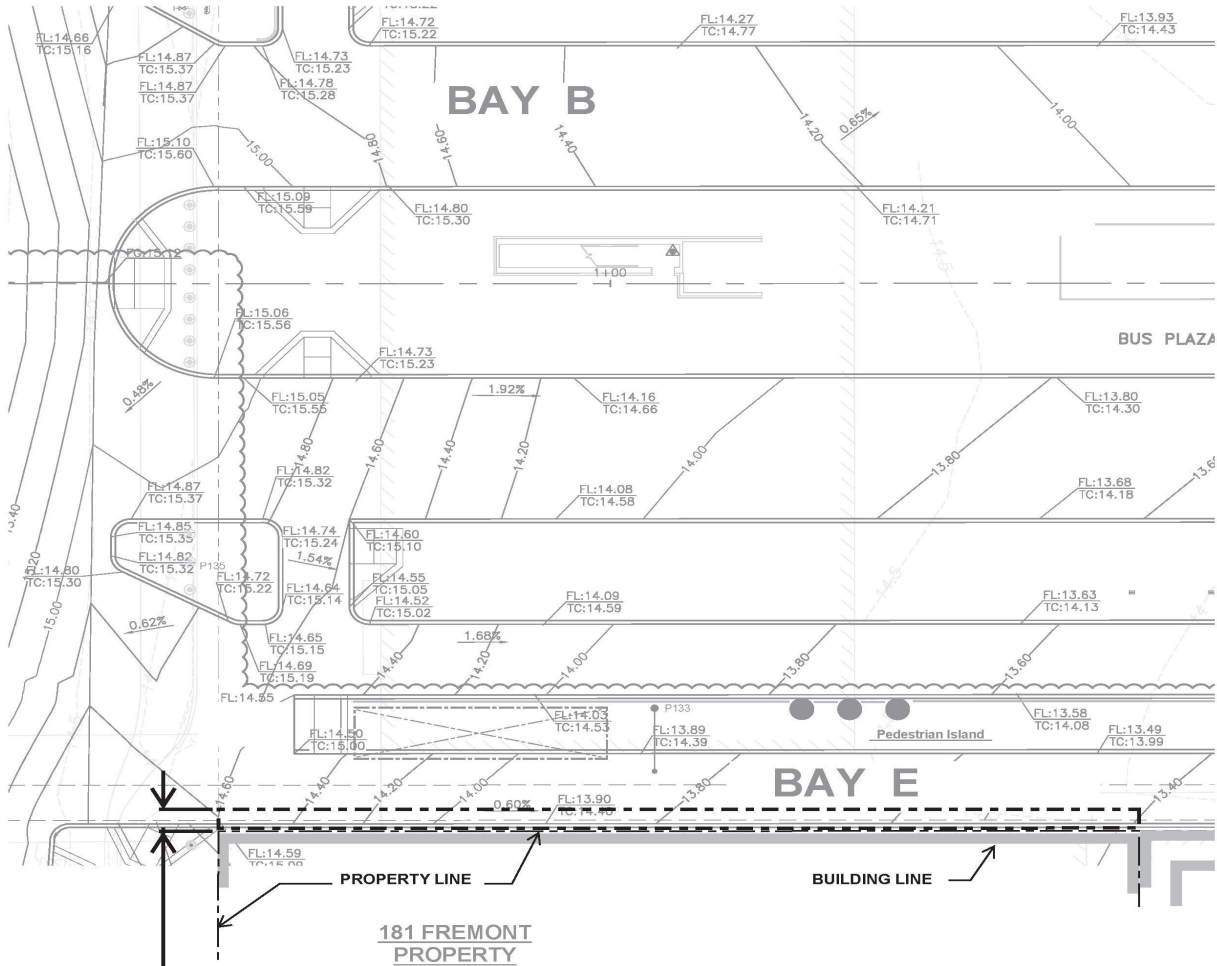
Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

# Exhibit E

## No Entry Zone



**28" NO ENTRY ZONE**

**181 FREMONT PROPERTY**

## CITY CONSENT TO GRANT OF EASEMENT

This City Consent to Grant of Easement is made by the City and County of San Francisco, a municipal corporation (the “**City**”), acting by and through the San Francisco Municipal Transportation Agency (the “**SFMTA**”), and agreed to by the Transbay Joint Powers Authority, a joint powers authority created under California Government Code Sections 6500 *et seq.* (the “**TJPA**”), 181 Fremont Office LLC, a Delaware limited liability company (“**Commercial Owner**”), and 181 Fremont Street Master Association, a California nonprofit mutual benefit corporation (“**Master Association**”), as of September 8, 2022 (“**Execution Date**”). City, TJPA, and Master Association shall each be a “**Party**” and collectively, the “**Parties**.”

### RECITALS

A. The TJPA owns and operates the Salesforce Transit Center in San Francisco, California, San Francisco Assessor’s Block 3719, Lot 3; Block 3720, Lots 10 and 11; and Block 3721, Lots 6, and 124) (the “**Transit Center Property**”). The TJPA leases a portion of Block 3719, Lot 3 (“**Lot 3**”) at the east end of the Transit Center Property to the City for the SFMTA’s public transportation operations under a Transit Center Lease dated June 15, 2018 (as amended, modified or restated, the “**Lease**”). The premises leased to the City under the Lease are depicted in Exhibit A to the Lease and extends to thirty-five feet above the ground level (the “**SFMTA Premises**”). The SFMTA Premises includes a transit lane for SFMTA’s electric transit vehicles (“**Bay E**”), which have electricity supplied to them by overhead power lines (“**Bay E Power Lines**”).

B. The fifty-eight story mixed-use building located adjacent to Lot 3 at 181 Fremont Street, San Francisco, California, (San Francisco Assessor’s Block 3719, Lots 450, and 452 through 518) (the “**181 Fremont Property**”) is comprised of two (2) separate vertical parcels, Parcel A and Parcel B, as described and shown on the Condominium Map entitled “Final Map No. 8247”, recorded in the Office of the Recorder of the City and County of San Francisco, State of California, on June 14, 2016, in Book 129 of Condominium Maps, page(s) 174-177. Parcel A consists of five basements levels, floors 1 through 40 and floor 58 of commercial office space and a pedestrian bridge connecting the 181 Fremont Property to the Transit Center Property rooftop park (the “**Commercial Parcel**”). Commercial Owner is the fee owner of the Commercial Parcel. Parcel B consists of floor 41 through 57 and includes 67 residential condominium units (the “**Residential Parcel**”). Commercial Owner and 181 Fremont Residences Association, a California nonprofit mutual benefit corporation, representing the owners of the condominiums comprising the Residential Parcel, are the members of the Master Association, which operates the 181 Fremont Property on behalf of such owners, pursuant to the 181 Fremont Master Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement, recorded in the Office of the Assessor-Recorder of the City and County of San Francisco, State of California (“**Official Records**”), on August 1, 2016, as DOC-2016-K300741-00, as amended, which encumbers both the Commercial Parcel and the Residential Parcel. In no event shall any reference to “181” or “Master Association” be deemed to include any individual owners of the condominiums comprising the Residential Parcel.

C. Commercial Owner and Master Association (together, “**181**”) own the 181 Fremont Property, and wish to obtain a surface and air rights easement (“**Easement**”) from the TJPA over

Lot 3 and on the terms of the Agreement for Surface and Air Rights Easement (the “**Easement Agreement**”), which is by and among the TJPA, 181, and Master Association, dated September 8, 2022, and recorded in the Official Records of San Francisco County as Instrument No. \_\_\_\_\_ on \_\_\_\_\_, 2022, to perform the Maintenance Activities (as defined in the Easement Agreement). Undefined, capitalized terms used in this Consent shall have the definitions provided in the Easement Agreement.

D. The portion of the Transit Center Property that would be subject to the Easement, Lot 3, is 137.5 feet long, extends vertically from the ground level of the Transit Center Property to the sky, and north from the Property Line between the 181 Fremont Property and Lot 3 three and seventy-four hundredths (3.74) feet (approximately 45 inches) over the Transit Center Property (the “**Easement Area**”). The “**Property Line**” shall mean the property line between Lot 3 and the 181 Fremont Property which based on the dimensions of 181 Fremont on the Effective Date of the Easement Agreement is a straight line from a point .56 feet (approximately 7 inches) northwesterly of the northwest corner of the 181 Fremont building to a point .93 feet (approximately 11 inches) northwesterly of the northeast corner of the 181 Fremont building as shown on the second page of Exhibit C of the Easement Agreement. So long as the TJPA leases any portion of the Easement Area to the City, some Maintenance Activities cannot be performed unless the SFMTA de-energizes the Bay E Power Lines.

E. The Easement Area is described and depicted in Exhibit C of the Easement Agreement. The Maintenance Activities in the Easement Area will affect the SFMTA’s operations and, due to the Bay E Power Lines, require compliance with legal clearance requirements. The City agrees that it has no authority to consent to or grant 181 or Master Association any rights in the Easement Area and pursuant to its rights under the Lease, and the City has authority over de-energizing the Bay E Power Lines for Maintenance Activities in the Easement Area .

## CONSENT

**1. Conditions to Use.** The City consents to the TJPA’s grant of the Easement to 181 pursuant to the Easement Agreement, and entry in the Easement Area by the Permittees (as defined in the Easement Agreement) for the Maintenance Activities on the terms and conditions set forth below.

A. **Maintenance Activities.** The Maintenance Activities shall only be performed in compliance with the requirements of the Easement Agreement and this Consent.

**B. Limitations.**

i. No Entry Zone. Except for purposes of creating, relocating, and enforcing the No Entry Zone, no Permittee may enter the No Entry Zone (including any Permit Holder). During Maintenance Activities, the Master Association shall prevent persons and vehicles from entering the No Entry Zone by causing the clear demarcation of the No Entry Zone with stanchions, zipcords, traffic cones, and/or fencing and warning signs and the Master Association shall cause the relocation of the stanchions, zipcords, traffic cones, and/or fencing and warning signs as the platform moves laterally across the north façade of the 181 Fremont Property building to maintain the No Entry Zone at all times in which a platform is suspended from the 181 Fremont Property. The Master Association shall prevent any persons performing the Maintenance Activities



(including the Permit Holder) from driving vehicles or walking on the Easement Area, except for purposes of creating, relocating, and enforcing the No Entry Zone or performing the Maintenance Activities. The No Entry Zone is shown in Exhibits C (Page 3) and E to the Easement Agreement.

ii. Lighting. If the Master Association or its Permittees (including the Permit Holder) uses the Easement Area before dawn or after sunset, the Master Association shall cause the provision of adequate lighting so that the No Entry Zone is clearly visible.

iii. Compliance with Laws. The Master Association shall cause all Maintenance Activities to be done in compliance with (a) the applicable Work Description (as defined below) or the applicable description of Emergency Work in any emergency clearance permit, and (b) all applicable laws and safety orders, including but not limited to 8 California Code of Regulations Section 2946 and the general orders, rules and recommendations of the Division of Industrial Safety of California, or any successor to that body, the California Public Utilities Commission, and the SFMTA's Safety Division (including its operating rule and procedures), or any successors to those bodies. The SFMTA, acting in its regulatory capacity, shall have sole discretion in interpreting and determining the applicability of the safety orders and the operating rules and procedures to the Maintenance Activities; provided that the SFMTA will interpret and apply them in the same manner it would for any other party performing similar work near the SFMTA's high voltage overhead power lines.

### C. Procedure for Maintenance Activities.

i. The City shall designate an employee or agent (the "**SFMTA Representative**") to receive updates regarding, and to be the coordinator relating to, Maintenance Activities and Permits (as defined below) and shall provide that person's contact information to Master Association. Master Association shall designate an employee or agent (the "**Master Association Representative**") to provide updates regarding, and to be the coordinator relating to, Maintenance Activities in the Easement Area and any Permits, and shall provide the contact information for that person to the City and the TJPA and provide the SFMTA Representative contact information (and any updates to that contact information) to the TJPA. The City can change the individual serving as the SFMTA Representative at any time by providing written notice of that change to the Master Association. Master Association can change the individual serving as the Master Association Representative at any time by providing written notice of that change to the City and the TJPA.

ii. On or before January 15<sup>th</sup> of each year, the Master Association Representative shall provide to the SFMTA Representative and the SFMTA address designated for notice purposes in Section 7 (as that address may be changed through the process described in that Section), a schedule of the upcoming Regular Maintenance, which shall include a description for each Regular Maintenance activity proposed for the next twelve (12) months, confirm the contact information for the Master Association Representative, and request confirmation of the SFMTA Representative contact information. The schedule shall provide the following for all such anticipated Maintenance Activities ("**Work Description**"):

a. a description of the anticipated Maintenance Activities and why they are needed;

b. the anticipated location, dates and times, and duration of each of the Maintenance Activities; and

c. whether any Under Bridge Work will be performed for the described Maintenance Activities (such Under Bridge Work will be limited to two two (2)- hour sessions per year and shall be conducted during Regular Maintenance, but will be as reasonably required for Unscheduled Maintenance and Emergency Maintenance).

iii. When any Maintenance Activities are desired (whether Regular Maintenance or otherwise), the Parties shall use the following procedures (except as set forth in Section 1.C.vi):

a. At least three (3) weeks before the commencement of any Regular Maintenance described in the applicable annual schedule, the Master Association Representative shall send the SFMTA Representative a notice (“**Confirmation Notice**”) that (A) confirms the applicable Work Description remains unchanged, (B) lists the Equipment (defined below) that will be used (including make and model), and (C) gives the name of the company that will be the Permittee (the “**Permit Holder**”) that will do that Regular Maintenance and the name, phone number, and email address of the person who will be the Worker in Charge (as defined below) when that Regular Maintenance is being performed. The Master Association Representative must deliver each Confirmation Notice to the SFMTA address designated for notice purposes in Section 7 below (as that address may be changed through the process described in that Section) at the same time it delivers that Confirmation Notice to the SFMTA Representative.

b. At least three (3) weeks before the proposed date for any Unscheduled Maintenance, the Master Association Representative shall send the SFMTA Representative a request (“**Work Request**”) that (A) provides the Work Description for that Unscheduled Maintenance, (B) lists the Equipment that will be used (including make and model), and (C) gives the name of the Permit Holder that will do that Unscheduled Maintenance and the name, phone number, and email address of the person who will be the Worker in Charge when that Unscheduled Maintenance is being performed. The Master Association Representative must deliver each Work Request to the SFMTA address designated for notice purposes in Section 7 below (as that address may be changed through the process described in that Section) at the same time it delivers that Work Request to the SFMTA Representative. The Master Association Representative shall provide the SFMTA Representative with written evidence that the TJPA has approved the Unscheduled Maintenance before the SFMTA issues a Permit for that Unscheduled Maintenance.

c. Once the SFMTA Representative receives a Confirmation Notice or a Work Request, it shall process a construction clearance permit (or similar permit or approval as may be required) from the applicable SFMTA division (each, “**Permit**”) on behalf of the named Permit Holder. The City shall notify the Master Association Representative within three (3) weeks after receipt of any Confirmation Notice or Work Request if there is a conflict with the requested dates and times due to SFMTA staff capacity. If there is a conflict, the SFMTA Representative will work with the Master Association Representative to find a mutually agreeable time as soon as reasonably possible before or after the originally requested dates (and in no event more than two (2) weeks after the requested dates).

d. The SFMTA Representative shall coordinate any internal SFMTA approvals and coordination required for a Permit, notify Master Association Representative when a Permit has been issued, and provide the Master Association Representative with copies of any written Permit, which Permit shall include a date and time for commencement of the applicable Maintenance Activities established pursuant to Section C.ii above. The Master Association shall provide a copy of any Permit issued by SFMTA to the TJPA.

e. At least one (1) hour before the Maintenance Activities start time specified in an issued Permit, the Master Association Representative shall (or shall cause its Permit Holder to) contact SFMTA Central Control (or such other division indicated on the applicable Permit) at the contact information set forth in the applicable Permit (“**Central Control Contact**”) and the TJPA to confirm that start time. The SFMTA shall then de-energize the Bay E Power Lines by the start time designated in the applicable Permit so that no electricity is conducted through them and shall provide a visual indication that the lines are de-energized for as long as the Bay E Power Lines remain de-energized (e.g., by placing an orange cone on the de-energized Bay E Power Lines); provided that the Worker in Charge shall contact Central Control Contact to confirm that such de-energization has occurred before any of the Maintenance Activities commence.

f. The Worker in Charge shall immediately notify the Central Control Contact upon the completion of Maintenance Activities, and the SFMTA may re-energize the Bay E Power Lines at any time thereafter.

g. Should Maintenance Activities described in a Permit require that Under Bridge Work be performed during the times permitted under this Consent, then, within seventy-two (72) hours after notice from the Master Association Representative, the SFMTA Representative (in consultation with Master Association Representative) shall designate the time periods when Under Bridge Work may occur under that Permit, and the SFMTA shall close Bay E to vehicular traffic during the time period(s) designated by the SFMTA.

iv. Notwithstanding any Work Description provided to the SFMTA Representative for Maintenance Activities, the Parties understand and agree that the actual duration of Maintenance Activities will depend on various factors that cannot be fully predicted. If, after any Maintenance Activities begin, the Master Association Representative determines they will take longer than permitted under the applicable Permit, the Master Association Representative must notify the SFMTA Representative as soon as it makes that determination but no later than forty-eight (48) hours before the end times established in the applicable Permit and pursuant to the terms of the Easement Agreement for those Maintenance Activities, and request an extension of the applicable Permit for those Maintenance Activities. If the extension would extend beyond the deadline for completion of Maintenance Activities under the terms of the Easement Agreement, the Master Association Representative must provide the SFMTA Representative with evidence of the TJPA’s consent to that extension. The SFMTA will take reasonable efforts to accommodate that request if the Maintenance Activities cannot be completed within the period permitted under the applicable Permit for reasons outside of the reasonable control of the Master Association and its applicable Permit Holder, provided that the SFMTA can deny the request if extending that Permit or Maintenance Activity will have a significant adverse impact on the SFMTA’s transit operations. Each time any Maintenance Activities occur, the Master Association Representative

must check on their completion status with its applicable Permit Holder at least fifty (50) hours before the end time specified in the applicable Permit for those Maintenance Activities.

v. As used herein, (a) the “**Worker in Charge**” means an employee of Master Association, or a Master Association contractor, who must be on-site at the Easement Area to ensure safety in the Easement Area at all times with respect to the Maintenance Activities, and cannot engage in any other activities, when the Maintenance Activities are performed and (b) “**Equipment**” means the rig used to descend alongside the building at the 181 Fremont Property (“**Rig**”) and/or any vehicles or other equipment that will be brought onto the Easement Area during the course of the Maintenance Activities.

vi. Notwithstanding anything to the contrary set forth in this Consent, if 181 requires Emergency Maintenance, the Master Association Representative shall contact the SFMTA Representative, the Central Control Contact designated in the most recent Permit (or any other SFMTA division or contact person designated for Emergency Maintenance of whom the Master Association Representative has been provided notice) and the TJPA, and the SFMTA shall promptly dispatch an inspector to assess the situation and coordinate with the appropriate SFMTA divisions to arrange for an Emergency Maintenance clearance permit and a mutually-agreeable time for the Master Association to cause the performance of the Emergency Maintenance, which will be as soon as reasonably possible in consideration of any other emergency work that the SFMTA needs to perform at that time to avoid substantial danger to public health or safety. The SFMTA shall cause the Bay E Power Lines to be de-energized during the mutually-agreeable time in accordance with such Emergency Maintenance clearance permit, and 181 shall cause the compliance with the terms of that clearance permit. If the Worker in Charge determines that the Rig must be set down on level ground in an emergency to protect the safety or security of the public, the workers using the Rig, the Equipment, or the Bay E Power Lines, then the Worker in Charge may permit the Rig to be set down on level ground north of the curb running along the 181 Fremont Property Line, but only for as long as necessary to resolve the emergency. If the Worker in Charge allows the Rig to be set down at ground level, the Worker in Charge shall immediately notify the SFMTA Representative, the Central Control Contact designated in the applicable Permit (or any other SFMTA division or contact person designated for Emergency Maintenance of whom the Master Association Representative has been provided notice), and the TJPA.

**D. Costs.** The City shall be entitled to charge Master Association for the SFMTA costs incurred to de-energize the Bay E Power Lines (including the costs of any inspector or other support person dispatched by the SFMTA to assist in the de-energization process) after any Maintenance Activities are completed. The amount shall be the same amount that the SFMTA would charge any other private party that requires de-energizing of the SFMTA’s power lines to accommodate their work. The SFMTA will not start processing a new Confirmation Notice or Work Request if Master Association has received a bill for prior work but has not yet paid it.

**2. Agreement of 181.** 181 represents and warrants that Recital B of this Consent is true and correct. 181 agrees to the conditions described in Section 1 of this Consent and agrees that the City has the right to prohibit any Permittees from entering the Easement Area if these conditions have not been met at that time. 181 agrees that as long as the SFMTA leases any portion of the Easement Area, the definition of Maintenance Activities in the Easement Agreement will not be amended without the written consent of City.

**3. Agreement of TJPA.** The TJPA has (a) acknowledged that the conditions described in Section 1 of this Consent are consistent with the Easement Agreement, (b) agreed that the SFMTA shall have the right to enforce the obligations of 181 under this Consent as long as the City leases any portion of the Easement Area, and (c) agreed that as long as the SFMTA leases any portion of the Easement Area, the definition of Maintenance Activities in the Easement Agreement will not be amended without the written consent of City.

**4. Limitation on Liability; Waiver of Claims.** The City, including all of its boards, commissions, departments, agencies, and other subdivisions, officers, directors, agents, employees, consultants, contractors, representatives and their respective heirs, legal representatives, successors, and assigns (individually and collectively, the “**City Parties**”), will not be responsible for or liable to 181 or any Permit Holder, and 181 hereby assumes the risk of, and waives and releases the City Parties from all claims for any injury, loss, or damage to any person or property in or about the Easement Area by or from any cause whatsoever (“**Claims**”); provided that nothing in this Section will relieve City Parties from liability caused solely and directly by the active gross negligence or willful misconduct of the City Parties, but the City Parties will not be liable under any circumstances for any consequential, incidental, or punitive damages.

**5. Indemnity.** Master Association will indemnify, defend, and hold harmless the City Parties (individually an “**Indemnified Party**” and collectively, the “**Indemnified Parties**”), from and against from and against any and all claims, demands, losses (including, but not limited to, diminution in value), liabilities, damages, judgments, settlements, liens, fines, penalties, costs and expenses, including reasonable attorneys’ fees and costs, and fees of consultants and experts, laboratory costs, and related costs of any Indemnified Party (collectively, “**Losses**”) all to the extent arising in whole or in part out of the death of any person or any accident, injury, loss, or physical damage whatsoever to any person or to the property of any person on account of or in any way arising out of or in connection with the Easement Agreement, or 181’s or Permittees’ use of the Easement, including the Easement Area or any failure of 181 to comply with its obligations under this Consent or any failure of the Permittees to comply with the requirements of Section 1 of this Consent or the acts or omissions or negligence of any of the Permittees in, on, or about the Easement Area; provided, however, that Master Association shall have no obligation to indemnify the Indemnified Parties for Losses arising from the active gross negligence or willful misconduct of the Indemnified Parties. Where the active gross negligence or willful misconduct of the Indemnified Parties is a cause of, but is not the sole cause of, Losses, Master Association will indemnify the Indemnified Parties, as applicable, according to 181’s share of fault, as applicable. 181’s obligations under this Section will survive the termination of this Consent. Master Association agrees to defend the Indemnified Parties against any claims for Losses that are within the scope of the indemnity provisions of this Consent even if such claims may be groundless, fraudulent, or false. Master Association’s duty to pay for the defense of an Indemnified Party shall arise immediately upon service of process on the Indemnified Party. Master Association’s duty to pay for the defense of an Indemnified Party shall not be contingent on the ultimate determination of the Indemnified Party’s liability for the Loss.

**6. Insurance.** Master Association shall, at its sole cost, carry the insurance described in Section 6 of the Easement Agreement and name the City and County of San Francisco as additional insured on all liability policies described in that Section. If Master Association fails to carry a policy of Commercial General Liability Insurance meeting the requirements of Section 6 of the

Easement Agreement at any time during the term of this Consent, then Master Association shall perform the duties which would have been performed by the carrier had Master Association carried such a policy as required in Section 6 of the Easement Agreement, but only to the extent of the duties which such carrier would have had to perform.

**7. Notices.** Except for notices to be provided to the SFMTA Representative or the Master Association Representative, any notice to be provided by any Party under this Consent shall be sufficiently given or delivered if personally delivered or dispatched by registered or certified mail, postage prepaid, return receipt requested, or reputable overnight courier service, addressed as follows:

If to Master Association: 181 Fremont Street Master Association  
c/o Jay Paul Company  
Four Embarcadero Center, Suite 3620  
San Francisco, CA 94111  
Attn: Janette D’Elia

With a copy to:

Rachel B. Horsch  
Pillsbury Winthrop Shaw Pittman LLP  
Four Embarcadero Center, 22nd Floor  
San Francisco, CA 94111

If to Commercial Owner: 181 Fremont Office LLC  
c/o Jay Paul Company  
Four Embarcadero Center, Suite 3620  
San Francisco, CA 94111  
Attn: Janette D’Elia

With a copy to:

Rachel B. Horsch  
Pillsbury Winthrop Shaw Pittman LLP  
Four Embarcadero Center, 22nd Floor  
San Francisco, CA 94111

If to City: San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Strategic Real Estate  
Re: 181 Fremont Easement

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Real Estate/Finance Team  
Re: 181 Fremont Easement

If to the TJPA:                      Transbay Joint Powers Authority  
425 Mission Street, Suite 250  
San Francisco, CA 94105  
Attn: Security Operations Center  
Telephone: (628) 260-9000

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days before the effective date of the change. All notices under this Consent shall be deemed given, received, made, or communicated on the date the notice is actually delivered to the office of the person to whom it is addressed or, if mailed or sent by overnight courier, on the delivery date or attempted delivery date shown on the return receipt. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of a copy of the notice. Either Party can change its address for notices under this Section by delivering a notice to the other Party in the manner specified in this Section.

**8. Authority.** Each individual executing this Consent on behalf of a Party represents and warrants that he or she is authorized to execute and deliver this Consent on behalf of that Party and that this Consent will be binding upon the Party.

**9. Term.** This Consent shall remain in effect as long as the City leases any portion of the Easement Area.

**10. Assumption of Obligations.** If Master Association no longer exists or is no longer authorized to operate the 181 Fremont Property on behalf of the 181 Fremont Property owners, and no successor association is formed to operate the 181 Fremont Property on behalf of the owners of the 181 Fremont Property, then 181 shall assume the obligations of Master Association under this Consent.

**11. Miscellaneous.** This Consent may not be modified other than by an agreement in writing signed by the Parties or by their respective successors in interest. This Consent will be binding on and inure to the benefit of the Parties and their respective heirs, successors and assigns. This Consent may be executed in one or more counterparts, each of which is an original, but all of which constitute one and the same instrument. This Consent must be construed in accordance with, and will be governed by, California law.

IN WITNESS WHEREOF, this Consent has been executed by the City, the TJPA, and 181 and shall be effective on the later to occur of the date it is fully executed and the date that the Easement Agreement is recorded in the Official Records of San Francisco County.

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation acting by and through its San Francisco Municipal Transportation Agency

By: \_\_\_\_\_  
Jeffrey Tumlin  
Director of Transportation

Date: \_\_\_\_\_

APPROVED AS TO FORM

DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Carol Wong  
Deputy City Attorney

TJPA:

TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created under California Government Code Sections 6500 *et seq.*

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

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Counsel for the TJPA



COMMERCIAL OWNER:

181 FREMONT OFFICE LLC, a Delaware limited liability company

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

MASTER ASSOCIATION:

181 FREMONT STREET MASTER ASSOCIATION, a California nonprofit mutual benefit corporation

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_