

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Transbay Joint Powers Authority
201 Mission Street Suite 2100
San Francisco, CA 94105
Attn: Maria Ayerdi-Kaplan

Recording Fee \$0 (Govt Code § 27383)
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All or portions of 425 Mission (APN 3720-10 and -11, APN 3721-006 and -124, and APN 3719-003), State Parcel F (APN 3721-015A), 546 Howard (APN 3721-016), 564 Howard (APN 3721-019), 568 Howard (APN 3721-020), 77-79 Natoma (APN 3721-029), and 75 Natoma (APN 3721-031)

PARCEL F PEDESTRIAN BRIDGE EASEMENT AGREEMENT

THIS PARCEL F PEDESTRIAN BRIDGE EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of _____, 2015 by and between the TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created under California Government Code Sections 6500 et seq. (“**TJPA**”), and _____, a _____ (“**Developer**”). The TJPA and Developer, as Parcel Owners (as that term is defined below), and their respective successors and assigns, are each individually referred to herein sometimes as a “**Party**” and are collectively referred to herein sometimes as the “**Parties**”.

RECITALS

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

A. The TJPA is the owner of that certain real property generally located at 425 Mission Street, San Francisco, California (Assessor's Block 3720, Lots 10 and 11; Block 3721, Lots 006 and 124; and Block 3719, Lot 003), generally as shown on Exhibit A attached hereto (“**Transit Center Property**”), on which the TJPA has constructed or is constructing a new Transit Center building and a rooftop park (“**Rooftop Park**”).

B. Developer is the owner of that certain real property located across Natoma Street from the Transit Center Property fronting on Natoma and Howard Streets in San Francisco, California (consisting of portions of State Parcel F (APN 3721-015A), 75 Natoma (APN 3721-031), 546 Howard (APN 3721-016), 564 Howard (APN 3721-019), 568 Howard (APN 3721-020), and 77-79 Natoma (APN 3721-029)), as more particularly depicted in Exhibit B-1 and described on Exhibit B-2 attached hereto (“**Parcel F**”). The Transit Center Property and Parcel F

are each individually referred to in this Agreement as a “**Parcel**” and are collectively referred to in this Agreement as the “**Parcels**”. The Transit Center Property and Parcel F are depicted on the Site Plan attached as Exhibit C.

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

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

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

1. **Definitions.**

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

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

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

(c) “**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. Notwithstanding the foregoing, the following shall be excluded from Force Majeure: (i) the requirement of any third-party agreement or approval with or by a Party or its Affiliates, contractors, agents, consultants, member agency, employees, officers, or any of the foregoing; and (ii) a Party’s inability to obtain financing, increases in construction costs, or any changes in market conditions. In the event of the occurrence of a Force Majeure event, the time or times for performance will be extended for the period of the delay, provided that (A) within thirty (30) days after the beginning of any such delay, the delayed Party shall have first notified the other Party in writing of the cause or causes of such delay and claimed an extension right for Force Majeure, and (B) the delayed Party cannot, through commercially reasonable efforts, make up for the delay.

(d) “**Mortgage**” shall mean any mortgage, deed of trust, or other instrument primarily given to secure a loan or other obligation and constituting a lien recorded against all or

any portion of Parcel F, or against any ground lease or master lease that relates to all or any portion of Parcel F.

(e) **“Mortgagee”** shall mean any mortgagee or beneficiary under a Mortgage, or any ground lessor under any ground lease or master lessor under any master lease, with respect to all or any portion of Parcel F, and any successor-in-interest to any of the foregoing.

(f) **“Owner”** or **“Parcel Owner”** shall mean the fee title owner or owners from time to time of a Parcel. **“Owners”** or **“Parcel Owners”** shall mean the fee title owners of the Transit Center Property and Parcel F. Notwithstanding the foregoing, in no event shall Owner include any individual Condominium Owners, and Developer shall ensure that (i) any condominium map and the covenants, conditions & restrictions (**“CC&Rs”**) created within Parcel F recognize and are subject to this Agreement, (ii) the Pedestrian Bridge Easement and TJPA Easement shall be part of the common area of any condominiums and controlled by the property management association of the Condominium Owners, and (iii) individual Condominium Owners shall have no rights or obligations under this Agreement and no interest in the Pedestrian Bridge Easement or the TJPA Easement.

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

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

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

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

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

(l) **“Reservation Agreement”** shall mean the agreement between the TJPA and Developer providing the terms and conditions for the TJPA’s exclusive use of Parcel F for a

period after Closing, recorded in the Official Records of the City and County of San Francisco on the date hereof as Document No _____.

2. Construction of Pedestrian Bridge.

(a) Approval of 50% CDs. Construction of the Pedestrian Bridge by Developer shall be at no cost to the TJPA and shall be in accordance with 100% construction drawings (“CDs”) approved in writing by the TJPA which approval shall not be unreasonably withheld or conditioned. Prior to submitting 100% CDs to the TJPA, Developer shall submit approximately 50% CDs to the TJPA for approval in writing by the TJPA, which approval shall not be unreasonably withheld or conditioned. Developer’s submission shall include, but not be limited to, calculations showing the support reactions (imposed loads) and support locations of the Pedestrian Bridge on the Transit Center structure. The grounds for the TJPA’s reasonable disapproval of the 50% CDs may include, but shall not be limited to: 50% CDs that do not meet one or more of the following: (i) the design and construction of the Pedestrian Bridge comply with the security requirements set forth in the Security Agreement; (ii) the design and construction of the Pedestrian Bridge comply with all regulatory approvals by any government agency with jurisdiction over the Tower; (iii) the design of the Pedestrian Bridge and its structural connections to the Transit Center and the Tower will accommodate differential movement between the Transit Center and the Tower; (iv) the rails/walls, walking surfaces, and understructure appearance of the Pedestrian Bridge are compatible with the design of the Transit Center and the Project and with the other pedestrian bridges connecting buildings adjoining the Transit Center to the Rooftop Park that are constructed before the Pedestrian Bridge; (v) for any Pedestrian Bridge supported by the Transit Center structure rather than cantilevered from a building on Parcel F, the Pedestrian Bridge shall not place an excessive load on the Transit Center structure; and (vi) the Pedestrian Bridge shall not be located within six (6) feet of either side of Transit Center column lines 4, 6, 8, and 10, as depicted on Exhibit D. The TJPA shall review and approve, conditionally approve, or disapprove the 50% CDs within thirty (30) business days after Developer submits the 50% CDs to the TJPA or else the 50% CDs shall be deemed approved. After the TJPA has approved 50% CDs for the Pedestrian Bridge, the TJPA shall not make any changes to the design of the Transit Center or Rooftop Park that would necessitate any changes to such previously approved CDs except as provided in Section 10.

(b) Approval of 100% CDs. The TJPA shall review and approve, conditionally approve, or disapprove the 100% CDs within thirty (30) business days after Developer submits the 100% CDs to the TJPA or else the 100% CDs shall be deemed approved. The TJPA will not disapprove the 100% CDs based on anything that was included and approved in the 50% CDs. The grounds for the TJPA’s reasonable disapproval of the 100% CDs may include, but shall not be limited to, 100% CDs that do not meet one or more of (i) through (vi) above, or the 100% CDs are not consistent with the 50% CDs approved by the TJPA. The TJPA shall not require changes to the 100% CDs that are inconsistent with the 50% CDs approved by the TJPA under Section 2(a) unless the TJPA agrees to pay Developer for the reasonable costs associated with the change.

(c) Developer Responsible for Pedestrian Bridge. The TJPA shall have no responsibility for the Pedestrian Bridge, except: (x) as provided in Section 5, (y) if Developer completes the Pedestrian Bridge before completion of the Rooftop Park superstructure, the TJPA

shall be responsible for any additional costs incurred by Developer to connect the Pedestrian Bridge to the Rooftop Park that would not have been incurred by Developer if the Rooftop Park had been completed first, and (z) if Developer completes the Pedestrian Bridge after completion of the Rooftop Park superstructure and during or after the construction of the Rooftop Park improvements (e.g., fountain, lighting, acoustics, landscaping), Developer shall be responsible for any redesign or reconstruction costs incurred by the TJPA to accommodate the connection of the Pedestrian Bridge to the Rooftop Park. Developer shall pay the TJPA's full estimated costs of redesign and reconstruction of the Rooftop Park before the TJPA's designers and contractors begin work on the redesign and reconstruction, respectively.

(d) Completion of Pedestrian Bridge. Developer shall complete construction of the Pedestrian Bridge prior to the time Developer obtains a certificate of occupancy for the Tower.

3. Grant of Easements.

(a) Easement From Developer to TJPA. Subject to the provisions of Section 4, as of the Effective Date, Developer, as Owner of Parcel F, grants to the TJPA, as Owner of the Transit Center Property, the TJPA's Permittees, and the Public an irrevocable, perpetual, appurtenant, non-exclusive easement in, to, over and across the Pedestrian Bridge for pedestrian access by the TJPA, the TJPA's Permittees, and the Public: (i) between the Rooftop Park and publicly accessible areas of the Tower, with ingress and egress available from the Rooftop Park to the ground floor and the public street through the Tower; and (ii) to retail amenities located on the Pedestrian Bridge, if any ("**TJPA Easement**"). Access by the Public to the Rooftop Park from the Pedestrian Bridge shall, subject to the terms of Exhibit C to the Security Agreement, be for the same periods that access to the Rooftop Park by the Public is permitted from the Transit Center or any other access point, unless (x) the TJPA or Developer determines, in their respective sole discretion, that access shall be reduced on a temporary basis due to a particular safety or security threat specific to the Pedestrian Bridge; (y) Developer reasonably determines that a temporary closure is necessary or appropriate for maintenance, repair or other similar activities on the Pedestrian Bridge or in the Tower, provided that if such closure is for longer than twenty-four (24) hours, such closure shall be subject to the approval of the TJPA, which approval shall not be unreasonably withheld, conditioned or delayed, and the TJPA's approval shall be given or withheld within twenty-four (24) hours following notice of intent to close the Pedestrian Bridge from Developer, or else the closure shall be deemed approved; or (z) the TJPA determines, in its sole discretion, that access to the Pedestrian Bridge from the Rooftop Park must be temporarily closed (A) when occupancy of the Rooftop Park reaches the limits imposed by Building or Fire Codes, (B) to control crowds in the case of a special event in the Rooftop Park, or (C) to respond to an immediate security threat that requires closure of access to the Rooftop Park. The Parties shall cooperate in closing Public access to the Pedestrian Bridge whenever the Rooftop Park is closed. Each Party shall give written notice to the other Party as soon as reasonably practical following any restriction of access to the Pedestrian Bridge. The rights of access over the Pedestrian Bridge granted to the Public through the TJPA Easement shall remain in effect whenever the Rooftop Park is open for public use, subject to the closure periods described above. Developer shall provide appropriate circulation in the Tower to allow the Public to access to the Pedestrian Bridge from the street level entry into the Tower.

(b) Easement from TJPA to Developer.

(i) Construction Easement. Subject to the provisions of Section 4, effective on the Effective Date, the TJPA, as Owner of the Transit Center Property, grants to Developer, as Owner of Parcel F, an appurtenant, temporary, irrevocable, non-exclusive, easement for access by Developer and Developer's Permittees in, to, over and across the Transit Center Property only as necessary for Developer to design, install, construct, and connect the Pedestrian Bridge to the Rooftop Park structure including the construction and installation of improvements on the Transit Center Property that are necessary and do not interfere with the design, construction, operation, use, maintenance, or management of the Transit Center or Rooftop Park.

(ii) Pedestrian Bridge Easement. Subject to the provisions of Section 4, effective as of the completion of the Rooftop Park and Pedestrian Bridge, the TJPA, as Owner of the Transit Center Property, grants to Developer, as Owner of Parcel F, an appurtenant, permanent, irrevocable, non-exclusive, easement for access by Developer and Developer's Permittees in, to, over and across the Transit Center Property only as necessary for Developer to operate, maintain, and provide security for the Pedestrian Bridge. The foregoing easement shall include an easement for encroachment of the Pedestrian Bridge onto the Transit Center Property as constructed in accordance with the CDs approved by the TJPA under Section 2.

(iii) Access Easement. Subject to the provisions of Section 4, effective as of the completion of the Rooftop Park and Pedestrian Bridge, the TJPA, as Owner of the Transit Center Property, grants to Developer, as Owner of Parcel F, an appurtenant, permanent, irrevocable, non-exclusive, easement for access by Developer, Developer's Permittees, and the Public in, to, over and across the Rooftop Park to the Pedestrian Bridge. Such access to the Rooftop Park, and from the Rooftop Park to the Pedestrian Bridge, shall, subject to the terms of Exhibit C to the Security Agreement, be for the same periods access to the Rooftop Park by the Public is permitted from the Transit Center or any other access point, unless (i) the TJPA or Developer determines, in their respective sole discretion, that access shall be reduced on a temporary basis due to a particular security threat specific to the Pedestrian Bridge, or (ii) the TJPA determines, in its sole discretion, that the Rooftop Park must be temporarily closed (A) when occupancy of the Rooftop Park reaches the limits imposed by Building or Fire Codes, (B) to control crowds in the case of a special event in the Rooftop Park, or (C) to respond to an immediate security threat that requires closure of access to the Rooftop Park.

(iv) No Obligation of TJPA. Developer acknowledges and agrees that the TJPA shall not be obligated to Developer to complete construction of the Transit Center or the Rooftop Park. The obligations of the TJPA under this Section 3(b) shall have no force or effect if the TJPA does not complete construction of the Transit Center and the Rooftop Park. If the TJPA does not give notice to the Developer that the TJPA has opened the Rooftop Park to the Public within twenty (20) years after the Effective Date, then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except for rights and obligations that survive this Agreement.

(c) Defining Easement Areas. If requested by either Party after the Pedestrian Bridge has been constructed and installed, the Parties shall execute a mutually-acceptable

supplement to this Agreement (“**Supplemental Agreement**”) defining the area or areas covered by the easements provided for under this Agreement. Any Supplemental Agreement shall not become effective and no rights or obligations shall arise under the Supplemental Agreement unless (1) the Parties agree on the terms of the Supplemental Agreement, and (2) all liens, Mortgages, and encumbrances that are inconsistent with the provisions of this Agreement and the Security Agreement or that in any way would diminish the TJPA’s rights under this Agreement or the Security Agreement are subordinated to the Supplemental Agreement.

4. Obligation to Construct or Reconstruct Tower, Transit Center, or Rooftop Park.

Developer acknowledges and agrees that under Section 7.9 of the Purchase and Sale Agreement with the TJPA pursuant to which Developer acquired Parcel F, Developer shall be obligated to the TJPA to start construction of the Project on Parcel F no later than _____, and shall complete construction of the Project on Parcel F Property no later than _____. Developer covenants that it shall include the Pedestrian Bridge in any application for Regulatory Approvals for the Project, make good faith efforts to obtain Regulatory Approvals for a Project that includes the Pedestrian Bridge, and construct the Pedestrian Bridge required by such Regulatory Approvals. In the event of damage to or destruction of the Pedestrian Bridge within twenty (20) years after the Effective Date (but where the Tower remains on Parcel F and if damaged, is being repaired),, Developer shall reconstruct the Pedestrian Bridge consistent with the design of the preexisting Pedestrian Bridge at no cost to the TJPA, with the exception of any connection of the Pedestrian Bridge to the Rooftop Park, the cost of which shall be shared by the TJPA and Developer in proportion to the cost of the connection of the preexisting Pedestrian Bridge.

5. Coordination of Work.

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

6. Operation and Maintenance.

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

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

7. Indemnification.

With the sole exception of third party claims for injury caused by acts of third persons in connection with alleged breach of security, including criminal acts, Developer shall indemnify, protect, defend, and hold harmless the TJPA, the City, and the State of California, and their respective boards, commissions, members and member agencies, departments, agencies, and other subdivisions, officers, directors, agents, employees, consultants, contractors, and representatives, and their respective heirs, legal representatives, successors and assigns, and each of them (collectively and individually, “**TJPA Parties**”) from and against any and all claims, demands, losses, liabilities, damages, costs and expenses (including reasonable Attorneys’ Fees and Costs, and fees of consultants and experts, laboratory costs, and related costs; any Attorneys’ Fees and Costs, and fees of consultants and experts assessed by a court) (collectively, “**Losses**”) arising out of the death of any person or any accident, injury, loss or damage whatsoever to any person or to the property of any person in connection with, arising out of, in response to, caused by, occurs on, or in any manner relating to the design, installation, construction, operation, use, inspection, maintenance, management, replacement, repair, or alteration of the Pedestrian Bridge; provided, however, that Developer shall have no obligation to indemnify the TJPA or the TJPA Parties for Losses arising solely from the gross negligence or willful misconduct of the

TJPA or the TJPA Parties. Where the gross negligence or willful misconduct of the TJPA or the TJPA Parties is a cause of, but is not the sole cause of, Losses, Developer shall indemnify the TJPA and the TJPA Indemnified Parties according to the respective parties' share of fault.

8. Insurance.

Developer shall at its sole cost name the TJPA, its member agencies (including the City), and the State of California ("**State**") as additional insureds under a policy of Commercial General Liability Insurance covering the Pedestrian Bridge ("**Policy**"). The Policy shall:

(a) be effective on the date Developer obtains a permit of occupancy allowing tenants, residential owners, or the public to use the Pedestrian Bridge ("**Insurance Effective Date**") and shall be renewed annually (prior to expiration) for the duration of the life of the Pedestrian Bridge and any modifications thereto. Not less than ten (10) days before the Insurance Effective Date, Developer shall deliver to the TJPA a certificate or certificates of insurance in a form reasonably satisfactory to the TJPA, evidencing the coverage required hereunder, and shall deliver such proof of insurance ten (10) days before every anniversary of the Insurance Effective Date;

(b) have a limit of Thirty Million Dollars (\$30,000,000) for each occurrence and aggregate occurrences per year, which may be accomplished by primary and excess layers, subject to an escalation of Three Million Dollars (\$3,000,000) on each five- (5-) year anniversary of the Insurance Effective Date;

(c) be a separate policy from Developer's other insurance policies or shall have a per location endorsement consistent with the limits described in this Section 8;

(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 Pedestrian Bridge.

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

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

(g) require a defense and indemnity of the named insured and the additional insureds, including the TJPA, its member agencies, and the State;

(h) be primary insurance with respect to the TJPA, its member agencies, and the State for all Covered Claims, and any insurance or self-insurance of the TJPA, its member agencies, and the State 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, its member agencies, and the State (unless rights of subrogation would otherwise be waived by reason of the TJPA, its member agencies and the State being named as additional insureds); and

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

Developer shall provide written notice to the TJPA within five (5) business days following notice from Developer's insurer of any cancellation or modification of the terms of the Policy and shall replace such Policy with a Policy that complies with all of the requirements of this Section 8 within five (5) business days after giving the notice to the TJPA. Developer shall provide written notice to the TJPA within three (3) business days following Developer's failure to pay all or part of the premium for the Policy when due. Developer's failure to pay all or part, of the premium for the Policy when due shall be an immediate default under this Agreement without any requirement for notice or cure. If Developer fails to pay a premium for the Policy when due, the TJPA may, at its election, pay the premium and all interest and penalties, if any, and shall have all legal and equitable remedies against Developer for reimbursement of the amount paid, whether or not Developer gives written notice to the TJPA of the failure to pay the premium.

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

The Policy may, at Developer's option, apply to the entirety of Parcel F, so long as the Policy has a per location endorsement that satisfies all requirements of this Section 8.

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

9. Security.

(a) Security Agreement. Developer and the TJPA have entered into that certain confidential Security Agreement ("**Security Agreement**") pertaining to security for the

Project and the Transit Center, including the Pedestrian Bridge. The Parties shall maintain the confidentiality of the Security Agreement and shall disclose the Agreement only to persons to whom disclosure is permitted under the terms of the Security Agreement. The Security Agreement may be amended from time to time by written agreement of Developer and the TJPA consistent with the easements provided under this Agreement. The Security Agreement shall include, without limitation, the rights and obligations of the Parties set forth in Sections 9(b) and 9(c). The rights and obligations of the Security Agreement shall run with the land under Section 17. Moreover, in conjunction with any sale or transfer of title to any part of Parcel F, Developer shall assign its rights and obligations under the Security Agreement to the transferee and require that the transferee assign its rights and obligations under the Security Agreement to any and all subsequent transferees of title.

(b) Obligations of Developer. Developer shall at its sole cost provide safety and security for the Pedestrian Bridge, to the extent provided in (and subject to) the Security Agreement. In the event of a conflict between the provisions of this Agreement and the Security Agreement, the provisions of the Security Agreement shall govern and control.

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

10. Modifications to Pedestrian Bridge or Transit Center Design.

In the event that Developer requests modifications of the Transit Center after the Effective Date of this Agreement to accommodate the Tower or Pedestrian Bridge, including modifications of the Transit Center and the underlying framework that envelopes the Transit Center, modifications or extensions of the Rooftop Park, or modifications or extensions of Park finishes, if approved by the TJPA pursuant to Section 2, then Developer shall pay all TJPA estimated costs of such modifications in advance of the start of such redesign or reconstruction. In the event that the TJPA requests modifications of the Pedestrian Bridge design after the TJPA's approval of 50% CDs, which modifications are inconsistent with the approved 50% CDs, to accommodate changes to the Transit Center, if approved by Developer in its reasonable discretion, then the TJPA shall pay all costs of such modifications. After the TJPA has approved the 100% CDs for the Pedestrian Bridge, Developer shall not make any material change to the Pedestrian Bridge without the prior written approval of the TJPA, which approval may be granted or withheld at the TJPA's sole discretion.

11. Rights of Mortgagees.

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

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

(c) Term and Limitation of Liability. No Mortgagee shall be obligated or liable for the obligations and liabilities of the Owner of Parcel F hereunder unless and until such Mortgagee acquires fee title to all or a portion of Parcel F (whereupon such Mortgagee shall be and become entitled to all of the benefits and protections of the Owner of Parcel F hereunder), and then such Mortgagee shall be liable for the obligations and liabilities of the Owner only (i) upon Mortgagee's acquisition of fee title to Parcel F, and (ii) for the duration of such ownership; provided that any purchaser of Parcel F at foreclosure or from Mortgagee after foreclosure shall be obligated to perform each and every obligation of the Owner hereunder. The foregoing notwithstanding, if the Owner is in default of this Agreement at the time of a Mortgagee's acquisition of Parcel F, the Mortgagee shall not be bound by any such default by such Owner, provided that such Mortgagee shall be obligated to (i) remedy any curable, non-monetary, non-construction defaults of such Owner within thirty (30) days following the acquisition by any such Mortgagee of title to Parcel F or three (3) days following such acquisition of title in the event of an immediate and serious danger to person or property), and (ii) reimburse the TJPA under Section 8 to the extent of any insurance premiums, interest, and penalties for or under the Policy paid by the TJPA by reason of the Owner's failure to pay such insurance premiums, interest and penalties if and when due, such reimbursement to be made by such Mortgagee to the TJPA within thirty (30) days following the receipt by such Mortgagee of reasonably detailed evidence of the amount paid by the TJPA. With respect to subpart (i) of the preceding sentence, if such default cannot reasonably be cured within the required period and Mortgagee has commenced the cure within the required cure period and is diligently prosecuting such cure, the cure period shall be such period as is commercially reasonable required to prosecute such cure to completion. If a Mortgagee acquires fee title to Parcel F at such time when the exterior of the Tower is completed but the Pedestrian Bridge is not completed in accordance with the provisions of this Agreement, such Mortgagee shall complete the Pedestrian Bridge within such period as is reasonably necessary to do so, but in no event to exceed six (6) months after the date such Mortgagee acquires fee title to Parcel F. If a Mortgagee has given the TJPA written notice of the Mortgagee's interest in Parcel F, provided the Mortgagee's mailing address, and requested notices that are required to be given under this Agreement, then that Mortgagee shall not be bound by any amendment, modification or revision of this Agreement entered into after the Mortgagee has given notice to the TJPA without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld or delayed; provided it will be reasonable for a Mortgagee to refuse to consent to any amendment that could affect its security interest. Any and

all Mortgagees with respect to all or any portion of Parcel F shall, without limitation, have the benefits of Sections 3 and 12. If a Mortgagee was not provided notice of the Owner's default prior to the date the Mortgagee acquires fee title to Parcel F in accordance with Section 11(d), Mortgagee's cure periods under this Section 11(c) shall commence on the date that the TJPA provides written notice of such default to Mortgagee.

(d) Mortgagee Cure Rights. Notwithstanding any other provision in this Agreement for notices of default, each Mortgagee of Developer where Developer is in default hereunder shall be entitled to notice of said default, in the same manner that other notices are required to be given under this Agreement; provided, however, that said Mortgagee shall have, prior to the time of default, notified the TJPA of the Mortgagee's interest in Parcel F, provided the Mortgagee's mailing address, and requested notices that are required to be given under this Agreement. In the event that any notice shall be given of the default of Developer, then the TJPA shall provide a copy of the notice to such Mortgagee (which has previously given the above stated notice of its mailing address to the TJPA) under any Mortgage affecting Parcel F or portion thereof at the same time that the TJPA gives notice of the default to Developer, that Developer is in default and such Mortgagee shall have (i) thirty (30) days after such notice to cure any such default, or (ii) three (3) days in the event of an immediate and serious danger to person or property. If the TJPA fails to provide the required notice to Mortgagee, then the Mortgagee's period to cure shall not start until the TJPA provides the required notice to Mortgagee. If such default cannot reasonably be cured within the required period, and Mortgagee has commenced the cure within the required cure period and is diligently prosecuting such cure, the cure period shall be such period as is reasonably required to prosecute such cure to completion. If the cure of a default requires possession of Parcel F or any part of Parcel F, the periods for cure referred to in this Section 11 shall each be deemed to commence when the Mortgagee has obtained (i) possession of Parcel F, (ii) the unconditional permission of Developer to undertake such cure accompanied by the agreement of Developer, satisfactory in all respects to the Mortgagee that the exercise of such cure shall not affect any of the Mortgagee's rights or remedies under its loan documents, or (iii) obtains a court ordered right, to enter Parcel F and perform the cure, which possession, permission or order the Mortgagee shall attempt to obtain as quickly as is reasonably feasible in the circumstances. The giving of any notice of default or the failure to deliver a copy of such notice of default to any Mortgagee shall in no event create any liability on the part of the TJPA to Developer or Mortgagee for so declaring such breach or default.

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

(f) Intended Third Party Beneficiary. Each Mortgagee with respect to all or any portion of Parcel F is an intended third-party beneficiary of the provisions of this Agreement which expressly benefit it and, as an intended third-party beneficiary, shall be entitled to enforce such provisions prior to succeeding to fee title to Parcel F or any portion thereof. Such Mortgagee, however; is not an intended third-party beneficiary of the provisions of this

Agreement other than those which expressly benefit it and shall not be entitled to enforce the provisions of this Agreement other than those which expressly benefit it prior to succeeding to fee title to Parcel F or any portion thereof.

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

12. Defaults and Remedies.

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

13. Limitation of Liability.

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

14. Assignment; Effect of Transfer.

Anything else in this Agreement to the contrary notwithstanding, direct or indirect interests in Parcel F or any portion thereof may be freely transferred without the necessity of any consent by the TJPA. Developer shall notify the TJPA of any transfer of fee title to Parcel F. In the event an Owner transfers or otherwise conveys its entire interest in its Parcel, such Owner shall, as to the other Party, thereupon be released and discharged from any and all obligations as

Owner in connection with such Parcel arising under this Agreement with respect to the period after the date of such transfer or conveyance, but shall remain liable for all obligations arising under this Agreement with respect to the period prior to such transfer or conveyance; and the transferee of such Parcel (including, without limitation, any transferee who acquires its interest by foreclosure, trustee's sale or otherwise, regardless of the terms of any promissory note, mortgage, or deed of trust agreement between the Owner and any lender or trustee of a lender) shall assume all rights and obligations with respect to such Parcel under this Agreement with respect to the period of ownership by such transferee, including any ongoing breach that continues following the date of transfer, subject to the limitations of liability and other provisions of this Agreement.

Acceptance of a conveyance of fee simple title to part or all of Parcel F shall constitute an assumption by the transferee of all of the rights and obligations of the transferor under this Agreement, as it relates to the property transferred, arising from and after the date of such transfer, subject to the limitations set forth in this Agreement.

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

15. Force Majeure.

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.

16. No Cancellation.

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

17. Running with the Land.

It is the intent of the Parties that each and all of the easements, covenants, conditions and restrictions set forth in this Agreement are for the mutual benefit of the Parcels and every portion of each thereof. Each and all of the easements, covenants, obligations conditions and restrictions set forth in this Agreement, including the Security Agreement, touches and concerns and shall affect, relate to, and run with the land of each of the Parcels and every portion of each thereof, and shall apply to and bind the respective successor Owners of each of the Parcels and every

portion of each thereof, for the benefit of each of the other Parcels and every portion of each thereof (except for the portions of Parcel F owned by individual Condominium Owners and except to the extent otherwise stated herein). Each and all of the easements, covenants, obligations conditions and restrictions set forth in this Agreement are imposed on each portion of and interest in each of the Parcels as mutual equitable servitudes in favor of each and all other portions of and interests in the Parcels and constitute covenants running with the land pursuant to applicable law, including, without limitation, Section 1468 of the Civil Code of the State of California. Moreover, in conjunction with any sale or transfer of title to any part of Parcel F, Developer shall assign its rights and obligations under the Security Agreement to the transferee and require that the transferee assign its rights and obligations under the Security Agreement to any and all subsequent transferees of title.

18. Notices.

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

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

Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
Attn: Executive Director Maria Ayerdi-Kaplan
Telephone: (415) 597-4620

With a copy to:

Office of the City Attorney
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: RE/Finance

And to:

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

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

Attn: _____
Telephone: _____

And to: the address on file at the SF Tax Assessor's Office for mailing tax statements for Parcel F

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

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

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

(iii) if approval is being requested, shall be clearly marked "Request for Approval under the Parcel F Pedestrian Bridge Easement Agreement"; and

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

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

(d) Effective Date of Notices. All notices under this Agreement shall be deemed given, received, made, or communicated 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.

19. Estoppel Certificates.

Each Party, within ten (10) business days after written request of any other Party or any Mortgagee, shall issue to such other Party or to any prospective Mortgagee or transferee of such Party's interest in any Parcel, or (with respect to Developer) any lender secured by a pledge of a direct or indirect interest in Developer, an estoppel certificate stating: (i) whether the Party to whom the request has been directed knows of any default under this Agreement, and if there are

known defaults, specifying the nature thereof; (ii) in the case of an estoppel certificate requested from the TJPA, whether, to the TJPA's knowledge, Developer has completed its obligations under Sections 2 and 4, and if any such obligation has not been completed, specifying the obligation which has not been completed; (iii) whether, to the knowledge of the Party to whom the request has been directed, this Agreement has been modified or amended in any way, and if it has been so modified or amended, stating the nature of such modification or amendment; and (iv) whether to the knowledge of the Party to whom the request has been directed, this Agreement is in full force and effect as of the date of the estoppel certificate.

20. Effective Date.

(a) Recording. This Agreement shall become effective and binding upon the Parties when both Parties have signed the Agreement. The Easements under this Agreement shall become effective and binding upon the Parties, each of the Parcels, and the Owners of all or any portion of each of the Parcels and their respective successors, assigns and successors-in-interest to all or any portion of each of the Parcels, only upon the recordation of this Agreement in the Official Records of the City and County of San Francisco ("**Effective Date**"). This Agreement shall be recorded at the Closing for the sale of Parcel F to Developer and shall have the priority of encumbrances provided in Section 20(b).

(b) Title Policy. This Agreement shall not be recorded until Chicago Title Insurance Company has issued to the TJPA, or its nominee, an ALTA owner's policy of title insurance ("**Title Policy**"), which Title Policy shall confirm that, upon recordation, subject to potential but unfiled mechanics' liens this Agreement and the easements under the Agreement have priority over any and all Mortgages, liens and other encumbrances of any type affecting Parcel F (collectively, "**Encumbrances**") other than Encumbrances approved by the TJPA. Developer shall pay for the cost of the Title Policy.

21. Severability.

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

22. Non-Waiver.

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

23. Governing Law.

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

Francisco, State of California, and Developer and the TJPA agree that any service of process in such action or proceeding may be made by personal service upon the other wherever the other may then be located, or by certified or registered mail directed to the party at the address set forth in this Agreement.

24. Attorneys' Fees.

If either 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.

25. Not a Public Dedication.

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

26. No Rights to Tower or Project.

Without limiting any provision of the Security Agreement, nothing in this Agreement shall be deemed to grant or to imply any licenses, easements, right of access or other rights or interests of any kind in favor of the TJPA, any other Person or the public in the Tower or the Project, or any part thereof, other than the easements herein granted with respect to the Pedestrian Bridge.

27. No Third Party Beneficiaries or Duties.

Except as provided in Section 11(f), this Agreement is for the exclusive benefit of the Parties and not for the benefit of any other Person (including 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 construed to create any duty or liability to any third party or to describe any standard of care owed to any third party.

28. Amendments.

This Agreement may be amended, extended, supplemented, changed, or revoked only by the written agreement of all Parties hereto (and, to the extent specified herein, any Mortgagee), which amendment, extension, supplement, change, or revocation shall be effective and binding upon the whole of the Parcels upon the recordation of same in the Official Records of the City and County of San Francisco. If Parcel F or the Transit Center Property is divided, then this Agreement may be modified, as it relates to the affected portions of the Parcels, by the Parties that own the affected Parcels. The Parties shall cooperate in good faith to discuss and, if mutually agreeable, execute one or more amendments to this Agreement only to account for (a) changes in the actual construction field conditions and (b) changes in the circumstances over the course of construction of the improvements to be constructed pursuant to this Agreement. At the TJPA's election, any amendment to this Agreement shall not become effective and no rights or obligations shall arise under the Amendment to this Agreement unless all Encumbrances (as defined in Section 20(b)) that are directly or indirectly inconsistent with the provisions of this Agreement or that in any way diminish the TJPA's rights under this Agreement are subordinated to the amendment. Under no circumstances shall this Agreement be subordinated to any mortgage or lien and the TJPA shall be deemed in good faith if it refuses to subordinate this Agreement to any mortgage or lien.

29. Entire Agreement.

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

30. Interpretation of Agreement.

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

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

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

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

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

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

31. Relationship of the Parties.

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

32. Compliance with Laws.

Each Party and their respective representatives shall conduct all activities within the Pedestrian Bridge Easement Area in a safe, prudent, and professional manner in accordance with commercial reasonable construction practices. Each Party and its’ respective representatives shall, with respect any work within the Bus Ramp Easement Area, promptly comply with (a) all laws, statutes, ordinances, codes, rules, regulations, requirements, or orders or municipal, state, and federal authorities now in force or that may later be in force, including, but not limited to, those relating to the generation, use, storage, handling, treatment, transportation, or disposal of Hazardous Materials (as defined below); (b) the 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 the Party has notice.

“**Hazardous Materials**” shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local

governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” 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.

33. Waiver of Claims.

Developer, for itself, its successors and assigns, hereby waives, releases, remises, acquits, and forever discharges the TJPA, the TJPA’s employees, agents, officers, directors, consultants, contractors, successors or assigns, member agencies, or any other person acting on behalf of the TJPA, and the State of California, of and from any and all rights, claims, losses, injuries, costs, damages, causes of action, demands, rights, expenses, penalties, fines, or compensation whatsoever, direct or indirect, which Developer now has or which Developer may have in the future for inverse condemnation related to the TJPA’s exercise of its rights under this Agreement, including claims and losses related to noise, vibration, fumes, or lighting, or the design, installation, construction, operation, use, inspection, maintenance, management, replacement, repair, alteration, safety or security of the Pedestrian Bridge or the improvements constructed by the TJPA on the Transit Center Property that structurally support those portions of the Pedestrian Bridge which connect to the Transit Center; provided, however, that Developer does not waive or release any rights, claims, demands, or causes of action for injuries, costs, damages, expenses, or losses (including, but not limited to, diminution in value) that Developer may have now or in the future for the TJPA’s negligence or willful conduct in the exercise of its rights under this Agreement.

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

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

To give full force and effect to the above general release, Developer hereby expressly, knowingly, and voluntarily waives all the rights and benefits of Section 1542 and any other similar law of any jurisdiction. By placing its initials below, Developer specifically acknowledges and confirms the validity of the release made above and the fact that Developer

was represented by counsel who explained, at the time this Agreement was made, the consequences of the above releases.

INITIALS: _____
Developer's initials

34. 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.

35. Community Benefits District.

The Greater Rincon Hill Community Benefit District (“**CBD**”) was formed on _____, 2015 by a vote of the property owners in a portion of the Transit Center District Plan Area and certain adjacent areas (“**Greater Rincon Hill**”) to help finance community services and the maintenance of public improvements in areas including the Transbay District (as defined in the CBD Management Plan), including the Rooftop Park (also known as “**City Park**”). The CBD will help fund activities and improvements such as community services and maintenance of parks and streetscapes in the Greater Rincon Hill District to benefit the properties in the CBD, including maintenance of the Rooftop Park. Developer shall be responsible for payment of any CBD assessment levied on Parcel F after expiration of the Reservation Agreement.

NO FURTHER TEXT ON THIS PAGE]

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

DEVELOPER:

By: _____

Name: _____

Its: _____

TJPA:

TRANSBAY JOINT POWERS AUTHORITY

By: _____

Name: Maria Ayerdi-Kaplan

Its: Executive Director

APPROVED AS TO FORM:

By: _____

Counsel for the TJPA

ACKNOWLEDGMENT

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

State of _____)

County of _____)

On _____, 2015, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

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

State of _____)

County of _____)

On _____, 2015, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Depiction of Transit Center Property

[see attached]

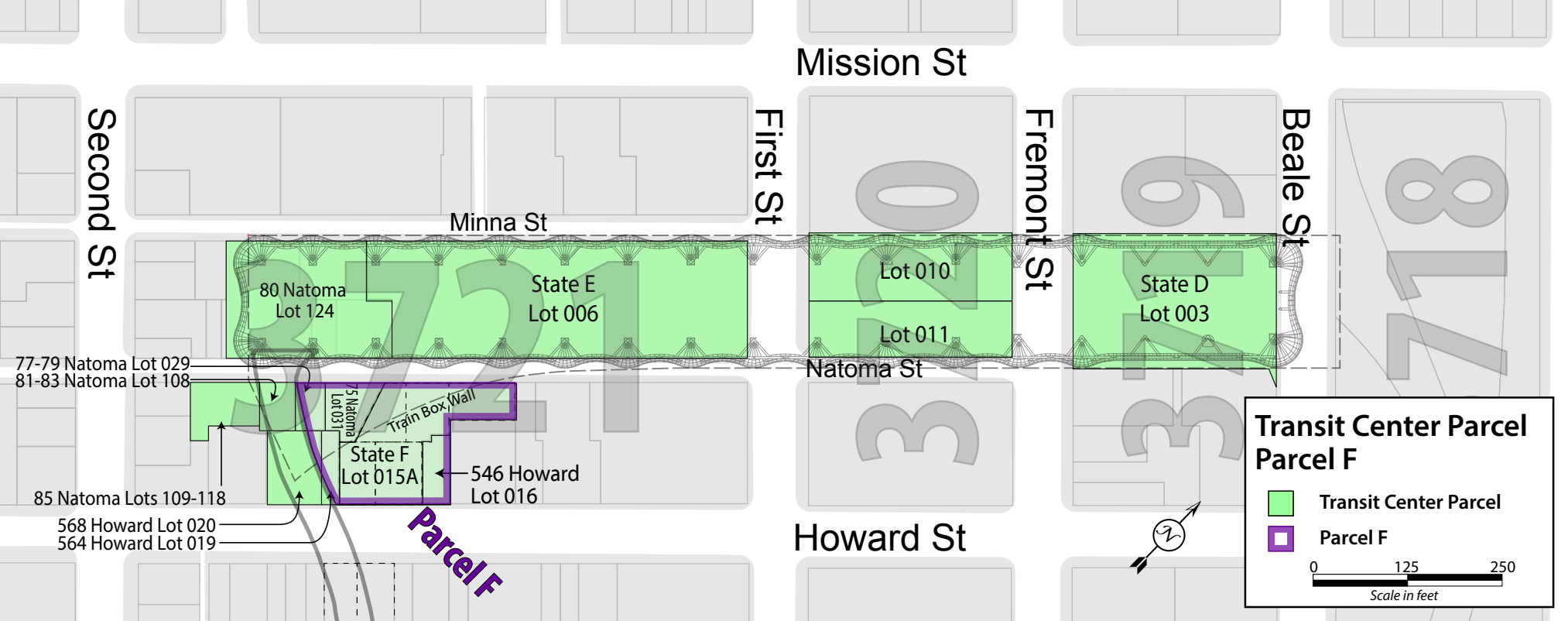


EXHIBIT B-1

Depiction of Parcel F

[see attached]

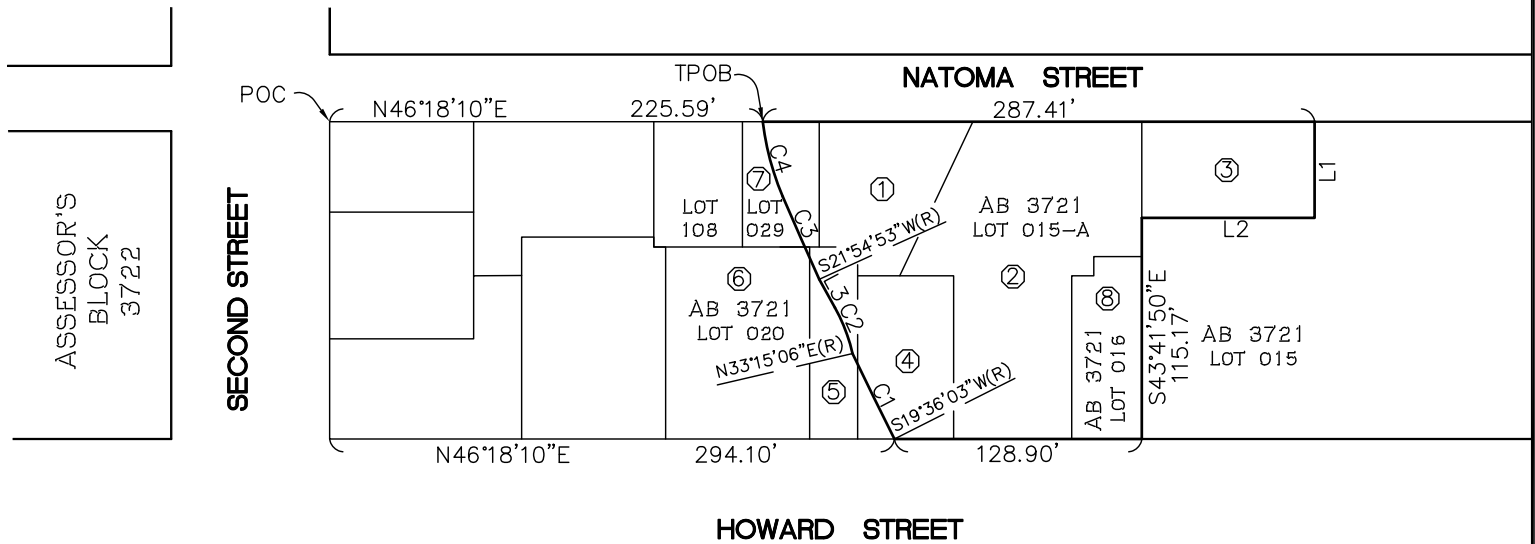
PLAT TO ACCOMPANY LEGAL DESCRIPTION

TRANSBAY PARCEL F PROPERTY

LINE TABLE		
LINE	LENGTH	BEARING
L1	50.00'	S43°41'50"E
L2	90.00'	S46°18'10"W
L3	16.92'	N72°41'50"W

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	49.51'	2274.00	1°14'51"
C2	25.70'	92.33	15°56'56"
C3	47.04'	2274.00	1°11'07"
C4	40.45'	140.00	16°33'18"

- ① AB 3721-LOT 031
DOC. 2009-1745633-00
REEL J867, IMAGE 0118
- ② AB 3721-LOT 015-A
PARCEL 3
DOC. 2010-J017202-00
(TRACT A)
- ③ AB 3721-LOT 015-A
PARCEL 2
DOC. 2010-J017202-00
(TRACT A)
- ④ AB 3721-LOT 015-A
PARCEL 1
DOC. 2010-J017202-00
(TRACT A)
- ⑤ AB 3721-LOT 019
DOC. 2014-J925707-00
- ⑥ AB 3721-LOT 020
DOC. 2014-J925707-00
- ⑦ AB 3721-LOT 029
DOC. 2008-1694632-00
- ⑧ AB 3721-LOT 016
DOC. 2009-1745633-00
REEL J867, IMAGE 0118



ASSESSOR'S
BLOCK
3736

LEGEND

- RECORD BOUNDARY
- PROPOSED BOUNDARY
- POC
- TPOB
- POINT OF COMMENCEMENT
- TRUE POINT OF BEGINNING

BEARINGS PER "RECORD OF SURVEY NO. 6428"
BOOK EE, SURVEY MAPS AT PAGES 19-27,
SAN FRANCISCO COUNTY RECORDS.

1"=100'

F3 & Associates, Inc.

Land Surveying

701 E. H STREET, Benicia, CA 94510
Phone (707) 748-4300 - Fax (707) 361-0295
www.F3-inc.com

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC WORKS
TRANSBAY TRANSIT CENTER

PRELIMINARY

TODD TILLOTSON PLS # 8593 EXP. 12/31/15

DATE: JUNE 10, 2015

DRAWN BY: STAFF

JOB NO: 14275

CCSF DPW

FILE NO:

SHEET 1 OF 1

EXHIBIT B-2

Legal Description of Parcel F

[see attached]

TRANSBAY PARCEL F PROPERTY
PERIMETER DESCRIPTION

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING ALL OF THAT PARCEL OF LAND CONVEYED TO THE TRANSBAY JOINT POWERS AUTHORITY BY GRANT DEED RECORDED APRIL 10, 2009 IN OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO UNDER DOCUMENT NO. 2009-I745633-00, TOGETHER WITH A PORTION OF PARCELS ONE THROUGH 3, INCLUSIVE, OF LAND CONVEYED TO THE TRANSBAY JOINT POWERS AUTHORITY BY DIRECTOR'S DEED (QUITCLAIM) RECORDED AUGUST 9, 2010 IN OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO UNDER DOCUMENT NO. 2010-J017202-00, A PORTION OF THAT PARCEL OF LAND CONVEYED TO THE TRANSBAY JOINT POWERS AUTHORITY BY GRANT DEED RECORDED DECEMBER 16, 2008 IN OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO UNDER DOCUMENT NO. 2008-I694632-00, AND A PORTION OF THOSE PARCELS OF LAND CONDEMNED TO THE TRANSBAY JOINT POWERS AUTHORITY BY ORDER OF CONDEMNATION IN OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO UNDER DOCUMENT NO. 2014-J925707-00, ALL BEING SITUATED IN 100 VARA BLOCK NO. 347 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF NATOMA STREET, DISTANT THEREON 225.59 FEET, MORE OR LESS, NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF SECOND STREET, SAID POINT BEING THE MOST EASTERLY EDGE OF RAMP, AS CONSTRUCTED; THENCE CONTINUING ALONG SAID SOUTHEASTERLY LINE OF NATOMA STREET NORTH $46^{\circ}18'10''$ EAST 287.41 FEET, TO THE NORTHERNMOST CORNER OF SAID PARCEL 2 (2010-J017202); THENCE LEAVING SAID SOUTHEASTERLY LINE OF NATOMA STREET AND ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 2 SOUTH $43^{\circ}41'50''$ EAST 50.00 FEET; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 2 SOUTH $46^{\circ}18'10''$ WEST 90.00 FEET; THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 3 (2010-J017202) AND THE NORTHEASTERLY LINE OF THAT SAID CERTAIN PARCEL OF LAND CONVEYED BY DEED UNDER DOCUMENT NO. 2009-I745633-00 SOUTH $43^{\circ}41'50''$ EAST 115.17 FEET, MORE OR LESS, TO THE NORTHWESTERLY LINE OF HOWARD STREET, SAID POINT PERPENDICULARLY DISTANT 423.00 FEET, MORE OR LESS, NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF SECOND STREET; THENCE ALONG SAID NORTHWESTERLY LINE OF HOWARD STREET SOUTH $46^{\circ}18'10''$ WEST 128.90 FEET MORE OR LESS, TO THE MOST NORTHEASTERLY EDGE OF RAMP, AS CONSTRUCTED; THENCE ALONG SAID EDGE OF RAMP, IN ALL OF ITS COURSES, WESTERLY ALONG A CURVE FROM WHICH THE RADIUS BEARS SOUTH $19^{\circ}36'03''$ WEST, HAVING A RADIUS OF 2274.00 FEET, THROUGH A SUBTENDED ARC OF $1^{\circ}14'51''$ AN ARC LENGTH OF 49.51 FEET; THENCE ALONG A NON-TANGENT CURVE FROM WHICH THE RADIUS BEARS NORTH $33^{\circ}15'06''$ EAST, HAVING A RADIUS OF 92.33 FEET, THROUGH A SUBTENDED ARC OF $15^{\circ}56'56''$, AN ARC LENGTH OF 25.70 FEET; THENCE NORTH $72^{\circ}41'50''$ WEST 16.91 FEET; THENCE ALONG A NON-TANGENT CURVE FROM WHICH THE RADIUS BEARS SOUTH $21^{\circ}54'53''$ WEST, HAVING A RADIUS OF 2274.00 FEET, THROUGH A SUBTENDED ARC OF $1^{\circ}11'07''$, AN ARC DISTANCE OF 47.04 FEET; THENCE ALONG A TANGENT CURVE, HAVING A RADIUS OF 140.00 FEET, THROUGH A SUBTENDED ARC OF $16^{\circ}33'18''$, AN ARC DISTANCE OF 40.45 FEET, MORE OR LESS TO THE POINT OF BEGINNING.
BEING A PORTION OF ASSESSOR'S BLOCK NO. 3721
COMPRISING 32,015 SQUARE FEET, MORE OR LESS

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

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

PRELIMINARY

TODD A. TILLOTSON
L.S. NO. 8593
LICENSE EXPIRES 12/31/15

DATE: _____

EXHIBIT C

Site Plan

[see attached]

Transbay Transit Center

Natoma St

Outside Face of
Train Box Shoring Wall

Train Box Easement

*PORTION OF
LOT 015A
3192 O.R. 15A*

81-83 Natoma
AB 3721
Lot 108

75 Natoma
AB 3721
Lot 031

77-79 Natoma
AB 3721
Lot 029

Venting
Facilities
Easement

**TRANSBAY PARCEL F
PROPERTY**

**BUS RAMP
PROPERTY**

State Parcel F
AB 3721
Lot 015A

530 Howard
AB 3721
Lot 014

540 Howard
AB 3721
Lot 015

568 Howard
AB 3721
Lot 020

*PORTION OF
LOT 015A
3171 O.R. 484*

*PORTION OF
LOT 015A
2966 O.R. 336*

546 Howard
AB 3721
Lot 016

Controlled Vehicle
Ramp to Lower
Concourse

564 Howard
AB 3721
Lot 019

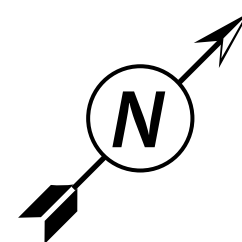
Bike Ramp to
Lower Concourse

Bus Ramp Easement

SITE PLAN PARCEL F PROPERTY

Howard St

Bus Ramp



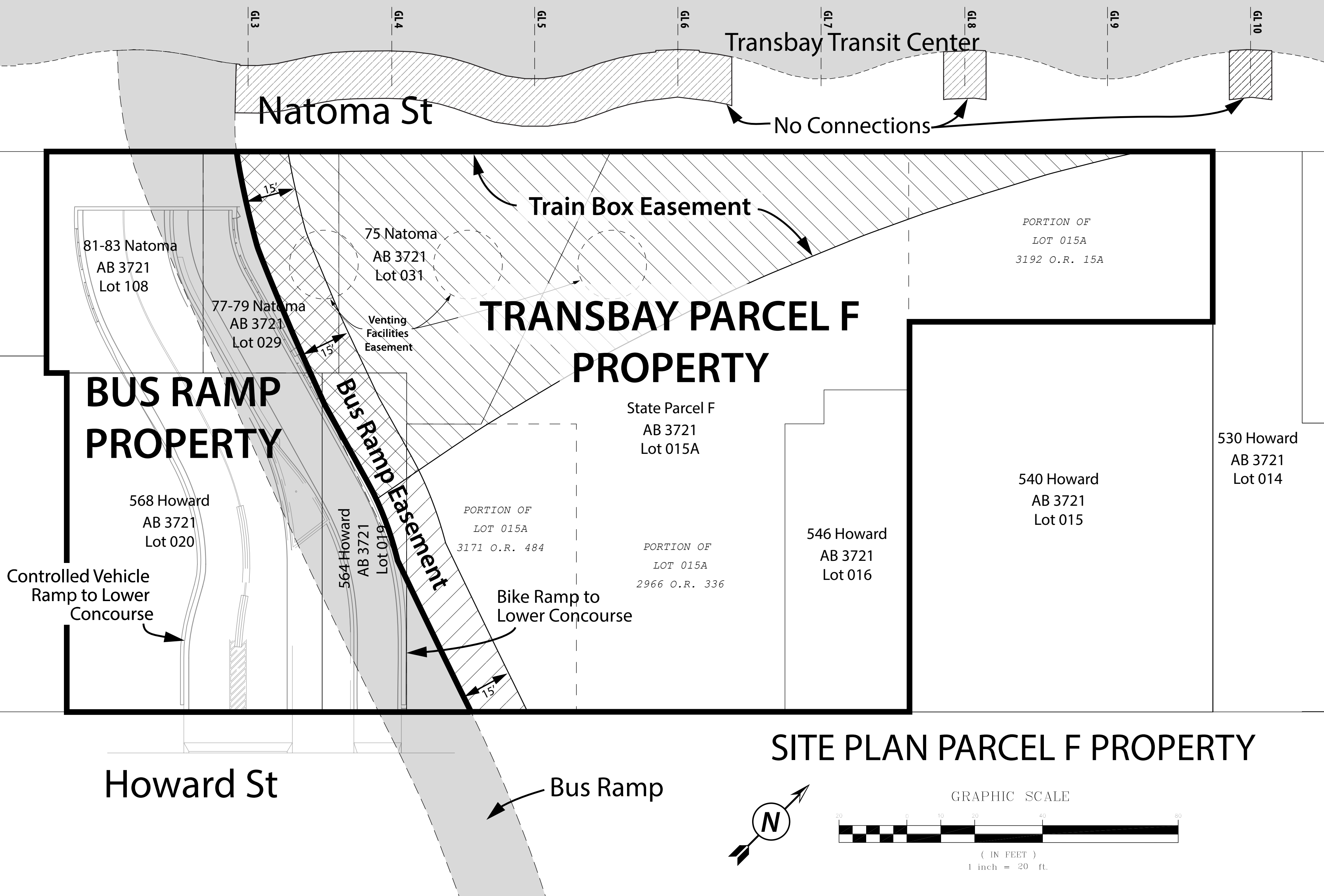
GRAPHIC SCALE

(IN FEET)
1 inch = 20 ft.

Exhibit D

Transit Center Column Lines

[see attached]



Natoma St

Transbay Transit Center

No Connections

Train Box Easement

**TRANSBAY PARCEL F
PROPERTY**

PORTION OF
LOT 015A
3192 O.R. 15A

**BUS RAMP
PROPERTY**

State Parcel F
AB 3721
Lot 015A

PORTION OF
LOT 015A
3171 O.R. 484

PORTION OF
LOT 015A
2966 O.R. 336

546 Howard
AB 3721
Lot 016

540 Howard
AB 3721
Lot 015

530 Howard
AB 3721
Lot 014

568 Howard
AB 3721
Lot 020

564 Howard
AB 3721
Lot 019

Bike Ramp to
Lower Concourse

Controlled Vehicle
Ramp to Lower
Concourse

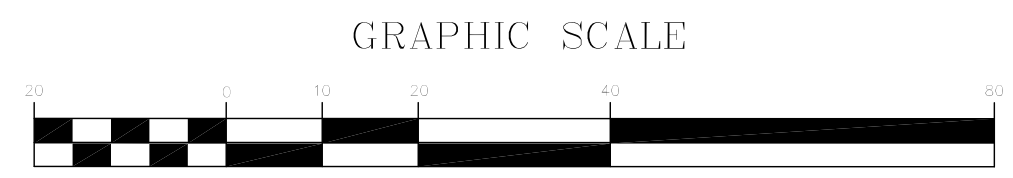
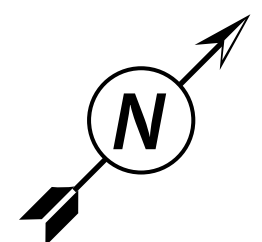
Bus Ramp Easement

Venting
Facilities
Easement

SITE PLAN PARCEL F PROPERTY

Howard St

Bus Ramp



GRAPHIC SCALE

(IN FEET)
1 inch = 20 ft.