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**SECURITY AGREEMENT FOR PARCEL F PROJECT**

This agreement (this “Agreement”), dated and effective as of \_\_\_\_\_, 2015, is 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 and their respective successors and assigns are each individually referred to herein as a “**Party**” and are collectively referred to herein as the “**Parties.**”

**RECITALS**

A. The TJPA is the owner of that certain real property 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) (“**Transit Center Property**”), on or with respect to which the TJPA has constructed, is constructing or will construct a new Transit Center building (“**Transit Center**”) and a rooftop park (“**Rooftop Park**”).

B. Developer and the TJPA have entered into an Agreement of Purchase and Sale for Real Estate dated September 10, 2015 (“**Purchase Agreement**”), by which Developer has agreed to purchase that certain real property owned by the TJPA adjacent to the Transit Center Property and located between Natoma, Howard, First, and Second Streets in San Francisco, California (Assessor’s Block 3721, Lots 015A, 031, 016, 019, 020, and 029) (“**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.**”

C. Following the closing of Developer’s purchase of Parcel F under the Purchase Agreement, Developer intends to develop and construct on Parcel F (i) a high-rise building (the “**Tower**”), and (ii) a pedestrian bridge (the “**Pedestrian Bridge**”) connecting the Tower to the Rooftop Park (Parcel F and improvements constructed thereon, collectively, the “**Project**”).

D. As part of the Purchase Agreement, the Parties have entered into the Parcel F Pedestrian Bridge Easement Agreement (“**Pedestrian Bridge Easement Agreement**”), which, inter alia, establishes easements in favor of Developer and pedestrians in the Tower over the Transit Center Property for the Pedestrian Bridge connection and access to the Rooftop Park and an easement in favor of the TJPA and the Public over the Pedestrian Bridge (“**Bridge Easements**”). The Pedestrian Bridge Easement Agreement contemplates that Developer will complete construction of the Pedestrian Bridge prior to the time Developer obtains a certificate of occupancy for the Tower (or any other high rise building on Parcel F).

E. Also as part of the Purchase Agreement, the Parties have entered into the Parcel F Bus Ramp Easement Agreement (“**Bus Ramp Easement Agreement**”), which, inter alia, establishes an easement in favor of the TJPA over a fifteen (15) foot strip of Parcel F adjacent to the TJPA’s elevated bus ramp connecting the Bay Bridge to the Transit Center (the “**Bus Ramp Easement Area**”).

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F. Also as part of the Purchase Agreement, the Parties have entered into the Easements for Transbay Subsurface Facilities and Transbay Venting Facilities (“**Train Box Easement Agreement**”), which, inter alia, establishes an easement in favor of the TJPA over a portion of Parcel F for the TJPA’s train box (“**Transbay Subsurface Facilities**”) and venting facilities (“**Transbay Venting Facilities**”) located under and on Parcel F (the Pedestrian Bridge Easement Agreement, the Bus Ramp Easement Agreement, and the Train Box Easement Agreement collectively, the “**Easement Agreements**”).

G. The Easement Agreements require Developer to provide for the safety and security of the Project, including the Pedestrian Bridge and the Bus Ramp Easement Area, as well as the Transbay Venting Facilities (collectively, the “**Secured Areas**”) in accordance with this Agreement. “**Safety**” and “**security**” or words of similar import shall mean such level of safety and security as may be achieved through the procedures set forth in this Agreement, and shall not mean any assurance or guarantee that no injury, damage, or loss will occur. Terms used in this Agreement, but not defined herein, shall have the meanings ascribed to them in the Easement Agreements.

H. Developer and the TJPA both acknowledge that the security of the Transit Center and the Project, including the Secured Areas, would be materially compromised by the disclosure of Exhibits A, B, or C to this Agreement or any security information required to be provided to the TJPA under this Agreement, except for disclosures to the extent provided in Section 14 below.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the TJPA and Developer agree to cooperate in providing security for the Transit Center and the Project on the following terms:

### **1. DEVELOPER’S SECURITY CONSULTANTS AND SECURITY DESIGNS**

(a) In designing and constructing the Project, including the Tower and the Secured Areas, Developer shall retain a qualified and experienced security consultant, approved by the TJPA, which approval shall not be unreasonably withheld, conditioned or delayed (“**Developer Security Consultant**”), to recommend safety and security design measures for the Project, including the Tower and the Secured Areas, to appropriately maximize the protection of the public from injury due to human caused and natural events including earthquake, flood, wind, precipitation, building movement, terrorist attack, sabotage, civil unrest or civil disturbances, accidents, and criminal acts. The measures described in Exhibit A shall be incorporated into the design and construction of the Project. In addition, the Developer Security Consultant shall recommend measures for the Secured Areas that include protective design features and situational awareness systems deemed appropriate by the Developer Security Consultant for the development of a safe and secure Project. The Developer Security Consultant shall perform a Risk Vulnerability Assessment (“**RVA**”) at an early stage in the design process for the Project so that its recommendations can be considered for incorporation into the final design of the Project. The Developer Security Consultant shall submit its recommendations in confidence to Developer. Developer shall then adopt appropriate design measures to be incorporated in the Project (which shall include, but are not limited to, all of the design and operational measures described in Exhibit A). Developer shall then oversee the incorporation of the adopted measures

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in the design, construction, and operation of the Project. Those measures shall take into account and be coordinated with the safety and security program for the Transit Center.

(b) Developer, in consultation with the Developer Security Consultant, shall ensure that experts having subject matter expertise as to all of the subjects listed in Exhibit B are retained except to the extent that Developer determines that such subject matter expertise is within the capabilities of or available in-house to Developer and the Developer Security Consultant. Developer shall provide the TJPA with the names and resumes of the person or persons (whether in-house or retained) having the required expertise in each of the subjects listed in Exhibit B.

(c) Throughout the design process for the Project, Developer and the Developer Security Consultant shall meet and confer with the Chief Security Officer of the TJPA and the security consultant of the TJPA regarding the security design for the Project for the purpose of demonstrating to the TJPA that the security design features required to be implemented by Developer under this Agreement are incorporated into the Project design, including the Tower and the Secured Areas. To ensure that the confidentiality of the security information is protected, such information shall to the maximum extent feasible be provided orally, and any documents containing such information that are used in connection with the meeting shall be returned to the Party providing the documents at the conclusion of the meeting, or shall be subject to appropriate controls to protect confidentiality as may be agreed upon by the Parties in their respective sole discretion. Any exchange of written communications between the Parties pertaining to the meeting shall not contain or describe the confidential information presented at the meeting, except pursuant to and in accordance with appropriate controls to protect confidentiality as may be agreed upon by the Parties in their respective sole discretion.

## **2. DEVELOPER'S SECURITY OPERATIONS**

(a) Throughout the design process for the Project, Developer and the Developer Security Consultant shall meet and confer with the Chief Security Officer of the TJPA (or its designee) regarding operational measures for the Secured Areas to appropriately maximize the protection of the public from injury due to human and natural causes including earthquake, flood, wind, precipitation, building movement, terrorist attack, sabotage, civil unrest or civil disturbances, accidents, and criminal acts. The Developer Security Consultant shall submit its recommendations for operational measures for the Secured Areas in confidence to Developer and the TJPA's Chief Security Officer. The TJPA's Chief Security Officer, may, but is not required to, comment on the recommendations within ten (10) business days, and Developer may, but is not required to, incorporate the comments of the TJPA's Chief Security Officer, provided that Developer's operational measures for the Secured Areas otherwise comply with this Agreement. Following the expiration of ten (10) business days, Developer shall adopt appropriate security measures for the operation of the Secured Areas and provide a copy of the security measures to the TJPA Chief Security Officer. Such security measures for the operation of the Secured Areas shall be coordinated with the safety and security program for the Transit Center and shall be consistent with the security management policies described in Exhibit C.

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(b) In consultation with the Developer Security Consultant and the Chief Security Officer of the TJPA, Developer and the TJPA shall enter into a mutual aid and assistance agreement (“**Mutual Aid Agreement**”) containing terms and conditions under which the Parties shall cooperate and provide resources and assistance to each other in the event of an actual or threatened emergency involving the Transit Center Property, the Transit Center or the Project, including, without limitation, provisions providing for the entry and access to the Transit Center Property, the Transit Center or the Project by the authorized security personnel of each Party where necessary to mitigate the effects of such actual or threatened emergency. The Parties’ approval of the terms of the Mutual Aid Agreement shall not be unreasonably withheld, conditioned or delayed. The foregoing notwithstanding, the Mutual Aid Agreement shall (i) be signed by both Parties prior to the first anniversary of the date of the initial occupancy of persons conducting business or living in the Tower, (ii) include provisions substantially similar to the provisions contained in Sections 7, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, and 26 of this Agreement; (iii) provide that neither Party shall evacuate persons or property through the property of the other Party in an emergency unless the Parties mutually agree; (iv) not interfere with the use of the Project for its intended commercial or residential purpose; and (v) not impose unreasonable costs on the Parties. The other provisions of this Section 2(b) notwithstanding, in the event the Parties are unable to agree on the terms and conditions of the Mutual Aid Agreement prior to the first anniversary of the date of the initial occupancy of persons conducting business or living in the Tower, (A) the sole remedy of the Parties shall be to compel binding arbitration of the terms and conditions of the Mutual Aid Agreement pursuant Section 2(c) below, and (B) consistent with the provisions of this Section 2(b) Developer shall not be prevented from entering into any leases or sale of all or any portion of the Project during the pendency of such arbitration.

(c) Any dispute, controversy, or claim arising out of Section 2(b) of this Agreement shall be determined and resolved by arbitration under the provisions of the Code of Civil Procedure or such law then in force in California governing arbitration, with any rules of procedure not set out in such law to be established by a professional arbitration association. Judgment upon any arbitration award may be entered in any court of competent jurisdiction. Each party to such arbitration shall bear its own attorneys’ fees and other costs of arbitration. The fees of any neutral arbitrator(s) shall be borne equally by the parties.

### **3. ALTERNATE EQUIPMENT OR MEETING FREQUENCIES**

The provisions of Section 1 above notwithstanding, Developer may, in its sole discretion, use other equipment than that specified in Exhibit A, but only if such other equipment can be technically proven to meet or exceed the performance requirements for the specified equipment set forth in Exhibit A. If, pursuant to this Section 3, such other equipment is used by Developer, such other equipment shall automatically be deemed to be added onto Exhibit A, as applicable, for purposes of this Agreement. Notwithstanding anything to the contrary in this Agreement or in Exhibit A, in no event shall Developer be required to incorporate any measures in the design and construction of the Secured Areas or the Project that conflicts with or is prohibited by any laws applicable to the project, including without limitation, any building or fire codes, planning or zoning codes, State, Federal, or local requirements relating to accessible design (“**ADA**”), or conditions of approval imposed on the Project by the City. The provisions of Sections 1 and 2

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notwithstanding, on the mutual agreement of the Parties the frequencies for meetings provided in Exhibit A or Exhibit B, as applicable may be altered and such relevant exhibit(s) shall be deemed revised accordingly.

### 4. SECURITY MEETINGS AND REPORTS

(a) Commencing on the Effective Date and ending on the date of completion of construction of the Project, Developer shall provide the TJPA with a written, monthly security report: (a) describing Developer's progress in obtaining site and building permits, progress in the preparation of construction drawings, and progress regarding construction of the Project, until construction of the Project is complete, (b) identifying Developer's commercial tenants for pre-leased space and leased space and the purchasers of residential units in the Project (provided, however, that such disclosure shall not be required for any tenant until initial occupancy by the tenant if Developer is prevented from such disclosure by a confidentiality agreement required by the particular tenant), and (c) describing all significant security incidents that have occurred since the prior month's report was prepared. Such reports and the information contained therein are proprietary to Developer and shall be held in confidence by the TJPA, subject to Section 14 of this Agreement.

(b) Commencing upon the completion of the construction of the Project, Developer or its designated security officer ("**Developer Security Officer**") and the Chief Security Officer for TJPA shall conduct monthly security meetings to exchange information regarding the security of the Transit Center and the Project. Developer or the Developer Security Officer and the Chief Security Officer for TJPA shall exchange at such meeting (or in such other manner as they may mutually agree) copies of all reports of significant security incidents for the preceding one-month period for the Transit Center and the Project. Such reports and the information contained therein are proprietary to the TJPA and Developer and shall be held in confidence subject to Section 14 of this Agreement.

### 5. TRAINING PROGRAMS

Developer shall design and conduct training programs for security personnel for the Secured Areas.

### 6. SECURITY OPERATIONS CENTERS

In circumstances where this Agreement provides that any equipment or systems to be provided by Developer are to be connected to the Transit Center or the Transbay Transit Center Security Operations Center ("**TTC SOC**"), the Parties shall cooperate to identify and provide agreed upon points of connection from Parcel F and the Transit Center for the extension of conduit under Natoma Street to connect the TTC SOC to the Parcel F Tower Security Operations Center ("**PFT SOC**"); provided, however, that the Parties may agree that the TTC SOC and PFT SOC may be connected through a reliable and secure wireless system. If Developer does not provide a wireless connection for the TTC SOC and PFT SOC, Developer shall be solely responsible at its expense to provide the conduit and cable under Natoma Street for any hard-wired connection between the PFT SOC and the TTC SOC. Each Party shall be solely

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responsible at its expense to provide such equipment as may be required on the Party's property to connect the TTC SOC and PFT SOC and to use the data or other signal from the other Party's Security Operations Center.

### 7. NO LIABILITY OR INDEMNITY FOR CLAIMS REGARDING FAILURE OF SECURITY

Anything to the contrary contained in this Agreement or the Easement Agreements notwithstanding (but without limiting Developer's obligations to provide insurance under Section 10(a) of this Agreement and the Easement Agreements), 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 7 shall be construed as a waiver of either Party's rights and remedies under Section 20 for breaches of or defaults under this Agreement or rights to enforce the provisions of the Agreement through specific performance. Notwithstanding anything to the contrary in this Agreement, (a) the TJPA shall have no responsibility for providing adequate security to Parcel F and the Project, including the Tower and the Pedestrian Bridge and Bus Ramp Easement Area, which shall be the sole responsibility of Developer; (b) with the exception of and subject to the requirements of Section 22 of this Agreement, Developer shall have no responsibility for providing adequate security to the Transit Center, the Rooftop Park, or the Bus Ramp which shall be the sole responsibility of the TJPA; and (c) the TJPA and Developer shall share responsibility for providing adequate security for the Transbay Venting Facilities.

### 8. EFFECTIVE DATE

This Agreement shall become effective immediately upon its execution by both Parties ("**Effective Date**"). Notwithstanding the foregoing, the obligations of Developer with respect to the operation and security for the Pedestrian Bridge (except for any such obligations that require that Developer incorporate security measures into the design and construction of the Pedestrian Bridge, all of which shall be and become effective on the Effective Date) shall commence immediately upon the opening of the Pedestrian Bridge for use by Developer's tenants, residents, and invitees or by the public. Notwithstanding the first sentence of this Section, the obligations of Developer with respect to the operation and security for the Bus Ramp Easement Area and Transbay Venting Facilities shall commence immediately upon the expiration of the Reservation Agreement between the TJPA and Developer ("**Reservation Agreement**") providing the terms and conditions for the TJPA's exclusive use of Parcel F for the period from Closing on the sale of Parcel F to Developer through no later than December 31, 2016.

### 9. DEVELOPER'S ADDITIONAL SECURITY

Developer may provide security in addition to the security required under this Agreement; provided, however, that the additional security does not interfere with or diminish Developer's obligations under this Agreement, interfere with or diminish the TJPA's security

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operations for the Transit Center, or cause or result in any failure to meet the technical requirements of this Agreement.

### 10. INSURANCE AGAINST TERRORIST ATTACK

(a) At the earliest practical opportunity, but in no event later than ninety (90) days after issuance of the last addendum to the site permit for the Project, Developer and/or its insurer shall apply to the Under Secretary for Science and Technology of the Department of Homeland Security or such other official as may be designated by applicable statutes or regulations (“**Under Secretary**”) for designation of the Tower and the Tower’s safety and security plan as a Qualified Anti-Terrorism Technology under the Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (“**SAFETY Act**”), 6 U.S.C. Sections 441 et seq. and 6 C.F.R. Part 25 that would be effective as of the earliest date permitted under the SAFETY Act. In addition, Developer and/or its insurer shall, at the earliest time permitted under the SAFETY Act, apply to the Under Secretary for certification of the Tower’s safety and security plan as an Approved Product for Homeland Security under the SAFETY Act. Developer shall maintain liability insurance covering third party claims for damages from a terrorist attack on Parcel F up to the limits required by the United States Government under the SAFETY Act. Developer shall use commercially reasonable efforts to cause the insurance policy Developer obtains under the SAFETY Act to provide that the insurer will indemnify and defend the TJPA, its member agencies, including the City and County of San Francisco, and the State of California and their respective heirs, legal representatives, successors and assigns, and each of them (collectively and individually, “**Indemnified Governmental Parties**”), and Developer and its lenders and investors and their respective heirs, legal representatives, successors and assigns, and each of them (collectively and individually, “**SAFETY Act Indemnified Parties**”) from and against any and all third-party liability claims which are covered by such policy, up to such limits. The obligation of Developer to obtain such a policy shall be conditioned upon the availability of such a policy in the marketplace from a carrier whose financial circumstances and reputation provide assurance that it can perform its obligations under the policy as and when required and the cost of such policy is available at commercially reasonable rates. At least six (6) months prior to the expiration of any designation (and certification), Developer shall reapply to the United States Government for continued designation (and certification).

(b) If the insurer providing liability coverage to Developer under Section 10(a) cannot by law provide the coverage to the TJPA required in Section 10(a), then Developer may request a rescission of any certification under the SAFETY Act and if such rescission is granted and Developer is not obligated to purchase the policy required by Section 10(a) Developer shall be required to purchase and maintain in force the liability insurance policy described in this Section 10(b). In addition, and without limiting the foregoing, from the date on which Developer starts steel erection for the Tower and continuing until certification, if any, under the SAFETY Act is received as provided in Section 10(a) and Developer obtains, if at all, the liability insurance described in Section 10(a), Developer shall be required to purchase and maintain in force the liability insurance policy described in this Section 10(b). Subject to the foregoing limitations, Developer shall purchase and maintain in force a policy of liability insurance at a commercially reasonable annual premium for a commercially reasonable limit providing that the insurer will indemnify, protect, defend and hold harmless the SAFETY Act Indemnified Parties

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from and against any and all claims, demands, losses, liabilities, damages (excluding consequential damages), costs and expenses (including reasonable attorneys' fees and costs, and consultants' fees and costs) of whatever kind or nature incurred by the SAFETY Act Indemnified Parties ("**Losses**") arising out of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person that may occur on or adjacent to Parcel F that is caused by terrorist attack against or sabotage of any improvements on Parcel F. If claims covered by such policy exceed the limits thereof, proceeds available shall be applied on an equitable basis among the parties insured or entitled to the benefit of such policy. Developer shall provide a copy of such policy or a certificate or other reasonable evidence of the existence thereof to the TJPA promptly upon obtaining any such policy or a renewal thereof. The obligation of Developer to obtain such a policy shall be expressly conditioned upon the availability of such a policy in the marketplace from a carrier whose financial circumstances and reputation provide assurance that it can perform its obligations under the policy as and when required.

(c) Anything to the contrary contained in this Section 10 notwithstanding, but without limiting the obligations of Developer to apply for the designation and certification described in Section 10(a) within the time periods required for such applications in Section 10(a), Developer shall not be required to obtain a liability policy pursuant to Section 10(a) which has an effective date prior to the date of the first certificate of occupancy for the Project, or for any period after which the Tower or the Pedestrian Bridge cease to exist for any reason.

### **11. AMENDMENTS**

This Agreement may be amended or modified only by a written instrument executed by the TJPA and Developer.

### **12. 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.

### **13. 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.

### **14. CONFIDENTIALITY**

Exhibits A, B, and C to this Agreement are intended by the Parties to be confidential and privileged. Neither Party will disclose the Exhibits, the contents of the Exhibits, or documents



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and information exchanged under this Agreement, to any third party, except: (i) to the extent required by law; (ii) where the Parties agree in writing that disclosure is in the interest of the security of the Project or the Transit Center; (iii) to actual and prospective transferees of all or any part of the interest of the TJPA in the Transit Center or the direct or indirect interest of Developer in Parcel F; (iv) to actual and prospective lenders of Developer; (v) to consultants, lawyers, accountants and advisers to the TJPA or Developer or their respective members or beneficial owners; and (vi) to tenants and residents in the Project and the TJPA, but only where disclosure of the Exhibits to this Agreement or documents and information exchanged under this Agreement is necessary to effectively implement this Agreement. Where a Party contends that disclosure of this Agreement, the contents of the Agreement, or documents and information exchanged under this Agreement is required by law, the Party so contending shall (a) promptly notify the other Party of the existence and scope of such requirement for disclosure and (b) cooperate with the other Party in its efforts to seek a protective order or otherwise resist or narrow the scope of the required disclosure on legally available grounds. The Parties agree that each Party's design for their respective buildings is proprietary to that Party.

### **15. SUCCESSORS AND ASSIGNS; RUNNING WITH THE LAND; THIRD PARTY BENEFICIARY**

This Agreement shall inure to the benefit of and bind the respective successors and assigns of the TJPA and Developer. Following any sale or transfer of title to any part of a Parcel owned by either the TJPA or Developer (except for Condominium Owners as defined in the Pedestrian Bridge Easement Agreement), the terms "TJPA" and "Developer" shall be deemed to refer to the successors and assigns of the transferor following such transfer. It is the intent of the Parties that each and all of the covenants, obligations, 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 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 Residential Owners and except to the extent otherwise stated herein). Each and all of the 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 this Agreement to the transferee and require that the transferee assign its rights and obligations under this Agreement to any and all subsequent transferees of title.

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.

## 16. 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. “**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.

(b) Validity of Lien. “Owner” 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. No breach or violation or threatened breach or violation of any covenant, obligation, condition, or restriction contained in this Agreement 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, obligations, conditions, and restrictions 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. “**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. 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 five (5) 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 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

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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 reasonably required to prosecute such cure to completion. The other provisions of this Section 16(c) notwithstanding, 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. 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 16(d) below, Mortgagee's cure periods under this Subsection 16(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) five (5) days in the event of a breach of this Agreement, 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 16 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.

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(e) Amendments. The TJPA agrees not to unreasonably withhold, condition or delay its consent to amendments to this Section 16 required by Mortgagees to protect their rights as Mortgagees under this Section 16, provided, however, that such amendments are substantially consistent with the provisions of this Agreement and the Easement Agreements and do not materially diminish the TJPA's rights under this Agreement or the Easement Agreements. Any Amendment to this Agreement shall be subject to Section 11.

(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.

### 17. 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 1, 2, 3, 6, 10 and 22 of this Agreement and under Exhibits A, B, and C to this Agreement, and if any such obligation has not been completed, specifying the obligation which has not been completed; (iii) whether, to the knowledge of the Party to whom the request has been directed, this Agreement has been modified or amended in any way, and if it has been so modified or amended, stating the nature of such modification or amendment; and (iv) whether to the knowledge of the Party to whom the request has been directed, this Agreement is in full force and effect as of the date of the estoppel certificate.

### 18. FORCE MAJEURE

If any Party 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.

**19. 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 of 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.

**20. 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 five (5) 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 the right to actual damages (subject to proof)Nothing in this Section 20 shall preclude entry into the Tower in the case of an actual or threatened emergency in accordance with, and subject to, the terms and conditions of the Mutual Aid Agreement. 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 other provisions of this Section 20 notwithstanding, neither Party shall be liable to the other Party for consequential damages. A default by any Party under the Easement Agreement shall not, by itself, constitute a default by such Party under this Agreement.

**21. ASSIGNMENT; EFFECT OF TRANSFER**

Anything else in this Agreement to the contrary notwithstanding, direct or indirect interest 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 that either Party transfers or otherwise conveys its entire interest in its Parcel, such Party shall, as to the other Party, thereupon be released and discharged from any and all obligations in connection with such Parcel arising under this Agreement with respect to the period after such transfer or conveyance, but shall remain liable for all monetary 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

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note, mortgage, or deed of trust agreement between the Party 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 Parcel F 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.

## **22. PROTECTION OF TRANSIT CENTER AND TOWER DURING CONSTRUCTION.**

To the extent reasonably feasible, Developer and the TJPA shall place or cause to be placed effective temporary pedestrian and vehicle interdiction barriers between the Transit Center and the Tower to protect both the Transit Center and Tower construction sites and/or the completed Transit Center or Project from unauthorized entry and damage from the other Party's construction site. Such barriers shall be maintained at all times from the beginning of steel erection for the Tower until completion of construction of the shell of the Tower.

## **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. ENTIRE AGREEMENT**

This Agreement (including the Exhibits), the Reservation Agreement, and the Easement Agreements contain the entire agreement between the Parties with respect to safety, security, counter-terrorism, crowd control, SAFETY Act and liability insurance for terrorist acts for the

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Transit Center and the Project and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. Where the Easement Agreements provide that a safety or security obligation of a Party shall be governed by this Agreement, the scope of such obligation shall be determined by the specific provisions of this Agreement, notwithstanding any more general or otherwise different description of such obligation in the Easement Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to the subject matter described in the first sentence of this Section 24 are superseded in 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. 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

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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.

**26. PERSON**

For avoidance of doubt, the term “person” as used in this agreement includes, without limitation, any private person, corporation, limited liability company, partnership, joint venture, business entity, business trust, association or other private organization or private entity, or any governmental entity or agency.

**27. WAIVER OF CLAIMS**



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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, construction, installation, operation, use, inspection, maintenance, replacement, repair, or alteration of security equipment and devices on or in Parcel F; 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

**28. 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, other than a dispute covered by Sections 2.b and c, 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

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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.

**[NO FURTHER TEXT ON THIS PAGE]**

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IN WITNESS WHEREOF, this Agreement has been executed and delivered 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

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**EXHIBITS A, B, AND C ARE CONFIDENTIAL AND ARE NOT ATTACHED. THEY  
WILL BE DISCLOSED TO THE HIGHEST BIDDER/BUYER AFTER TJPA BOARD  
APPROVAL OF THE PURCHASE-SALE OF PARCEL F TO THE HIGHEST  
BIDDER/BUYER**

Exhibits  
Confidential Security Agreement  
Parcel F