

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105  
Attn.: Zachary S. Finley

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**AGREEMENT NOT TO ENCUMBER OR TRANSFER PROPERTY**

THIS AGREEMENT NOT TO ENCUMBER OR TRANSFER PROPERTY (this “**Agreement**”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2014, by and between the TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created pursuant to an agreement among the City and County of San Francisco, the Alameda-Contra Costa Transit District and the Peninsula Corridor Joint Powers Board (Caltrain) and under the California Joint Exercise of Powers Act, codified at California Government Code Sections 6500 *et seq.* (“**Borrower**”), and GOLDMAN SACHS BANK USA, as collateral agent on behalf the Secured Parties (as defined in the below-described Credit Agreement) (together with its successor and assigns in such capacity, “**Collateral Agent**”).

**RECITALS:**

A. Pursuant to that certain Credit Agreement, dated as of the date hereof (as amended, restated, supplemented, extended or otherwise modified from time to time and as refinanced, refunded or replaced from time to time, the “**Credit Agreement**”), by and among Borrower, the financial institutions from time to time party thereto, as lenders (“**Lenders**”), and Goldman Sachs Bank USA, as Sole Lead Arranger, Sole Lead Bookrunner, Syndication Agent, Administrative Agent and Collateral Agent, Lenders have agreed to extend a senior secured term loan facility (the “**Term Facility**”) to Borrower in an aggregate principal amount of \$171,000,000.

B. Borrower’s Obligations (as defined in the Credit Agreement), including without limitation the repayment of certain loans made by Lenders under the Term Facility (“**Loans**”), are secured by, among other things, a pledge by Borrower of the Gross Sales Proceeds (as referenced in the below-described Option Agreement) from the disposition of a portion of that certain real property as more particularly described on Exhibit A hereto (the “**Property**”) and commonly known as Transbay Parcels O, O’, and O”. The Credit Agreement, this Agreement and all other Credit Documents (as defined in the Credit Agreement) are referred to collectively herein as the “**Documents**.”

C. Pursuant to that certain Option Agreement for the Purchase and Sale of Real Property, dated as of January 31, 2008 (the “**Original Option Agreement**”), by and among the City and County of San Francisco, a municipal corporation (the “**City**”), Borrower, and the former Redevelopment Agency of the City and County of San Francisco, a public body corporate and politic of the State, established pursuant to the Community Redevelopment Law of the State of California (Health and Safety Code Sections 33000 *et seq.*) (“**Former Agency**”), Borrower and City granted the Former Agency an option to purchase the Property (the “**Option**”). The Office of Community Investment and Infrastructure, acting as the Successor Agency to the Former Agency (“**Agency**”), is successor in interest to the Option and the Former Agency’s rights and obligations under the Option Agreement. Pursuant to that certain First Amendment to Option Agreement, dated as of [\_\_\_\_\_] (the “**Option Agreement Amendment**”); the Original Option Agreement, as amended by the Option Agreement Amendment, is referred to herein as the “**Option Agreement**”), the City and the Agency consented to the Subordination of Option (as defined below) as to the Property, this Agreement and related matters.

D. Pursuant to certain affordable housing requirements (the “**Transbay Affordable Housing Obligation**”) described in Section 5027.1 of the California Public Resources Code, the Redevelopment Plan for the Transbay Redevelopment Project Area, approved by Ordinance No. 124-05, adopted by the Board of Supervisors of the City and County of San Francisco on June 21, 2005, and Ordinance No. 99-06, adopted by the Board of Supervisors of the City and County of San Francisco on May 9, 2006 (the “**Redevelopment Plan**”), and that certain Transbay Redevelopment Project Implementation Agreement, dated as of January 20, 2005, between the Borrower and the Former Agency, and finally and conclusively determined by the California Department of Finance to be an enforceable obligation under Redevelopment Dissolution Law, Part 1.85 (commencing with Section 34170) of the California Health and Safety Code (the “**Redevelopment Dissolution Law**”), the Project Area (as defined in the Redevelopment Plan) must be developed with a sufficient number of units of affordable housing necessary to achieve the Transbay Affordable Housing Obligation.

E. The Agency’s current development plans for the Property pursuant to the Redevelopment Plan call for the development of affordable and market rate housing on the approximate northern one-third portion of the Property generally depicted as “Block 4” on Exhibit 4 to the Redevelopment Plan (“**Redevelopment Block 4**”), with the remainder of the Property (the “**Remainder Parcels**”) to be developed with public rights of way, a park, and affordable housing. Based on current projections of the housing units to be built within the Project Area, assuming Redevelopment Block 4’s projected capacity of 550 units total, up to 45% of those units, or 248 units, would need to be affordable units to achieve compliance with the Transbay Affordable Housing Obligation. Nothing in this Agreement shall affect this Transbay Affordable Housing Obligation with respect to the Property .

F. Pursuant to that certain Subordination of Option Agreement for the Purchase and Sale of Real Property, dated as of the date hereof (as amended, restated, supplemented, or otherwise modified from time to time, the “**Subordination of Option**”), by and among Borrower, Agency and Collateral Agent with respect to the Property, and acknowledged by the City, Agency and Borrower have agreed, *inter alia*, that the Option Agreement, the Option and all rights and privileges of Agency thereunder with respect to the Property are and shall at all times continue to be subject and unconditionally subordinate in all respects to the lien of this

Agreement and the rights, privileges, and powers of Collateral Agent and Secured Parties hereunder upon the terms set forth in the Subordination of Option.

G. Lenders require as a condition to extending credit to Borrower under the Term Facility that Borrower enter into this Agreement to restrict certain rights of Borrower relative to the Property as set forth below.

AGREEMENT:

For good and valuable consideration the parties hereto agree as follows:

1. General Prohibition on Transfer and Encumbrance. Borrower hereby covenants with Collateral Agent that during the term of this Agreement, except: (a) as otherwise set forth in Section 2 of this Agreement or (b) as permitted under Section 6.4 of the Credit Agreement, Borrower shall not assign, mortgage, pledge, encumber, sell, exchange, convey, hypothecate, dispose of or otherwise transfer the Property, or any portion of, or any interest in, the Property without the prior written consent of Collateral Agent, nor shall Borrower allow any voluntary or involuntary lien or other encumbrance to exist on or be placed on record affecting Borrower's interest in the Property without the prior written consent of the Collateral Agent.

2. Exercise of Option. During the term of this Agreement, and so long as an Event of Default (as defined in the Credit Agreement) does not exist under the Documents, Collateral Agent agrees upon the terms and subject to the conditions set forth in Sections 6 and 7 of the Subordination of Option to permit Agency to exercise the Option for Redevelopment Block 4 in accordance with the Option Agreement, and to permit Borrower to transfer Redevelopment Block 4 to Agency in connection with such exercise of the Option. Agency shall further have the right to exercise the Option for the Remainder Parcels, and Borrower shall have the right to transfer the Remainder Parcels to Agency, at any time, even if there is an Event of Default under the Documents, so long as prior to such transfer of the Remainder Parcels, (i) Borrower or Agency shall have taken (or caused to be taken) such actions as may be necessary to subdivide the Property into separate legal parcels consisting of Redevelopment Block 4 and the Remainder Parcels and (ii) Borrower shall provide (or cause to be provided) to Collateral Agent, as security for the Obligations, a First Priority Mortgage (as those terms are defined in the Credit Agreement) on Redevelopment Block 4 (the "**Redevelopment Block 4 Mortgage**") and such title insurance policies, opinions and other deliverables with respect to such Mortgage as may be reasonably requested by Collateral Agent (including a subordination by the Agency of the Option for Redevelopment Block 4 to such First Priority Mortgage, which subordination shall be substantially in the form of the Subordination of Option, excluding the references with respect to the Remainder Parcels), as described in Section 5.17 of the Credit Agreement (collectively, the "**Redevelopment Block 4 Mortgage Deliverables**").

3. Lien Rights. All third parties and persons in interest are, by the recordation of this instrument, placed on notice that in the event: (a) any lien or other encumbrance is hereafter placed of record in violation of the terms of this Agreement; or (b) a conveyance or other transfer of any part of the Property shall occur in violation of the terms of this Agreement; then, without the requirement of any action by the parties hereto, this instrument shall constitute a recorded lien

effective from the date hereof, encumbering the Property and securing the full and faithful performance of all Obligations.

4. Affordable Housing. The Property and this Agreement are subject to the Transbay Affordable Housing Obligation, which applies to and passes with the Property and applies to and binds the successors in interest of any owner of the Property. The Property shall be held, transferred, sold and conveyed, subject to the conditions, restrictions, reservations and covenants set forth in Transbay Redevelopment Project Area Declaration of Restrictions, recorded in the Official Records of the City and County of San Francisco on August 4, 2006 as Document No. 2006I224839 (the “**Declaration of Restrictions**”), which include the Transbay Affordable Housing Obligation. In the event of any sale or transfer of the Property, the purchaser or purchasers and their successors and assigns, and the Property, shall continue to be subject to all of the conditions, restrictions and covenants provided in the Declaration of Restrictions; and, consistent with its enforceable obligations under the Redevelopment Dissolution Law, Agency retains full authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on the Property to meet the requirements of the Transbay Affordable Housing Obligation and implement the Redevelopment Plan.

5. Covenants Run With The Land. It is intended that the covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and shall bind every person having any interest in the Property and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns, heirs, and legal representatives.

6. GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING, WITHOUT LIMITATION, ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK; PROVIDED THAT WITH RESPECT TO THE MATTERS OF CAPACITY, POWER AND AUTHORITY OF BORROWER AND AGENCY, THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN.

7. WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS

WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 11 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE UNDER THE CREDIT AGREEMENT. IN THE EVENT OF LITIGATION, THIS SUBORDINATION. MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

8. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower:

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

With a copy to Borrower's Legal Counsel:

Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102  
Attn: Deborah Miller

**If to Collateral Agent:**

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 8, the term "**Business Day**" shall mean a day on which commercial banks are not authorized or required by law to close in either New York, New York or San Francisco, California.

Any party by notice to the others may designate additional or different addresses for subsequent notices or communications.

9. No Oral Change. This Agreement, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Collateral Agent, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrower and Collateral Agent and their respective successors and assigns forever.

11. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

12. Headings, Etc. The headings and captions of various paragraphs of this Agreement are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

13. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

14. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

15. Attorneys' Fees. In the event that any party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment).

16. Termination. At such time as either (a) the Obligations are paid in full, or (b) both (i) the Property is subdivided into separate legal parcels consisting of Redevelopment Block 4 and the Remainder Parcels and (ii) Borrower provides (or causes to be provided) to Collateral Agent the Redevelopment Block 4 Mortgage and the other Redevelopment Block 4 Mortgage Deliverables, this Agreement and all of Collateral Agent's right, title and interest hereunder shall terminate ("**Termination**"). On or as soon as practicable following the date of Termination, Collateral Agent shall provide a document in form reasonably acceptable to each of Collateral

Agent and Borrower to release the Property from this Agreement, which document Borrower may record in the Official Records of the City and County of San Francisco.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

[Signature page to follow]

IN WITNESS WHEREOF, this Agreement has been duly executed as of the \_\_\_\_ day of \_\_\_\_\_, 2014.

**BORROWER:**

**TRANSBAY JOINT POWERS AUTHORITY,**  
a Joint Powers Agency

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

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2014, before me, \_\_\_\_\_, a Notary Public, 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 of the Notary Public

(Seal)

[SIGNATURES CONTINUED ON FOLLOWING PAGE]



[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

[SIGNATURE PAGE TO AGREEMENT NOT TO ENCUMBER OR TRANSFER  
PROPERTY]

**COLLATERAL AGENT:**

**GOLDMAN SACHS BANK USA**, as Collateral  
Agent

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

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2014, before me, \_\_\_\_\_, a Notary Public,  
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 of the Notary Public

(Seal)

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

[To be attached.]