

PUBLISHED DEAL CUSIP NO. [\_\_\_\_\_]  
PUBLISHED FACILITY CUSIP NO. [\_\_\_\_\_]

**CREDIT AGREEMENT**

dated as of [●], 2014

among

**TRANSBAY JOINT POWERS AUTHORITY,**

**VARIOUS LENDERS,**

and

**GOLDMAN SACHS BANK USA,  
as Sole Lead Arranger, Sole Lead Bookrunner, Syndication Agent,  
Administrative Agent and Collateral Agent**

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**\$171,000,000 Term Loan**

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## CREDIT AGREEMENT

This **CREDIT AGREEMENT**, dated as of [●], 2014 is entered into by and among **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 California Government Code Section 6500 et seq., ("**Borrower**"), the Lenders party hereto from time to time and **GOLDMAN SACHS BANK USA** ("**Goldman Sachs**"), as Syndication Agent (in such capacity, "**Syndication Agent**"), as Administrative Agent (together with its permitted successors in such capacity, "**Administrative Agent**"), as Collateral Agent (together with its permitted successors in such capacity, "**Collateral Agent**") and as Sole Lead Arranger (in such capacity, "**Arranger**") and Sole Lead Bookrunner.

### RECITALS:

**WHEREAS**, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

**WHEREAS**, Lenders have agreed to extend a senior secured term loan facility to Borrower, in an aggregate principal amount not to exceed \$171,000,000, the proceeds of which will be used to fund Eligible Project Costs;

**WHEREAS**, Borrower has agreed to secure all of its Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on the Collateral; and

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

### SECTION 1. DEFINITIONS AND INTERPRETATION

**1.1. Definitions.** The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"**AC Transit**" means the Alameda-Contra Costa Transit District, a special district created under Part 1, Division 10 of the California Public Utilities Code.

"**AC Transit Acknowledgement Agreement**" means the Acknowledgement Agreement, dated as of January 1, 2010, by and between AC Transit and Borrower, as amended, supplemented or otherwise modified from time to time.

"**Additional AC Transit Capital Contributions**" means Tenant Capital Contributions (as defined in the Lease and Use Agreement) made by AC Transit under the Lease and Use Agreement in excess of \$37,200,000 in the aggregate, discounted to 2011 dollars using a 4.5% discount rate (including for purpose of such \$37,200,000 threshold Tenant Capital Contributions (as defined in the Lease and Use Agreement) made by AC Transit prior to the Closing Date but excluding any amounts that constitute Pledged Revenues).



**“Additional AC Transit Capital Contribution Written Direction”** means an irrevocable written direction to be given by Borrower to AC Transit on the Closing Date and acknowledged by AC Transit, substantially in the form of Exhibit H.

**“Additional Project Contracts”** means any contract, agreement, lease and use agreement, letter of intent, understanding or instrument entered into by Borrower after the execution and delivery of this Agreement, providing for the design, construction, testing, start-up, safety, financial services, lease, operation or maintenance of the Project, or otherwise relating to the Project; provided, that a contract or agreement shall not constitute an Additional Project Contract if it (i) is entered into (A) in the ordinary course of business in connection with the furnishing of goods or the performance of services or (B) for necessary Project-related expenditures, (ii) commits Borrower to spend, or is reasonably expected to involve expenditures by Borrower in one contract or a series of related contracts of, no more than \$5,000,000 in the aggregate for any such contract or series of related contracts and (iii) is for a term not exceeding two years.

**“Adjusted Eurodollar Rate”** means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurodollar Rate Loan, the rate *per annum* obtained by dividing (i) (a) the rate *per annum* equal to the rate determined by Administrative Agent to be the London interbank offered rate administered by the ICE Benchmark Administration (or any other person which takes over the administration of that rate) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars displayed on the ICE LIBOR USD page of the Reuters Screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (b) in the event the rate referenced in the preceding clause (a) is not available, the rate *per annum* equal to the offered quotation rate to first class banks in the London interbank market by [●]<sup>1</sup> for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Loan of Administrative Agent, in its capacity as a Lender, for which the Adjusted Eurodollar Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (ii) an amount equal to (a) one minus (b) the Applicable Reserve Requirement.

**“Administrative Agent”** as defined in the preamble hereto.

**“Adverse Proceeding”** means any action, suit, proceeding, hearing (in each case, whether administrative, judicial or otherwise), governmental investigation or arbitration at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of Borrower, threatened against or affecting Borrower, the Project or any other property of Borrower.

**“Affected Lender”** as defined in Section 2.15(b).

**“Affected Loans”** as defined in Section 2.15(b).

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<sup>1</sup> To be completed with the name of a commercial bank in the deal.

“**Affiliate**” means, (a) as applied to any Person (other than Borrower), any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 5% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise and (b) as applied to Borrower, any of the State, the JPA Members or the Successor Agency.

“**Agent**” means each of (i) Administrative Agent, (ii) Syndication Agent, (iii) Collateral Agent, (iv) Bookrunner and (v) any other Person appointed under the Credit Documents to serve in an agent or similar capacity (but excluding TIFIA Collateral Agent and Facility Collateral Agent).

“**Agent Affiliates**” as defined in Section 10.1(b)(iii).

“**Aggregate Amounts Due**” as defined in Section 2.14.

“**Agreement**” means this Credit Agreement, dated as of [●], 2014, as it may be amended, restated, supplemented or otherwise modified from time to time.

“**Annual Capital Contributions**” means the annual capital contributions required to be made by AC Transit pursuant to Section 5.1 of the Lease and Use Agreement using “Passenger Facility Charges” which shall include all passengers facility charges imposed by AC Transit on all passengers riding AC Transit originating and terminating from the Transbay Transit Center upon AC Transit’s commencement of service at the Transbay Transit Center or other sources of funding; provided, however, that the use of federal grant funds for this purpose shall be prohibited.

“**Anti-Corruption Laws**” as defined in Section 4.26.

“**Applicable Margin**” means, for Base Rate Loans and Eurodollar Rate Loans as of any date of determination, the corresponding percentages *per annum* for such date as set forth in the table below:

	<b>Base Rate Loans</b>	<b>Eurodollar Rate Loans</b>
From and including the Closing Date to but excluding the first anniversary thereof:	1.25%	2.25%
From and including the first anniversary of the Closing Date to but excluding the second anniversary of the Closing Date:	1.75%	2.75%
From and including the second anniversary of the Closing Date to but excluding the third anniversary of the Closing Date:	2.25%	3.25%
From and after the third anniversary of the Closing Date:	2.75%	3.75%

**“Applicable Reserve Requirement”** means, at any time, for any Eurodollar Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against “Eurocurrency liabilities” (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities which includes deposits by reference to which the applicable Adjusted Eurodollar Rate or any other interest rate of a Loan is to be determined, or (ii) any category of extensions of credit or other assets which include Eurodollar Rate Loans. A Eurodollar Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on Eurodollar Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

**“Approved Electronic Communications”** means any notice, demand, communication, information, document or other material that Borrower provides to Administrative Agent pursuant to any Credit Document or the transactions contemplated therein which is distributed to Agents or Lenders by means of electronic communications pursuant to Section 10.1(b).

**“Arranger”** as defined in the preamble hereto.

**“Asset Sale”** means, with respect to any Specified Real Property, a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, exclusive license (as licensor or sublicense), transfer or other disposition to, or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of such Specified Real Property.

**“Assignment Agreement”** means an Assignment and Assumption Agreement substantially in the form of Exhibit C, with such amendments or modifications as may be approved by Administrative Agent.

**“Assignment Effective Date”** as defined in Section 10.6(b).

**“Authorized Officer”** means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president, vice president (or the equivalent thereof), chief financial officer or treasurer of such Person; provided that the secretary or assistant secretary of such Person shall have delivered an incumbency certificate to Administrative Agent as to the authority of such Authorized Officer.

**“Available Pledged Revenues”** means any Pledged Revenues that have been deposited in either the Net Tax Increment Revenues Account or the AC Transit Annual Contributions Account and that have not been withdrawn, and are not required to be withdrawn,

from such accounts to make any transfers or payments required by clauses First through Third of Section 5(b) of the TIFIA Collateral Agency Agreement.

**“Bankruptcy Code”** means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

**“Base Rate”** means, for any day, a rate *per annum* equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus ½ of 1% and (iii) the sum of (a) the Adjusted Eurodollar Rate that would be payable on such day for a Eurodollar Rate Loan with a three-month interest period plus (b) the difference between the Applicable Margin for Eurodollar Rate Loans and the Applicable Margin for Base Rate Loans. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

**“Base Rate Loan”** means a Loan bearing interest at a rate determined by reference to the Base Rate.

**“Block 4”** means that portion of the real estate located in City and County of San Francisco Assessor Block 3739 Lot 008 described as “Block 4” in the Redevelopment Plan.

**“Board of Governors”** means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

**“Bookrunner”** means Arranger, in its capacity as sole lead arranger and sole bookrunner under the Commitment Letter.

**“Borrower”** as defined in the preamble hereto.

**“Business Day”** means (i) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or the State of California or is a day on which banking institutions located in either of such states are authorized or required by law or other governmental action to close and (ii) with respect to all notices, determinations, fundings and payments in connection with the Adjusted Eurodollar Rate or any Eurodollar Rate Loans, the term **“Business Day”** means any day which is a Business Day described in clause (i) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

**“Capital Lease”** means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

**“Capitalized Interest Account”** as defined in the Facility Collateral Agency Agreement.

**“Capitalized Interest Required Amount”** means, as of any date of determination, the aggregate amount of interest projected to be payable by Borrower on the entire outstanding principal amount of the Loans through the Maturity Date (after giving effect to

any Interest Rate Agreements entered into by Borrower with respect to the Loans and assuming no prepayments of the Loans are made by Borrower). As of the Closing Date, the Capitalized Interest Required Amount is \$[●].

“**Cash**” means money, currency or a credit balance in any demand or Deposit Account.

“**Certificate re Non-Bank Status**” means a certificate substantially in the form of Exhibit D.

“**CFD**” means a community facilities district to be created within the Redevelopment Area in compliance with the Mello-Roos Community Facilities Act of 1982 and the Redevelopment Plan.

“**City**” means the City and County of San Francisco, California.

“**Closing Date**” means the date on which the Loans are made, which occurred on [●], 2014.

“**Closing Date Certificate**” means a Closing Date Certificate substantially in the form of Exhibit E-1.

“**Closing Date Mortgaged Property**” means, collectively, Parcel F and the MTC Parcels.<sup>2</sup>

“**CM/GC**” means Webcor/Obayashi, a joint venture, as the construction manager and general contractor for the Project.

“**CM/GC Agreement**” means the Construction Manager/General Contractor for Transit Center & Related Structures, dated as of March 12, 2009, between the CM/GC and Borrower, as the same may be amended, supplemented or otherwise modified from time to time to the extent not prohibited by Section 6.10(b)(i).

“**Collateral**” means, collectively, all of the real, personal and mixed property (including Equity Interests) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

“**Collateral Agent**” as defined in the preamble hereto.

“**Collateral Documents**” means this Agreement (insomuch as Section 7.1 creates in favor of Collateral Agent, for the benefit of Secured Parties, a Lien on the Revenue and Proceeds Collateral as security for the Obligations), the TIFIA Collateral Agency Agreement, the Facility Collateral Agency Agreement, the Mortgages, the Subordination of Option Agreements, the Negative Pledge, the Lien Release Price Letter Agreement, the Trust Account Deposit Letter Agreement and all other pledge agreements, security agreements, intercreditor agreements, subordination agreements, collateral agency agreements and other documents, instruments and

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<sup>2</sup> Subject to on-going discussion about reservation for trainbox and related infrastructure.

agreements delivered by or on behalf of Borrower pursuant to this Agreement or any of the other Credit Documents in order to grant to, or perfect in favor of, Collateral Agent, for the benefit of Secured Parties, a Lien on the Collateral as security for the Obligations or to protect or preserve the Lien on the Collateral in favor of, Collateral Agent, for the benefit of Secured Parties, a Lien on the Collateral as security for the Obligations.

**“Collateral-Related Documents”** means the Lease and Use Agreement (but for the purposes hereof shall not include any provisions relating solely to the Lump Sum Payments as described in Section 5.1 thereof), the Implementation Agreement, the TIF Pledge Agreement, the Cooperative Agreement, the Option Agreement, the AC Transit Acknowledgement Agreement, the Additional AC Transit Capital Contribution Written Direction, the State Relinquishment Agreements, the MTC Agreement, TIFIA Collateral Agent Written Direction, the TIF Pledge Letter Agreement, and any and all other agreements, instruments, government approvals or other documents (excluding the Collateral Documents) evidencing, governing or otherwise executed in connection with and affecting in any material respects the Collateral, as any of the foregoing may be amended, supplemented or otherwise modified from time to time to the extent not prohibited by Section 6.10(b)(i).

**“Commitment”** means the commitment of a Lender to make or otherwise fund a Loan, and **“Commitments”** means such commitments of all Lenders in the aggregate. The amount of each Lender’s Commitment is set forth in Appendix A or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Commitments as of the Closing Date is \$171,000,000.

**“Commitment Letter”** as defined in Section 10.20.

**“Community Redevelopment Law”** means the Community Redevelopment Law of the State of California (Health and Safety Code Sections 33000 *et seq.*).

**“Construction Schedule”** means the schedule attached to this Agreement as Schedule 1.1, as the same may be amended, supplemented or otherwise modified from time to time to the extent not prohibited by Section 6.10(b)(iii).

**“Contractual Obligation”** means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

**“Conversion/Continuation Date”** means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

**“Conversion/Continuation Notice”** means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

**“Cooperative Agreement”** means the Cooperative Agreement, dated as of July 11, 2003, by and among the State, the City and Borrower, as the same may be amended,

supplemented or otherwise modified from time to time to the extent not prohibited by Section 6.10(b)(i).

**“CPI”** means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, January 2009 as the base period.

**“Credit Date”** means the date of a Credit Extension.

**“Credit Document”** means any of this Agreement, the Notes, if any, the Collateral Documents and all other documents, certificates, instruments or agreements executed and delivered by or on behalf of Borrower for the benefit of any Agent or any Lender in connection herewith on or after the date hereof.

**“Credit Extension”** means the making of a Loan.

**“Currency Agreement”** means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk associated with Borrower’s operations and not for speculative purposes.

**“Debt Service Subaccount”** means the subaccount in the Parity Permitted Debt Service Account established for the exclusive benefit of Administrative Agent and the Lenders pursuant to the TIFIA Collateral Agency Agreement and TIFIA Collateral Agent Written Direction.

**“Debt Service Reserve Subaccount”** means the subaccount in the Parity Permitted Debt Service Reserve Account established for the exclusive benefit of Administrative Agent and the Lenders pursuant to the TIFIA Collateral Agency Agreement and TIFIA Collateral Agent Written Direction.

**“Debtor Relief Laws”** means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

**“Default”** means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

**“Defaulting Lender”** means, subject to Section 2.19(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Administrative Agent and Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (which conditions precedent, together with the applicable default, if any, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified Borrower or

Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with the applicable default, if any, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by Administrative Agent or Borrower, to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Administrative Agent and Borrower), or (d) Administrative Agent has received notification that such Lender has, or has a direct or indirect parent company that is (i) insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors or (ii) the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding, or a receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its direct or indirect parent company, or such Lender or its direct or indirect parent company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

**“Deposit Account”** means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

**“Disposition and Development Agreement”** means each agreement entered into by the Successor Agency and a private entity in connection with the sale and private development of a State-owned Parcel or portion thereof in furtherance of the Redevelopment Plan.

**“DOF”** means the State of California Department of Finance.

**“Dollars”** and the sign “\$” mean the lawful money of the United States of America.

**“Eligible Assignee”** means any Person other than a natural person that is (i) a Lender, an affiliate of any Lender or a Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), or (ii) a commercial bank, insurance company, investment or mutual fund or other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act) and that extends credit or buys loans in the ordinary course of business; provided, that neither a Defaulting Lender nor Borrower nor any Affiliate of Borrower shall be an Eligible Assignee.



**“Eligible Project Cost”** means amounts in the Project Budget conforming to the definition of 49 USC 5302(a)(1), substantially all of which are paid by or for the account of Borrower in connection with the Project (excluding all costs associated with the construction of the commercial space and rooftop park at the Transbay Transit Center), prior Project expenditures for the period beginning October 15, 2005 and the costs set forth below:

(a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(b) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

(c) capitalized interest necessary to meet market requirements (including amounts deposited in the Capitalized Interest Account), reasonably required reserve funds (including amounts deposited in the Expense Reserve Account), capital issuance expenses (including Transaction Costs), and other carrying costs during construction of the Transbay Terminal Center.

**“Employee Benefit Plan”** means any employee benefit plan which provides benefits similar to those provided by an “employee benefit plan” as defined in Section 3(3) of ERISA and (i) which is or was sponsored, maintained or contributed to by, or is or was required to be contributed by, Borrower, or (ii) with respect to which Borrower has or may have any liability with regard to funding or the provision of compensation or benefits.

**“Environmental Claim”** means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

**“Environmental Laws”** means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to Borrower, the Project Site or any of the Specified Real Property.

**“Equity Interests”** means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and

membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

“**Eurodollar Rate Loan**” means a Loan bearing interest at a rate determined by reference to the Adjusted Eurodollar Rate.

“**Event of Default**” means each of the conditions or events set forth in Section 8.1.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

“**Expense Reserve Required Amount**” means \$550,000.

“**Expense Reserve Account**” as defined in the Facility Collateral Agency Agreement.

“**Facility Collateral Agency Agreement**” means the Collateral Agency Agreement to be executed by Borrower, Administrative Agent, Collateral Agent and Facility Collateral Agent substantially in the form of Exhibit J, as it may be amended, supplemented or otherwise modified from time to time.

“**Facility Collateral Agent**” means [U.S. Bank National Association], in its capacity as the depository and collateral agent for the Capitalized Interest Account and the Lockbox Account pursuant to the Facility Collateral Agency Agreement.

“**FATCA**” means Sections 1471 through 1474 of the Internal Revenue Code (effective as of the date hereof) and any regulations promulgated thereunder.

“**Federal Funds Effective Rate**” means for any day, the rate *per annum* equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to Administrative Agent on such day on such transactions as determined by Administrative Agent.

“**Fee Letter**” means the Fee Letter, dated as of the date hereof, between Arranger and Borrower, as amended, supplemented or otherwise modified from time to time.

“**Financial Officer Certification**” means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of Borrower that such financial statements fairly present, in all material respects, in accordance with GAAP,

the financial condition of Borrower as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

**“Financial Plan”** means the financial plan required to be delivered annually to the TIFIA Lender pursuant to Section 21 of the TIFIA Loan Agreement.

**“First Priority”** means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Permitted Lien.

**“Fiscal Year”** means the fiscal year of Borrower, which as of the Closing Date ends on June 30 of each calendar year.

**“Flood Hazard Property”** means any Specified Real Property located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

**“Flood Certificate”** means a “Standard Flood Hazard Determination Form” of the Federal Emergency Management Agency and any successor Governmental Authority performing a similar function.

**“Flood Program”** means the National Flood Insurance Program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004, in each case as amended from time to time, and any successor statutes.

**“Flood Zone”** means areas having special flood hazards as described in the National Flood Insurance Act of 1968, as amended from time to time, and any successor statute.

**“Funding Notice”** means a notice substantially in the form of Exhibit A-1.

**“Funds Flow Memorandum”** means the funds flow memorandum prepared by Arranger and approved by Borrower setting forth the sources and uses of the proceeds of the Loans to be disbursed on the Closing Date.

**“GAAP”** means, subject to the provisions of Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body.

**“Goldman Sachs”** as defined in the preamble hereto.

**“Government”** means the United States of America and its departments and agencies.

**“Government Obligations”** means (i) direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the Government, (ii) bonds, debentures or notes issued by any of the following United States federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (iii) obligations issued or guaranteed by an agency of the United States of America or Person controlled or supervised by and acting as an instrumentality of the United States of America pursuant to authority granted by the Congress, and (iv) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (i), (ii) and (iii) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated.

**“Governmental Authority”** means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity, officer or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

**“Governmental Authorization”** means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

**“Hazardous Materials”** means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of the Project Site or any of the Specified Real Property or to the indoor or outdoor environment.

**“Hazardous Materials Activity”** means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

**“Hedge Agreement”** means an Interest Rate Agreement entered into with a Lender Counterparty.

**“Highest Lawful Rate”** means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

**“Historical Audited Financial Statements”** means, as of the Closing Date, (i) for the Fiscal Years ending June 30, 2011 and June 30, 2012, the audited financial statements of Borrower consisting of the statement of net assets, the statement of revenues, expenses and

changes in fund net assets, and the statement of cash flows for such Fiscal Years, and (ii) for the Fiscal Year ending June 30, 2013, the audited financial statements of Borrower consisting of the statement of net position, the statement of revenues, expenses and changes in fund net position, and the statement of cash flows for such Fiscal Year, in each case certified by the chief financial officer of Borrower that they fairly present, in all material respects, in accordance with GAAP, the financial condition of Borrower as at the dates indicated and the results of operations and their cash flows for the periods indicated.

**“Implementation Agreement”** means the Transbay Redevelopment Project Implementation Agreement, dated as of January 20, 2005, by and between the Successor Agency and Borrower, as amended, supplemented or otherwise modified from time to time.

**“Increased-Cost Lenders”** as defined in Section 2.20.

**“Indebtedness”** means, as applied to any Person, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services, which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument; (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (vii) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another; (viii) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (ix) any liability of such Person for an obligation of another through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (ix), the primary purpose or intent thereof is as described in clause (viii) above; and (x) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including under any Interest Rate Agreement or Currency Agreement, in each case, whether entered into for hedging or speculative purposes or otherwise.

**“Indemnified Liabilities”** means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses

and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect, special or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions, the syndication of the credit facilities provided for herein or the use or intended use of the proceeds thereof, any amendments, waivers or consents with respect to any provision of this Agreement or any of the other Credit Documents, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral)); (ii) the commitment letter (and any related fee letter) delivered by any Agent or any Lender to Borrower with respect to the transactions contemplated by this Agreement; or (iii) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of Borrower.

**“Indemnitee”** as defined in Section 10.3(a).

**“Insolvent”** means, with respect to any Person, that such Person is (i) generally not paying its debts as they become due unless such debts are the subject of a bond fide dispute or (ii) unable to pay its debts as they become due.

**“Interest Payment Date”** means with respect to (i) any Loan that is a Base Rate Loan, the last Business Day of March, June, September and December of each year, commencing on the first such date to occur after the Closing Date, and the Maturity Date and (ii) any Loan that is a Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan.

**“Interest Period”** means, in connection with a Eurodollar Rate Loan, an interest period of three months, as selected by Borrower in the applicable Funding Notice or Conversion/Continuation Notice, (i) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (ii) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (c) of this definition, end on the last Business Day of a calendar month; and (c) no Interest Period with respect to any portion of Loans shall extend beyond the Maturity Date.

**“Interest Rate Agreement”** means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is for the purpose of hedging the interest rate exposure associated with Borrower’s operations and not for speculative purposes.

**“Interest Rate Determination Date”** means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

**“Internal Revenue Code”** means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

**“Investment”** means (i) any direct or indirect purchase or other acquisition by Borrower of, or of a beneficial interest in, any of the Securities of any other Person; (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by Borrower from any Person, of any Equity Interests of such Person; (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by Borrower to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business and (iv) all investments consisting of any exchange traded or over the counter derivative transaction, including any Hedge Agreement, whether entered into for hedging or speculative purposes or otherwise. The amount of any Investment of the type described in clauses (i), (ii) and (iii) shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

**“Joint Powers Agreement”** means the Joint Powers Agreement, dated as of April 4, 2001, by and among the JPA Members, as amended, supplemented or otherwise modified from time to time.

**“JPA Act”** means the California Joint Exercise of Powers Act, codified at California Government Code Sections 6500 et seq.

**“JPA Members”** means the following members of Borrower under the Joint Powers Agreement: (i) the City; (ii) AC Transit; and (iii) the Peninsula Corridor Joint Powers Board (Caltrain).

**“Labor Event”** as defined in Section 4.18.

**“Lease and Use Agreement”** means the Transbay Transit Center Program Lease and Use Agreement for the Temporary Terminal and Terminal, dated as of September 10, 2008, between Borrower and AC Transit, as the same may be amended, supplemented or otherwise modified from time to time to the extent not prohibited by Section 6.10(b)(i).

**“Lender”** means each financial institution listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment Agreement.

**“Lender Counterparty”** means each Lender, each Agent and each of their respective Affiliates who are counterparty to a Hedge Agreement (including any Person who is an Agent or a Lender (and any Affiliate thereof) as of the Closing Date but subsequently, whether before or after entering into a Hedge Agreement, ceases to be an Agent or a Lender, as the case may be); provided, at the time of entering into a Hedge Agreement, no Lender Counterparty shall be a Defaulting Lender.

**“Lien”** means (i) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease or license in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

**“Lien Release Price”** as defined in the Lien Release Price Letter Agreement.

**“Lien Release Price Letter Agreement”** means the confidential letter agreement, dated as of the Closing Date, between Borrower and Collateral Agent setting forth the Lien Release Price for Parcel F and Block 4.

**“Loan”** means a Loan made by a Lender to Borrower pursuant to Section 2.1(a).

**“Loan Exposure”** means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Loans of such Lender; provided, at any time prior to the making of the Loans, the Loan Exposure of any Lender shall be equal to such Lender’s Commitment.

**“Lockbox Account”** as defined in the Facility Collateral Agency Agreement.

**“Lockbox Account Proceeds”** means any Net Asset Sale Proceeds, any Net Insurance/Condemnation Proceeds and any Additional AC Transit Capital Contributions.

**“Lockout Date”** means the one-year anniversary of the Closing Date.

**“Make-Whole Premium”** means, with respect to the Loans on any date of prepayment of such Loans pursuant to Section 2.10 or Section 2.11 (or deemed prepayment in the case of the assignment of any Loans of a Terminated Lender pursuant to Section 2.20) prior to the Lockout Date, an amount equal to the present value of the sum of (i) the Applicable Margin that would have been payable for Eurodollar Rate Loans plus (ii) the Adjusted Eurodollar Rate (assuming an Interest Period of three months in effect on the date on which the applicable notice of prepayment is given or the assignment of Loans of a Terminated Lender is effected), in each case calculated as a rate per annum on the amount of the principal of such Loans prepaid from the date of such prepayment until the Lockout Date (in each case, computed on the basis of actual days elapsed over a year of 360 days and using a discount rate equal to the Treasury Rate as of such prepayment date plus 50 basis points).

**“Margin Stock”** as defined in Regulation U.



**“Material Adverse Effect”** means a material adverse effect on and/or material adverse developments with respect to (i) the business, operations, properties, assets, condition (financial or otherwise) or prospects of Borrower; (ii) the timely completion of the Project in accordance with the Construction Schedule (but by no later than December 31, 2017); (iii) the ability of Borrower to fully and timely perform its Obligations; (iv) the legality, validity, binding effect or enforceability against Borrower of a Credit Document to which it is a party; (v) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender or any Secured Party under any Credit Document; or (vi) the satisfaction of the TIFIA Borrowing Conditions.

**“Material Contracts”** means the Collateral-Related Documents, the Principal Project Contracts and any contract or other arrangement to which Borrower is a party (other than the Credit Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

**“Maturity Date”** means, the earliest of (a) the fourth (4th) anniversary of the Closing Date, (b) the termination or expiration of TIFIA Lender’s commitment to disburse the TIFIA Loan under the TIFIA Loan Agreement and (c) the date on which all Loans shall become due and payable in full hereunder, whether by acceleration or otherwise.

**“Mello-Roos Bonds”** means bonds to be issued by the City and secured by special tax revenues levied and derived in connection with the creation of the CFD.

**“Moody’s”** means Moody’s Investors Service, Inc.

**“Mortgage”** means each Deed of Trust, Assignment of Leases and Rents and Security Agreement executed by Borrower for the benefit of Administrative Agent, substantially in the form of Exhibit G, as it may be amended, restated, supplemented or otherwise modified from time to time.

**“MTC”** means the Metropolitan Transportation Commission, an agency created pursuant to California Government Code Sections 66500 et seq.

**“MTC Agreement”** means the Agreement for Quitclaim of Interest in 75 Natoma Street and 546 Howard Street, dated as of March 24, 2009, between Borrower and MTC, as amended by the MTC Agreement Amendment and as the same may be further amended, supplemented or otherwise modified from time to time to the extent not prohibited by Section 6.10(b)(i).

**“MTC Agreement Amendment”** means the First Amendment to Agreement for Quitclaim of Interest in 75 Natoma Street and 546 Howard Street, to be executed by Borrower and MTC and acknowledged by the Title Company, substantially in the form of Exhibit K.

**“MTC Parcels”** means the real property consisting of the following lots located in City and County of San Francisco Assessor Block 3721: (i) Lot 031 (also known 75 Natoma Street) and (ii) Lot 016 (also known as 546 Howard Street).

**“Nationally Recognized Rating Agency”** means any nationally recognized statistical rating organization identified as such by the United States Securities and Exchange Commission and that is acceptable to and approved by Administrative Agent.

**“Narrative Report”** means, with respect to the financial statements for which such narrative report is required, the management discussion and analysis or such other narrative report describing the operations of Borrower in the form prepared for presentation to senior management thereof for the applicable Fiscal Year.

**“Negative Pledge”** means the Agreement Not to Encumber or Transfer Property to be executed by Borrower and Administrative Agent substantially in the form of Exhibit I, as it may be amended, supplemented or otherwise modified from time to time.

**“Net Asset Sale Proceeds”** means, with respect to any Asset Sale, an amount equal to: (i) Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received by Borrower from such Asset Sale, minus (ii) any bona fide direct costs incurred by Borrower in connection with such Asset Sale; provided that, “Net Asset Sale Proceeds” shall not include (x) any payments received by Borrower from AC Transit under the Lease and Use Agreement and (y) any payments received by Borrower from any lease of the southern portion of the Temporary Terminal site to transportation operators, to the extent such lease contains right-of-ways over Block 4.

**“Net Insurance/Condemnation Proceeds”** means an amount equal to: (i) any Cash payments or proceeds received by Borrower (a) under any casualty insurance policy with respect to any Specified Real Property in respect of a covered loss thereunder or (b) as a result of the taking of any Specified Real Property of Borrower by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such Specified Real Property to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by Borrower in connection with the adjustment or settlement of any claims of Borrower in respect thereof, and (b) any bona fide direct costs incurred by Borrower in connection with any sale of such Specified Real Property as referred to in clause (i)(b) of this definition.

**“Net Mark-to-Market Exposure”** means, as of any date of determination, the excess (if any) of all unrealized losses over all unrealized profits of Borrower arising from Hedge Agreements or other Indebtedness of the type described in clause (x) of the definition thereof. As used in this definition, “unrealized losses” means the fair market value of the cost to Borrower of replacing such Hedge Agreement or such other Indebtedness as of the date of determination (assuming the Hedge Agreement or such other Indebtedness were to be terminated as of that date), and “unrealized profits” means the fair market value of the gain to Borrower of replacing such Hedge Agreement or such other Indebtedness as of the date of determination (assuming such Hedge Agreement or such other Indebtedness were to be terminated as of that date).

**“Net Tax Increment Revenues”** means all property tax increment revenues attributable to the State-owned Parcels, allocated to and received by Successor Agency and

pledged under the TIF Pledge Agreement as indebtedness to Borrower, but specifically excluding therefrom the following: (i) charges for San Francisco County administrative charges, fees, or costs; (ii) the portion of the tax increment revenues committed to the Successor Agency for fulfilling the Transbay Affordable Housing Obligation; (iii) a portion of the tax increment revenues equal to the percentage of such revenue that Successor Agency is required to pay to all governmental entities as required by the Community Redevelopment Law; and (iv) the portion of the tax increment revenues equal to the percentage of such revenues that the State may mandate Successor Agency to pay from time to time in the future, including, for example, any payments which Successor Agency may be required to pay to the Education Revenue Augmentation Fund pursuant to Section 33681 et seq. of the Community Redevelopment Law.

**“Non-Consenting Lender”** as defined in Section 2.20.

**“Non-Defaulting Lender”** means, at any time, each Lender that is not a Defaulting Lender at such time.

**“Non-U.S. Lender”** as defined in Section 2.17(c).

**“Note”** means a promissory note in the form of Exhibit B, as it may be amended, restated, supplemented or otherwise modified from time to time.

**“Notice”** means a Funding Notice or a Conversion/Continuation Notice.

**“Obligations”** means all obligations of every nature of Borrower, including obligations from time to time owed to Agents (including former Agents), Lenders or any of them and to Lender Counterparties, under any Credit Document or Hedge Agreement, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to Borrower, would have accrued on any Obligation, whether or not a claim is allowed against Borrower for such interest in the related bankruptcy proceeding), payments for early termination of Hedge Agreements and fees, expenses, indemnification or otherwise in connection with any Credit Document or Hedge Agreement.

**“Option Agreement”** means the Option Agreement for the Purchase and Sale of Real Estate Property, dated as of January 31, 2008, by and among the City, the Successor Agency and Borrower, as amended by the Option Agreement Amendment, and as the same may be further amended, supplemented or otherwise modified from time to time to the extent not prohibited by Section 6.10(b)(i). As a legally binding and enforceable agreement that existed prior to June 28, 2011, the Option Agreement is an “enforceable obligation” under Redevelopment Dissolution Law.

**“Option Agreement Amendment”** means the First Amendment to Option Agreement for the Purchase and Sale of Real Estate Property, to be executed by City, Borrower and Successor Agency, substantially in the form of Exhibit F, and to be approved by the Oversight Board of the City and County of San Francisco and the California Department of Finance under Section 34181(e) of the California Health and Safety Code.

**“Organizational Documents”** means with respect to Borrower, the Joint Powers Agreement and its by-laws, as the same may be amended, supplemented or otherwise modified from time to time to the extent not prohibited by Section 6.10(a).

**“Other Taxes”** means any and all present or future stamp or documentary Taxes or any other excise or property Taxes, charges or similar levies (and interest, fines, penalties and additions related thereto) arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Credit Document.

**“Parcel F”** means the real property consisting of City and County of San Francisco Assessor Block 3721, Lot 015A (also known as State-owned Parcel F).

**“Parcels O, O’ and O’”** means Lot 8 of City and County of San Francisco Assessor Block 3739 (also known as State-owned Parcels O, O’ and O’), which includes Block 4.

**“Parity Permitted Debt”** as defined in the TIFIA Loan Agreement.

**“Parity Permitted Debt Service Account”** as defined in the TIFIA Collateral Agency Agreement.

**“Parity Permitted Debt Service Reserve Account”** as defined in the TIFIA Collateral Agency Agreement.

**“Participant Register”** as defined in Section 10.6(g)(i).

**“PATRIOT Act”** as defined in Section 3.1(r).

**“Pension or Post-Employment Plan”** means any Employee Benefit Plan with respect to which (i) retirement benefits are or may be provided pursuant to a defined benefit formula, (ii) health or welfare benefits are or may be provided to a former employee or service provider following termination of employment or service, or (iii) the contributions made or required to be made by Borrower or any other Person to fund benefits under the foregoing clauses (i) or (ii) are determined on the basis of actuarial assumptions.

**“Permitted Liens”** means each of the Liens permitted pursuant to Section 6.2.

**“Permitted Investments”** means:

(a) Government Obligations;

(b) certificates of deposit where the certificates are collaterally secured by securities of the type described in item (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by an agency of the Government;

(c) repurchase agreements when collateralized by securities of the type described in item (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(d) money market funds that invest solely in obligations of the United States, its agencies and instrumentalities, and having a rating by S&P of AAAM-G or AAA-m or if rated by Moody's having a rating of Aaa;

(e) investment agreements, forward purchase agreements or other contractual agreements with corporations, financial institutions or national associations within the United States, provided that the senior long term debt of such corporations, institutions or associations is rated in one of the three (3) highest rating categories for comparable types of obligations by any National Recognized Rating Agency; and

(f) any other investment which may from time to time be expressly approved in writing by the Requisite Lenders.

**“Person”** means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

**“Phase 2”** means the extension of the Caltrain commuter rail service approximately 1.95 miles north from the vicinity of its current City terminus at Fourth and Townsend Streets to a new underground terminal beneath the Transbay Transit Center and the underground construction at such terminal of rail tracks and rail platforms for use by the Caltrain commuter rail service and the proposed high-speed rail service.

**“Platform”** as defined in Section 5.1(l).

**“Pledged Revenues”** means (i) Net Tax Increment Revenues, (ii) Annual Capital Contributions and (iii) all income from (i) and (ii) derived from Permitted Investments thereof.

**“Prime Rate”** means the rate of interest quoted in the print edition of *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation's thirty (30) largest banks), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Administrative Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

**“Principal Office”** means, for Administrative Agent, its “Principal Office” as set forth on Appendix B, or such other office or office of a third party or sub-agent, as appropriate, as it may from time to time designate in writing to Borrower, Administrative Agent and each Lender.

**“Principal Project Contracts”** means the CM/GC Agreement and the contracts for Program Management/Program Controls, Design Services for New Bus Storage Facilities, Architecture & Engineering for New Transit Center and Related Structures, Construction of New Bus Storage Facilities and any Additional Project Contracts.

**“Private Lenders”** means Lenders that wish to receive Private-Side Information.

**“Private-Side Information”** means any information with respect to Borrower that is not Public-Side Information.

**“Pro Rata Share”** means, with respect to each Lender, the percentage obtained by dividing (i) an amount equal to the Loan Exposure of that Lender, by (ii) an amount equal to the sum of the aggregate Loan Exposure of all Lenders.

**“Project”** means the design and construction of the Temporary Terminal, the design of the below-grade rail facilities of the Transbay Transit Center and the construction of the train box (core and shell of below-grade rail facilities), and the design and construction of the Transbay Transit Center’s bus facilities, bus ramps to the Bay Bridge, and bus storage facilities to be located underneath Interstate 80. The Project is Phase 1 of the Transbay Transit Center Program. The Project will serve bus passengers from Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo and Sonoma counties. Greyhound passengers from around the country will also be served by the Project.

**“Project Budget”** means the budget for the Project in the aggregate amount of \$1,899,400,000.00 attached hereto as Schedule 1.2 showing all Project Costs, and a summary of all Eligible Project Costs and the estimated sources and uses of funds for the Project, as the same may be amended, supplemented or otherwise modified from time to time to the extent not prohibited by Section 6.10(b)(iii).

**“Project Costs”** means (i) the costs paid or incurred (to the extent paid, such costs shall be reimbursed to the Person who paid such costs) or to be paid or incurred by Borrower in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance during construction and financing costs, provided that such costs were expended no earlier than October 15, 2005; (ii) costs of equipment and supplies and initial working capital and reserves required by Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of Borrower other than to the extent such amounts constitute direct or indirect costs unallowable to Borrower under 49 C.F.R. Part 18 and its contractors under 18 C.F.R. Part 31; and (iii) the repayment of obligations incurred by Borrower, the proceeds of which obligations were used to pay items (i) and (ii) of this definition.

**“Project Site”** means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Borrower in connection with the Project.

**“Public Lenders”** means Lenders that do not wish to receive Private-Side Information.

**“Public-Side Information”** means information that is not material non-public information (for purposes of United States federal, state or other applicable securities laws).

**“Real Estate Asset”** means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by Borrower in any real property, which, for the avoidance of doubt, shall include the Closing Date Mortgaged Property.

**“Recorder’s Office”** means the Office of the Assessor-Recorder of the City and County of San Francisco.

**“Redevelopment Dissolution Law”** means Part 1.85 (commencing with Section 34170) of the California Health and Safety Code.

**“Redevelopment Plan”** means 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, as may be amended, supplemented, or otherwise modified from time to time.

**“Register”** as defined in Section 2.4(b).

**“Regulation D”** means Regulation D of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Regulation T”** means Regulation T of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Regulation U”** means Regulation U of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Regulation X”** means Regulation X of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Related Fund”** means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

**“Release”** means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

**“Replacement Lender”** as defined in Section 2.20.

**“Requisite Lenders”** means one or more Lenders having or holding Loan Exposures representing more than 50% of the aggregate Loan Exposures of all Lenders;

provided that such amount shall be determined by disregarding the Loan Exposures of any Defaulting Lenders.

**“Revenue and Proceeds Collateral”** as defined in 7.1.

**“S&P”** means Standard & Poor’s, a Division of The McGraw-Hill Companies, Inc.

**“Sanctions”** as defined in Section 4.26.

**“Sanctions Laws”** as defined in Section 4.26.

**“Secured Parties”** means Lenders, Agents (including former Agents) and Lender Counterparties.

**“Securities”** means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

**“Securities Act”** means the Securities Act of 1933, as amended from time to time, and any successor statute.

**“Solvency Certificate”** means a Solvency Certificate of the chief financial officer of Borrower certifying that Borrower is not Insolvent substantially in the form of Exhibit E-2.

**“Specified Real Property”** means, collectively, Block 4 and the Closing Date Mortgaged Property.

**“State”** means the State of California.

**“State-owned Parcels”** means those parcels identified as “State-owned Parcels” under the Cooperative Agreement.<sup>3</sup>

**“State Relinquishment Agreement”** means a Relinquishment of Power of Termination with respect to Parcel F or Block 4, to be executed by the State and acknowledged by the City and Borrower, substantially in the form of Exhibit L, as the same may be amended, supplemented or otherwise modified from time to time to the extent not prohibited by Section 6.10(b)(i).

**“Subordination of Option Agreement”** means a Subordination of Option Agreement for the Purchase and Sale of Real Property with respect to Parcel F or Parcels O, O’

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<sup>3</sup> The definition of “State-owned Parcels” in previous drafts was taken from the TIFIA Loan Agreement. However, after reviewing the comment from the City/OCII, we believe the term, as used in this Agreement, should include all “State-owned Parcels”.



and O”, to be executed by Borrower, Successor Agency and Administrative Agent and acknowledged by the City, substantially in the form of Exhibit M, as it may be amended, restated, supplemented or otherwise modified from time to time.

**“Substantial Completion”** means the opening of the Project (excluding the Temporary Terminal) to any public transportation as defined at 49 USC 5302(a)(10).

**“Successor Agency”** means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, also known as the Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State.

**“Syndication Agent”** as defined in the preamble hereto.

**“Tax”** means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (together with interest, penalties and other additions thereto) of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed; provided, “Tax on the overall net income” of a Person shall be construed as a reference to a tax imposed by the jurisdiction in which that Person is organized or in which that Person’s applicable principal office (and/or, in the case of a Lender, its lending office) is located on all or part of the overall net income, profits or gains (whether worldwide, or only insofar as such income, profits or gains are considered to arise in or to relate to a particular jurisdiction, or otherwise) of that Person (and/or, in the case of a Lender, its applicable lending office).

**“Temporary Terminal”** means the temporary bus terminal on the block bounded by Howard, Main, Folsom and Beale Streets in the City and operated by Borrower during construction of the Transbay Transit Center.

**“Terminated Lender”** as defined in Section 2.20.

**“TI Indebtedness”** as defined in Section 5.18.

**“TIFIA Borrowing Conditions”** means the conditions precedent to borrowing the TIFIA Loan under the TIFIA Loan Agreement.

**“TIFIA Collateral Agency Agreement”** means the Collateral Agency and Account Agreement, dated as of January 1, 2010, by and among TIFIA Collateral Agent, Borrower, and the TIFIA Lender, as amended by the First Amendment thereto, dated as of May 8, 2014, as further amended by the TIFIA Collateral Agency Agreement Second Amendment, and as further amended, supplemented or otherwise modified from time to time.

**“TIFIA Collateral Agency Agreement Second Amendment”** means the Second Amendment to Collateral Agency and Account Agreement, to be executed by Borrower, the TIFIA Lender and TIFIA Collateral Agent, substantially in the form of Exhibit N.

**“TIFIA Collateral Agent”** means U.S. Bank National Association in its capacity as collateral agent under the TIFIA Collateral Agency Agreement (and any successor collateral agent appointed thereunder).

**“TIFIA Collateral Agent Written Direction”** means an irrevocable written direction to be given by Borrower to TIFIA Collateral Agent on the Closing Date and acknowledged by TIFIA Collateral Agent, substantially in the form of Exhibit O.

**“TIFIA Lender”** means the United States Department of Transportation, an agency of the United States of America, acting by and through the Federal Highway Administrator and acting as lender under the TIFIA Loan Agreement.

**“TIFIA Loan”** means the secured loan to be made by the TIFIA Lender to Borrower pursuant to the TIFIA Loan Agreement, subject to the satisfaction of the TIFIA Borrowing Conditions.

**“TIFIA Loan Agreement”** means the TIFIA Loan Agreement, dated as of January 1, 2010, as amended by the First Amendment thereto, dated as of May 8, 2014, by and between Borrower and the TIFIA Lender, as amended, supplemented or otherwise modified from time to time to the extent not prohibited by Section 6.10(b)(iii).

**“TIF Pledge Agreement”** means the Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement, dated as of January 31, 2008, by and among the City, Successor Agency and Borrower, as the same may be amended, supplemented or otherwise modified from time to time to the extent not prohibited by Section 6.10(b)(i).

**“TIF Pledge Letter Agreement”** means the letter agreement to be executed by the Successor Agency and acknowledged by the City and Borrower, substantially in the form of Exhibit P, as the same may be amended, supplemented or otherwise modified from time to time to the extent not prohibited by Section 6.10(b)(i).

**“Title Company”** means Chicago Title Company or such other nationally recognized title insurance company that is reasonably acceptable to Arranger and Administrative Agent.

**“Title Policy”** as defined in Section 3.1(e)(iii).

**“Transaction Costs”** means the fees, costs and expenses payable by Borrower on or before the Closing Date in connection with the transactions contemplated by the Credit Documents.

**“Transbay Affordable Housing Obligation”** means certain affordable housing requirements, as described in Section 5027.1 of the California Public Resources Code, the Redevelopment Plan and the Implementation Agreement, and finally and conclusively determined by the California Department of Finance to be an enforceable obligation under Redevelopment Dissolution Law; this obligation requires that 25 percent of all dwelling units developed within the Project Area (as defined in the Redevelopment Plan) shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 60 percent of the area median income, and that at least an additional 10 percent of all dwelling units developed within the Project Area shall be available at affordable housing cost to, and

occupied by, persons and families whose incomes do not exceed 120 percent of the area median income.

**“Transbay Final and Conclusive Enforceable Obligations”** means the TIF Pledge Agreement, the Implementation Agreement, and the Transbay Affordable Housing Obligation that the California Department of Finance finally and conclusively determined, under Section 34177.5 (i) of the California Health and Safety Code, to be enforceable obligations.

**“Transbay Transit Center”** means the new multimodal regional transit facility to be located in downtown San Francisco, California on First and Mission Streets.

**“Transbay Transit Center Program”** means (i) the Project, (ii) Phase 2 and (iii) the implementation of the Redevelopment Plan.

**“Treasury Rate”** means, as of the date of any prepayment of the Loans under Section 2.10 or Section 2.11 (or deemed prepayment in the case of the assignment of any Loans of a Terminated Lender pursuant to Section 2.20), the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to such date (or, if such Statistical Release is no longer published, any publicly available source of similar market data selected by Administrative Agent).

**“Trust Account”** as defined in the Cooperative Agreement.

**“Trust Account Deposit”** with respect to the Specified Real Property, as defined in the Trust Account Deposit Letter Agreement.

**“Trust Account Deposit Letter Agreement”** means the confidential letter agreement, dated as of the Closing Date, between Borrower and Collateral Agent setting forth the Trust Account Deposit for the Specified Real Property.

**“Type of Loan”** means a Base Rate Loan or a Eurodollar Rate Loan.

**“U.S. Lender”** as defined in Section 2.17(c).

**1.2. Accounting Terms**Error! Bookmark not defined.. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Borrower to Lenders pursuant to Section 5.1(a) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(c), if applicable).

**1.3. Interpretation, Etc.** Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including”, when following any general statement, term or

matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms lease and license shall include sub-lease and sub-license, as applicable.

## **SECTION 2. LOANS**

### **2.1. Loans.**

(a) Commitments. Subject to the terms and conditions hereof, each Lender severally agrees to make, on the Closing Date, a Loan to Borrower in an amount equal to such Lender’s Commitment. Borrower may make only one borrowing under the Commitment. which shall be on the Closing Date. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.10(a) and 2.11, all amounts owed hereunder with respect to the Loans shall be paid in full no later than the Maturity Date. Each Lender’s Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the funding of such Lender’s Commitment on such date.

(b) Borrowing Mechanics for Loans.

(i) Borrower shall deliver to Administrative Agent a fully executed Funding Notice no later than (x) the Closing Date with respect to Base Rate Loans and (y) three days prior to the Closing Date with respect to Eurodollar Rate Loans (or such shorter period as may be acceptable to Administrative Agent). Promptly upon receipt by Administrative Agent of such Funding Notice, Administrative Agent shall notify each Lender of the proposed borrowing.

(ii) Each Lender shall make its Loan available to Administrative Agent not later than 12:00 p.m. (New York City time) on the Closing Date, by wire transfer of same day funds in Dollars, at the principal office designated by Administrative Agent. Upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent (or, in the case of clause (A), the Title Company, acting as escrow agent) shall disburse the proceeds of the Loans received by Administrative Agent (or, in the case of clause (A), the Title Company, acting as escrow agent) from the Lenders as follows:

(A) a portion of the proceeds of the Loans equal to the Trust Account Deposit for the Specified Real Property shall be disbursed to Borrower for deposit in the Trust Account under the Cooperative Agreement and pursuant to the State Relinquishment Agreements and the MTC Amendment Agreement.

(B) a portion of the proceeds of the Loans equal to the Capitalized Interest Required Amount shall be disbursed to Facility Collateral Agent for deposit in the Capitalized Interest Account under the Facility Collateral Agency Agreement;

(C) a portion of the proceeds of the Loans equal to the Expense Reserve Required Amount shall be disbursed to Facility Collateral Agent for deposit in the Expense Reserve Account under the Facility Collateral Agency Agreement;

(D) a portion of the proceeds of the Loans equal to the amount of Transaction Costs payable by Borrower on the Closing Date shall be disbursed to the parties entitled thereto in accordance with the Funds Flow Memorandum; and

(E) the remaining proceeds of the Loans shall be credited to such account of Borrower as may be designated in writing to Administrative Agent by Borrower in the Funds Flow Memorandum.

## **2.2. Pro Rata Shares; Availability of Funds.**

(a) Pro Rata Shares. All Loans shall be made on the Closing Date by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder nor shall any Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Credit Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Credit Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Borrower a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate. In the event that (i) Administrative Agent declines to make a requested amount available to Borrower until such time as all applicable Lenders have made payment to Administrative Agent, (ii) a Lender fails to fund to Administrative Agent all or any portion of the Loans required to be funded by such Lender hereunder prior to the time specified in this Agreement and (iii) such Lender's failure results in Administrative Agent failing to make a corresponding amount available to Borrower on the Credit Date, at Administrative Agent's option, such Lender shall not receive interest hereunder with respect to the requested amount of such Lender's Loans for the period commencing with the time specified in this Agreement for receipt of payment by Borrower through and including the time of Borrower's receipt of the requested amount. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Borrower and Borrower shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is

paid to Administrative Agent, at the rate payable hereunder for Base Rate Loans. Nothing in this Section 2.2(b) shall be deemed to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that Borrower may have against any Lender as a result of any default by such Lender hereunder.

**2.3. Use of Proceeds.** The proceeds of the Loans made on the Closing Date shall be applied by Borrower to fund Eligible Project Costs.

**2.4. Evidence of Debt; Register; Lenders' Books and Records; Notes.**

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Borrower, absent manifest error; provided that, the failure to make any such recordation, or any error in such recordation, shall not affect Borrower's Obligations in respect of any Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent (or its agent or sub-agent appointed by it) shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and Loans of each Lender from time to time (the "**Register**"). The Register shall be available for inspection by Borrower or any Lender (with respect to (i) any entry relating to such Lender's Loans and (ii) the identity of the other Lender's (but not any information with respect to such other Lenders' Loans) at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record, or shall cause to be recorded, in the Register the Loans in accordance with the provisions of Section 10.6, and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on Borrower and each Lender, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect Borrower's Obligations in respect of any Loan. Borrower hereby designates Administrative Agent to serve as Borrower's agent solely for purposes of maintaining the Register as provided in this Section 2.4, and Borrower hereby agrees that, to the extent Administrative Agent serves in such capacity, Administrative Agent and its officers, directors, employees, agents, sub-agents and affiliates shall constitute "Indemnitees."

(c) Notes. If so requested by any Lender by written notice to Borrower (with a copy to Administrative Agent) at least two Business Days prior to the Closing Date, or at any time thereafter, Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Loan.

**2.5. Interest on Loans.**

(a) Except as otherwise set forth herein, each Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) if a Base Rate Loan, at the Base Rate plus the Applicable Margin;  
or

(ii) if a Eurodollar Rate Loan, at the Adjusted Eurodollar Rate plus the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Loan, and the Interest Period with respect to any Eurodollar Rate Loan, shall be selected by Borrower and notified to Administrative Agent and Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be.

(c) In connection with Eurodollar Rate Loans there shall be no more than five (5) Interest Periods outstanding at any time. In the event Borrower fails to specify between a Base Rate Loan or a Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan (if outstanding as a Eurodollar Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to Borrower and each Lender.

(d) Interest payable pursuant to Section 2.5(a) shall be computed (i) in the case of Base Rate Loans on the basis of a 360-day year (or, in the case of Base Rate Loans determined by reference to the "Prime Rate", a 365-day or 366-day year, as applicable), as the case may be, and (ii) in the case of Eurodollar Rate Loans, on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or the last Interest Payment Date with respect to such Loan or, with respect to a Base Rate Loan being converted from a Eurodollar Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Eurodollar Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan (i) shall accrue on a daily basis and shall be payable in arrears on each Interest Payment Date with respect to interest accrued on and to each such Interest Payment Date; (ii) shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that Loan, whether voluntary or mandatory,

to the extent accrued on the amount being prepaid; and (iii) shall accrue on a daily basis and shall be payable in arrears on the Maturity Date; provided, however, with respect to any voluntary prepayment of a Base Rate Loan, accrued interest shall instead be payable on the applicable Interest Payment Date.

(f) For the avoidance of doubt, interest shall accrue on the entire outstanding principal amount of the Loans in accordance with this Section 2.5, notwithstanding the fact that a portion of the proceeds of the Loans may be deposited in the Trust Account, the Capitalized Interest Account or the Expense Reserve Account.

## **2.6. Conversion/Continuation.**

(a) Subject to Section 2.15, Borrower shall have the option:

(i) to convert at any time all or any part of any Loan equal to \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, that a Eurodollar Rate Loan may only be converted on the expiration of the Interest Period applicable to such Eurodollar Rate Loan unless Borrower shall pay all amounts due under Section 2.15(c) in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any Eurodollar Rate Loan, to continue all or any portion of such Loan equal to \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount as a Eurodollar Rate Loan.

(b) Subject to Section 3.2, Borrower shall deliver a Conversion/Continuation Notice to Administrative Agent no later than 10:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three Business Days in advance of the proposed Conversion/Continuation Date (in the case of a conversion to, or a continuation of, a Eurodollar Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any Eurodollar Rate Loans shall be irrevocable on and after the related Interest Rate Determination Date, and Borrower shall be bound to effect a conversion or continuation in accordance therewith. If, prior to the expiration of the Interest Period then in effect for any Eurodollar Rate Loan, a Funding Notice or Conversion/Continuation Notice has not been delivered to Administrative Agent in accordance with the terms hereof specifying either the continuation of such Eurodollar Rate Loan for an additional Interest Period or the conversion of such Eurodollar Rate Loan to a Base Rate Loan, such Eurodollar Rate Loan shall automatically be continued for an additional Interest Rate Period (unless such additional Interest Rate Period would extend beyond the Maturity Date, in which case such Eurodollar Rate Loan shall automatically convert to a Base Rate Loan upon the expiration of the Interest Rate Period then in effect for such Eurodollar Rate Loan).

**2.7. Default Interest.** Upon the occurrence and during the continuance of an Event of Default under Section 8.1(a), (f) or (g), the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Loans or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any



proceeding under Debtor Relief Laws) payable on demand at a rate that is 2% *per annum* in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2% *per annum* in excess of the interest rate otherwise payable hereunder for Base Rate Loans). Payment or acceptance of the increased rates of interest provided for in this Section 2.7 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

## **2.8. Fees.**

(a) Borrower agrees to pay on the Closing Date for the account of each Lender party to this Agreement as a Lender on the Closing Date, a closing fee in an amount set forth in the Fee Letter, payable from the proceeds of the Loans as and when funded on the Closing Date (or as original issue discount, as may be provided in the Fee Letter). Such closing fee will be in all respects fully earned, due and payable on the Closing Date and non-refundable and non-creditable thereafter.

(b) In addition to the foregoing fee, Borrower agrees to pay to Agents such other fees in the amounts and at the times separately agreed upon.

**2.9. Principal Repayment.** The outstanding principal amounts of the Loans shall be repaid in full in cash on the Maturity Date.

## **2.10. Voluntary Prepayments.**

(a) Borrower may prepay any Loans on any Business Day in whole or, if in part, in an aggregate minimum amount of \$5,000,000 and in integral multiples of \$1,000,000 in excess of that amount.

(b) All such prepayments shall be made:

(i) upon not less than one Business Day's prior written or telephonic notice in the case of Base Rate Loans; and

(ii) upon not less than three Business Days' prior written or telephonic notice in the case of Eurodollar Rate Loans;

in each case given to Administrative Agent, as the case may be, by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed by delivery of written notice thereof to Administrative Agent (and Administrative Agent will promptly transmit such original notice for Loans, by telefacsimile or telephone to each Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.12 and shall be accompanied by payment of the Make-Whole Premium, to the extent required by Section 2.12(b).

**2.11. Mandatory Prepayment; Lockbox Account; Debt Service Reserve Subaccount.**

(a) Mandatory Prepayment. On the date of receipt by Borrower of any Cash proceeds from the incurrence of any Indebtedness for borrowed money, including any borrowing under the TIFIA Loan Agreement. Borrower shall prepay the Loans as set forth in Section 2.12 in an aggregate amount equal to the lesser of (x) 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses and (y) the aggregate outstanding principal amount of the Loans. Any such mandatory prepayment shall be applied as specified in Section 2.12 and shall be accompanied by payment of the Make-Whole Premium, to the extent required by Section 2.12(b).

(i) Concurrently with any prepayment of the Loans pursuant to this Section 2.11(a), Borrower shall deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable net proceeds. In the event that Borrower shall subsequently determine that the actual amount of net proceeds received exceeded the amount set forth in such certificate, Borrower shall promptly make an additional prepayment of the Loans in an amount equal to such excess up to the aggregate outstanding principal amount of the Loans, and Borrower shall concurrently therewith deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.

(b) Deposits to Lockbox Account.

(i) If Borrower receives (or shall be entitled to receive) any Lockbox Account Proceeds, Borrower shall deliver (or shall cause to be delivered) such Lockbox Account Proceeds directly to Facility Collateral Agent for deposit into the Lockbox Account.

(ii) Amounts on deposit in the Lockbox Account (including any investment earnings) shall be applied pursuant to the Facility Collateral Agency Agreement to pay outstanding Obligations (A) to the extent such Obligations are not paid when due and payable or (B) if requested by Borrower to make voluntary prepayments of the Loans in accordance with Section 2.10 and Section 2.12; provided, that in the case of the receipt of any Net Insurance/Condemnation Proceeds constituting casualty insurance proceeds for any Specified Real Property, Borrower shall have the option within one year of receipt thereof to use such Net Insurance/Condemnation Proceeds for the repair, restoration or replacement of such Specified Real Property.<sup>4</sup>

## **2.12. Application of Prepayments.**

(a) Application of Prepayments. Any prepayment of any Loan pursuant to Section 2.10 or Section 2.11 shall be applied to the outstanding principal amount of the Loans on

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<sup>4</sup> City/OCII requested that we add a provision here for transferring funds from the Lockbox Account to the Trust Account after the Obligations are paid in full. Any such provision would need to be included in the Facility Collateral Agency Agreement because the institution that controls the Lockbox Account (U.S. Bank, as the “Facility Collateral Agent”) is not a party to the Credit Agreement. Note that under Section 9 of the Facility Collateral Agency Agreement, any funds remaining in the Accounts (including the Lockbox Account) shall be disbursed to the Borrower or as the Borrower otherwise direct.

a pro rata basis. Any prepayment of Loans shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner which minimizes the amount of any payments required to be made by Borrower pursuant to Section 2.15(c).

(b) In the event that, before the Lockout Date, Borrower voluntarily prepays all or any portion of the Loans (which shall be deemed for these purposes to include any assignments by a Terminated Lender pursuant to Section 2.20) or all or any portion of the Loans is subject to a mandatory prepayment or acceleration event, Borrower shall pay to Administrative Agent for the ratable account of each of the Lenders the Make-Whole Premium.

(c) Except as set forth in Section 2.12(b) and Section 2.15(c), all prepayments made hereunder shall be made without penalty or premium of any kind.

### **2.13. General Provisions Regarding Payments.**

(a) All payments by Borrower of principal, interest, fees and other Obligations shall be made in Dollars in same day funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 12:00 p.m. (New York City time) on the date due at the Principal Office of Administrative Agent for the account of Lenders; for purposes of computing interest and fees, funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Borrower on the next succeeding Business Day.

(b) All payments in respect of the principal amount of any Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest then due and payable before application to principal.

(c) Administrative Agent (or its agent or sub-agent appointed by it) shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any Eurodollar Rate Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Whenever any payment to be made hereunder with respect to any Loan shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day.

(f) Administrative Agent shall deem any payment by or on behalf of Borrower hereunder that is not made in same day funds prior to 12:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been

received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to Borrower and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.7 from the date such amount was due and payable until the date such amount is paid in full.

(g) If an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to Section 8.1 or pursuant to any sale of, any collection from, or other realization upon all or any part of the Collateral, all payments or proceeds received by Agents in respect of any of the Obligations, shall be applied in accordance with the application arrangements described in Section 8.2.

**2.14. Ratable Sharing.** Lenders hereby agree among themselves that if any of them shall, whether by voluntary payment, through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, consolidation, set-off or counterclaim with respect to any and all monies owing by Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.14 shall not be construed to apply to (a) any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (b) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it.

**2.15. Making or Maintaining Eurodollar Rate Loans.**

(a) Inability to Determine Applicable Interest Rate. In the event that Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any Eurodollar Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of “Adjusted Eurodollar Rate”, Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to Borrower and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, Eurodollar Rate Loans until such time as Administrative Agent notifies Borrower and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Funding Notice or Conversion/Continuation Notice given by Borrower with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by Borrower.

(b) Illegality or Impracticability of Eurodollar Rate Loans. In the event that on any date (i) any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto) that the making, maintaining, converting to or continuation of its Eurodollar Rate Loans has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) Administrative Agent is advised by the Requisite Lenders (which determination shall be final and conclusive and binding upon all parties hereto) that the making, maintaining, converting to or continuation of its Eurodollar Rate Loans has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of the Lenders in that market, then, and in any such event, such Lenders (or in the case of the preceding clause (i), such Lender) shall be an **“Affected Lender”** and such Affected Lender shall on that day give notice (by e-mail or by telephone confirmed in writing) to Borrower and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). If Administrative Agent receives (x) a notice from any Lender pursuant to clause (i) of the preceding sentence or (y) a notice from Lenders constituting Requisite Lenders pursuant to clause (ii) of the preceding sentence, then (1) the obligation of the Lenders (or, in the case of any notice pursuant to clause (i) of the preceding sentence, such Lender) to make Loans as, or to convert Loans to, Eurodollar Rate Loans shall be suspended until such notice shall be withdrawn by each Affected Lender, (2) to the extent such determination by the Affected Lender relates to a Eurodollar Rate Loan then being requested by Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Lenders (or in the case of any notice pursuant to clause (i) of the preceding sentence, such Lender) shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan, (3) the Lenders’ (or in the case of any notice pursuant to clause (i) of the preceding sentence, such Lender’s) obligations to maintain their respective outstanding Eurodollar Rate Loans (the **“Affected Loans”**) shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (4) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Eurodollar Rate Loan then being requested by Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, Borrower shall have the option, subject to the provisions of Section 2.15(c), to rescind such Funding Notice or

Conversion/Continuation Notice as to all Lenders by giving written or telephonic notice (promptly confirmed by delivery of written notice thereof) to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender).

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Borrower shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid or payable by such Lender to Lenders of funds borrowed by it to make or carry its Eurodollar Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender) a borrowing of any Eurodollar Rate Loan does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing, or a conversion to or continuation of any Eurodollar Rate Loan does not occur on a date specified therefor in a Conversion/Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its Eurodollar Rate Loans occurs on a date prior to the last day of an Interest Period applicable to that Loan (which shall be deemed for this purpose to include any assignments by a Terminated Lender pursuant to Section 2.20); or (iii) if any prepayment of any of its Eurodollar Rate Loans is not made on any date specified in a notice of prepayment given by Borrower.

(d) Booking of Eurodollar Rate Loans. Any Lender may make, carry or transfer Eurodollar Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Assumptions Concerning Funding of Eurodollar Rate Loans. Calculation of all amounts payable to a Lender under this Section 2.15 and under Section 2.16 shall be made as though such Lender had actually funded each of its relevant Eurodollar Rate Loans through the purchase of a Eurodollar deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of “Adjusted Eurodollar Rate” in an amount equal to the amount of such Eurodollar Rate Loan and having a maturity comparable to the relevant Interest Period and through the transfer of such Eurodollar deposit from an offshore office of such Lender to a domestic office of such Lender in the United States of America; provided, however, each Lender may fund each of its Eurodollar Rate Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 2.15 and under Section 2.16.

## **2.16. Increased Costs; Capital Adequacy.**

(a) Compensation for Increased Costs and Taxes. Subject to the provisions of Section 2.17 (which shall be controlling with respect to the matters covered thereby), in the event that any Lender shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (A) any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (regardless of whether the underlying law, treaty or governmental rule, regulation or

order was issued or enacted prior to the date hereof), including the introduction of any new law, treaty or governmental rule, regulation or order but excluding solely proposals thereof, or any determination of a court or Governmental Authority, in each case that becomes effective after the date hereof, or (B) any guideline, request or directive by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law) or any implementation rules or interpretations of previously issued guidelines, requests or directives, in each case that is issued or made after the date hereof: (i) subjects such Lender (or its applicable lending office) or any company controlling such Lender to any additional Tax (other than any Tax on the overall net income of such Lender) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, liquidity, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Eurodollar Rate Loans that are reflected in the definition of “Adjusted Eurodollar Rate”) or any company controlling such Lender; or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or any company controlling such Lender or such Lender’s obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto; then, in any such case, Borrower shall promptly pay to such Lender, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or in a lump sum or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender shall deliver to Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.16(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (A) the adoption, effectiveness, phase-in or applicability of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or (B) compliance by any Lender (or its applicable lending office) or any company controlling such Lender with any guideline, request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, in each case after the date hereof, has or would have the effect of reducing the rate of return on the capital of such Lender or any company controlling such Lender as a consequence of, or with reference to, such Lender’s Loans, or participations therein or other obligations hereunder with respect to the Loans to a level below that which such Lender or such controlling company could have achieved but for such adoption, effectiveness, phase-in, applicability,

change or compliance (taking into consideration the policies of such Lender or such controlling company with regard to capital adequacy), then from time to time, within five Business Days after receipt by Borrower from such Lender of the statement referred to in the next sentence, Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling company on an after-tax basis for such reduction. Such Lender shall deliver to Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.16(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error. For the avoidance of doubt, subsections (a) and (b) of this Section 2.16 shall apply to all requests, rules, guidelines or directives concerning liquidity and capital adequacy issued by any United States regulatory authority (i) under or in connection with the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act and (ii) in connection with the implementation of the recommendations of the Bank for International Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority), regardless of the date adopted, issued, promulgated or implemented.

## **2.17. Taxes; Withholding, Etc.**

(a) Payments to Be Free and Clear. All sums payable by or on behalf of Borrower hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of any Lender) imposed, levied, collected, withheld or assessed by any Governmental Authority.

(b) Withholding of Taxes. If Borrower or any other Person (acting as a withholding agent) is (in such withholding agent's reasonable good faith discretion) required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by Borrower to Administrative Agent or any Lender under any of the Credit Documents: (i) Borrower shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as Borrower becomes aware of it; (ii) Borrower shall pay, or cause to be paid, any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on Borrower) for its own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of Administrative Agent or such Lender; (iii) unless otherwise provided on this Section 2.17, the sum payable by Borrower in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty days after the due date of payment of any Tax which it is required by clause (ii) above to pay, Borrower shall deliver to Administrative Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority; provided, with respect to any United States federal withholding tax, no such additional amount shall be required to be paid to any Lender (other than a Lender that becomes a Lender pursuant to Section 2.20) under clause (iii) above except to the extent that any change after the date hereof (in the case of each Lender listed on the signature pages hereof on the Closing Date)



or after the effective date of the Assignment Agreement pursuant to which such Lender became a Lender (in the case of each other Lender) in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such deduction, withholding or payment from that in effect at the date hereof or at the date of such Assignment Agreement, as the case may be, in respect of payments to such Lender; provided that additional amounts shall be payable to a Lender to the extent such Lender's assignor was entitled to receive such additional amounts.

(c) Evidence of Exemption From U.S. Withholding Tax. Each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a "**Non-U.S. Lender**") shall, to the extent such Lender is legally able to do so, deliver to Administrative Agent for transmission to Borrower, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Borrower or Administrative Agent (each in the reasonable exercise of its discretion), (i) two original copies of Internal Revenue Service Form W-8BEN, W-8ECI, W-8EXP and/or W-8IMY (or, in each case, any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower to establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of United States federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or (ii) if such Lender is not a "bank" or other Person described in Section 881(c)(3) of the Internal Revenue Code, a Certificate re Non-Bank Status together with two original copies of Internal Revenue Service Form W-8BEN (or any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower to establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of United States federal income tax with respect to any payments to such Lender of interest payable under any of the Credit Documents. Each Lender that is a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for United States federal income tax purposes (a "**U.S. Lender**") and is not an exempt recipient within the meaning of Treasury Regulation Section 1.6049-4(c) shall deliver to Administrative Agent and Borrower on or prior to the Closing Date (or, if later, on or prior to the date on which such Lender becomes a party to this Agreement) two original copies of Internal Revenue Service Form W-9 (or any successor form), properly completed and duly executed by such Lender, certifying that such U.S. Lender is entitled to an exemption from United States backup withholding tax, or otherwise prove that it is entitled to such an exemption. Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this Section 2.17(c) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Administrative Agent for transmission to Borrower two new original copies of Internal Revenue Service Form W-8BEN, W-8ECI, W-8EXP, W-8IMY and/or W-9 (or, in each case, any successor form), or a Certificate re Non-Bank Status and two original copies of Internal Revenue Service Form W-8BEN (or any successor form), as the case may be, properly completed and

duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower to confirm or establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to payments to such Lender under the Credit Documents, or notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence. Borrower shall not be required to pay any additional amount to any Non-U.S. Lender under Section 2.17(b)(iii) if such Lender shall have failed (1) to deliver the forms, certificates or other evidence required by the first sentence of this Section 2.17(c) or (2) to notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, if such Lender shall have satisfied the requirements of the first sentence of this Section 2.17(c) on the Closing Date or on the date of the Assignment Agreement pursuant to which it became a Lender, as applicable, nothing in this last sentence of Section 2.17(c) shall relieve Borrower of its obligation to pay any additional amounts pursuant this Section 2.17 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described herein.

(d) Notwithstanding anything to the contrary, Borrower shall not be required to pay any additional amount pursuant to Section 2.17(b) with respect to any United States federal withholding tax imposed on any “withholdable payments” payable to a recipient as a result of the failure of such recipient to satisfy the applicable requirements as set forth in FATCA after December 31, 2012.

(e) Without limiting the provisions of Section 2.17(b), Borrower shall timely pay all Other Taxes to the relevant Governmental Authorities in accordance with applicable law. Borrower shall deliver to Administrative Agent official receipts or other evidence of such payment reasonably satisfactory to Administrative Agent in respect of any Other Taxes payable hereunder promptly after payment of such Other Taxes.

(f) Borrower shall indemnify Administrative Agent and any Lender for the full amount of Taxes for which additional amounts are required to be paid pursuant to Section 2.17(b) arising in connection with payments made under this Agreement or any other Credit Document and Other Taxes (including any such Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) paid by Administrative Agent or Lender or any of their respective Affiliates and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower shall be conclusive absent manifest error. Such payment shall be due within thirty (30) days of Borrower’s receipt of such certificate.

(g) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest

(other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

**2.18. Obligation to Mitigate.** Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section 2.15, 2.16 or 2.17, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.15, 2.16 or 2.17 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Loans or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.18 unless Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this Section 2.18 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Administrative Agent) shall be conclusive absent manifest error.

**2.19. Defaulting Lenders.**

(a) Defaulting Lender Waterfall. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law, any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to Section 10.4 shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; *second*, as Borrower may request (so long as no Default or Event of Default shall have occurred and be continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this

Agreement, as determined by Administrative Agent; *third*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fourth*, so long as no Default or Event of Default shall have occurred and be continuing, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *fifth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 3.1 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the applicable Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If Borrower and Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders in accordance with the applicable Commitments, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

(c) Lender Counterparties. So long as any Lender is a Defaulting Lender, such Lender shall not be a Lender Counterparty with respect to any Hedge Agreement entered into while such Lender was a Defaulting Lender.

**2.20. Removal or Replacement of a Lender.** Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an **"Increased-Cost Lender"**) shall give notice to Borrower that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.15, 2.16 or 2.17, (ii) the circumstances which have caused such Lender to be an Affected Lender or which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after Borrower's request for such withdrawal; or (b) (i) any Lender shall become and continues to be a Defaulting Lender, and (ii) such Defaulting Lender shall fail to cure the default pursuant to Section 2.19(b) within five Business Days after Borrower's request that it cure such default; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by

Section 10.5(b), the consent of Requisite Lenders shall have been obtained but the consent of one or more of such other Lenders (each a “**Non-Consenting Lender**”) whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender, Defaulting Lender or Non-Consenting Lender (each, a “**Terminated Lender**”), Borrower may, by giving written notice to Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans in full to one or more Eligible Assignees (each a “**Replacement Lender**”) in accordance with the provisions of Section 10.6 and Borrower shall pay the fees, if any, payable thereunder in connection with any such assignment from such Terminated Lender; provided, (1) on the date of such assignment, the Replacement Lender shall pay to such Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of such Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.8; (2) on the date of such assignment, Borrower shall pay any amounts payable to such Terminated Lender pursuant to Section 2.12(b), 2.15(c), 2.16 or 2.17; or otherwise as if it were a prepayment of such Terminated Lender’s Loans and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. Upon the prepayment of all amounts owing to any Terminated Lender, such Terminated Lender shall no longer constitute a “Lender” for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender. Each Lender agrees that if Borrower exercises its option hereunder to cause an assignment by such Lender as a Terminated Lender, such Lender shall, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with Section 10.6. In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one Business Day after receipt of such notice, each Lender hereby authorizes and directs Administrative Agent to execute and deliver such documentation as may be required to give effect to an assignment in accordance with Section 10.6 on behalf of a Terminated Lender and any such documentation so executed by Administrative Agent shall be effective for purposes of documenting an assignment pursuant to Section 10.6. Any removal of Goldman Sachs or its successor as a Defaulting Lender pursuant to this Section shall also constitute the removal of Goldman Sachs or its successor as Administrative Agent pursuant to Section 9.7.

### **SECTION 3. CONDITIONS PRECEDENT**

**3.1. Closing Date.** The obligation of each Lender to make a Credit Extension on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date:

(a) Credit Documents. Administrative Agent and Arranger shall have received each Credit Document, executed and delivered by each Person who is a party thereto.

(b) TIFIA Collateral Agency Agreement. Administrative Agent and Arranger shall have received (i) the TIFIA Collateral Agency Agreement Second Amendment, executed

and delivered by Borrower, the TIFIA Lender and TIFIA Collateral Agent, (ii) TIFIA Collateral Agent Written Direction, executed and delivered by Borrower and acknowledged by TIFIA Collateral Agent, and (iii) TIFIA Collateral Agent's written acknowledgment of a Counterpart (as defined in the TIFIA Collateral Agency Agreement), executed and delivered by Administrative Agent to TIFIA Collateral Agent pursuant to Section 36 of the TIFIA Collateral Agency Agreement.

(c) Organizational Documents; Incumbency. Administrative Agent and Arranger shall have received, in respect of Borrower, (i) copies of each Organizational Document, certified as of the Closing Date or a recent date prior thereto by, as applicable, the appropriate Governmental Authority or by Borrower's secretary or assistant secretary; (ii) signature and incumbency certificates of the officers of Borrower who are authorized to execute and deliver Credit Documents and Funding Notices on behalf of Borrower; (iii) resolutions of the Board of Directors or similar governing body of Borrower approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a copy of Borrower's Notice of Joint Powers Agreement and related roster of members, certified as of the Closing Date or a recent date prior thereto by, as applicable, the appropriate Governmental Authority or by Borrower's secretary or assistant secretary; and (v) such other documents as Administrative Agent and Arranger may reasonably request.

(d) Governmental Authorizations and Consents. Borrower shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary in connection with the transactions contemplated by the Credit Documents and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Administrative Agent and Arranger. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Credit Documents or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(e) Closing Date Mortgaged Property. In order to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in the Closing Date Mortgaged Property, Collateral Agent shall have received from Borrower:

(i) a fully executed and notarized (A) Mortgage encumbering the Closing Date Mortgaged Property, (B) Subordination of Option Agreement with respect to Parcel F, and (C) State Relinquishment Agreement with respect to Parcel F, each in proper form for recording in the Recorder's Office;

(ii) a fully executed (A) Option Agreement Amendment and (B) MTC Agreement Amendment;

(iii) an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent, it being understood that the law firm of Shute, Mihaly & Weinberger LLP is satisfactory to Collateral Agent) in the State with respect to the power and authority of Borrower to execute and deliver the Mortgage of the Closing Date Mortgaged Property, the enforceability and validity of the Mortgage of the Closing Date Mortgaged Property, and such other matters as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent;

(iv) (A) an ALTA mortgagee title insurance policy or unconditional commitment therefor issued by the Title Company with respect to the Closing Date Mortgaged Property (the “**Title Policy**”), in an amount reasonably acceptable to Arranger, together with a title report issued by the Title Company with respect thereto, dated not more than thirty days prior to the Closing Date, and copies of all recorded documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to Collateral Agent and (B) evidence satisfactory to Collateral Agent that Borrower has paid to the Title Company or to the appropriate Governmental Authorities all expenses and premiums of the Title Company and all other sums required in connection with the issuance of the Title Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgage for the Closing Date Mortgaged Property in the Recorder’s Office;

(v) (A) a completed Flood Certificate with respect to the Closing Date Mortgaged Property, which Flood Certificate shall (x) be addressed to Collateral Agent and (y) otherwise comply with the Flood Program; (B) if the Flood Certificate states that the Closing Date Mortgaged Property is located in a Flood Zone, Borrower’s written acknowledgment of receipt of written notification from Collateral Agent (x) as to the existence of the Closing Date Mortgaged Property and (y) as to whether the community in which the Closing Date Mortgaged Property is located is participating in the Flood Program; and (C) if the Closing Date Mortgaged Property is located in a Flood Zone and is located in a community that participates in the Flood Program, evidence that Borrower has obtained a policy of flood insurance that is in compliance with all applicable requirements of the Flood Program; and

(vi) An ALTA survey of the Closing Date Mortgaged Property, certified to Collateral Agent and dated not more than thirty days prior to the Closing Date.

(f) Block 4 Matters. In order to (x) create in favor of Collateral Agent, for the benefit of Secured Parties, a valid encumbrance on Block 4 and (y) permit Borrower, if required by Section 5.17, to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in Block 4, Collateral Agent shall have received from Borrower:

(i) a fully executed and notarized (A) Negative Pledge encumbering Parcels O, O’ and O”, (B) Subordination of Option Agreement with respect to Parcels O,

O' and O'', (C) State Relinquishment Agreement with respect to Block 4, each in proper form for recording in the Recorder's Office;

(ii) a title report issued by the Title Company with respect to Parcels O, O' and O'', dated not more than thirty days prior to the Closing Date and copies of all recorded documents listed as exceptions to title or otherwise referred to therein, in form and substance reasonably satisfactory to Collateral Agent;

(iii) (A) a completed Flood Certificate with respect to Parcels O, O' and O'', which Flood Certificate shall (x) be addressed to Collateral Agent and (y) otherwise comply with the Flood Program; (B) if the Flood Certificate states that Parcels O, O' and O'' are located in a Flood Zone, Borrower's written acknowledgment of receipt of written notification from Collateral Agent (x) as to the existence of Parcels O, O' and O'' and (y) as to whether the community in which Parcels O, O' and O'' are located is participating in the Flood Program; and (C) if Parcels O, O' and O'' are located in a Flood Zone and is located in a community that participates in the Flood Program, evidence that Borrower has obtained a policy of flood insurance that is in compliance with all applicable requirements of the Flood Program; and

(iv) An ALTA survey of Parcels O, O' and O'', certified to Collateral Agent and dated not more than thirty days prior to the Closing Date.

Nothing in the Negative Pledge encumbering Parcels O, O', and O'' or the Subordination of Option Agreement with respect to Parcels O, O', and O'' shall affect the Transbay Final and Conclusive Enforceable Obligations with respect to Parcels O, O', and O'' or Block 4.

(g) Revenue and Proceeds Collateral. In order to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and perfected First Priority security interest in the Revenue and Proceeds Collateral, Borrower shall have delivered to Collateral Agent:

(i) evidence satisfactory to Collateral Agent of the compliance by Borrower of its obligations under Section 7 and the Collateral Documents; and

(ii) an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) with respect to the attachment of such security interest and that such security interest is effective, binding, and against Borrower, its successors, purchasers of the Collateral, creditors, and all others asserting the rights therein, to the extent set forth, and in accordance with, the Collateral Documents, irrespective of whether those parties have notice of the security interest and without the need for any physical delivery, recordation, filing, or further act, and such other matters governed by the laws of the State as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent;

(iii) a fully executed TIF Pledge Letter Agreement;

(iv) evidence satisfactory to Collateral Agent that Borrower shall have executed and delivered to AC Transit the Additional AC Transit Capital Contribution Written Direction; and



(v) evidence that Borrower shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Collateral Agent.

(h) Environmental Reports. Administrative Agent and Arranger shall have received reports and other information, in form, scope and substance satisfactory to Administrative Agent and Arranger, regarding environmental matters relating to the Specified Real Property.

(i) Financial Statements; Construction Schedule; Financial Plan. Administrative Agent and Arranger shall have received from Borrower, at least 20 calendar days prior to the Closing Date, (i) the Historical Audited Financial Statements; (ii) the Construction Schedule; and (iii) the most recent Financial Plan delivered by Borrower to the TIFIA Lender under the TIFIA Loan Agreement, all of which shall be satisfactory to Arranger in its discretion.

(j) Evidence of Insurance. Collateral Agent shall have received a certificate from Borrower's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect, together with endorsements naming Collateral Agent, for the benefit of Secured Parties, as additional insured and loss payee thereunder to the extent required under Section 5.5.

(k) Opinions of Counsel to Borrower. Agents and Lenders and their respective counsel shall have received originally executed copies of the favorable written opinions of Shute, Mihaly & Weinberger LLP and Nixon Peabody LLP, each as counsel for Borrower, as to such matters as Administrative Agent or Arranger may reasonably request, dated as of the Closing Date and in form and substance reasonably satisfactory to Administrative Agent and Arranger (and Borrower hereby instructs such counsel to deliver such opinions to Agents and Lenders).

(l) Fees. Borrower shall have paid to the parties entitled thereto the fees payable on or before the Closing Date referred to in Section 2.8 and all expenses payable pursuant to Section 10.2 which have accrued to the Closing Date.

(m) Solvency Certificate. On the Closing Date, Administrative Agent and Arranger shall have received a Solvency Certificate from Borrower in form, scope and substance satisfactory to Administrative Agent and Arranger.

(n) Closing Date Certificate. Borrower shall have delivered to Administrative Agent and Arranger an originally executed Closing Date Certificate, together with all attachments thereto.

(o) Closing Date. Lenders shall have made the Loans to Borrower on or before [●], 2014.

(p) No Litigation. Other than as set forth on Schedule 3.1(p) ("**Disclosed Litigation**"), (i) there shall not exist any material action, suit, investigation, litigation, proceeding, hearing or other legal or regulatory developments, pending or threatened in any

court or before any arbitrator or Governmental Authority affecting Borrower, the Project, the creation of the CFD or the satisfaction of any TIFIA Borrowing Condition or that, in the reasonable opinion of Administrative Agent and Arranger, materially impairs any of the transactions contemplated by the Credit Documents and (ii) there shall have been no material adverse developments with respect to the Disclosed Litigation as of the date of this Agreement.

(q) Letter of Direction. Administrative Agent and Arranger shall have received a duly executed letter of direction (which shall include the Funds Flow Memorandum) from Borrower addressed to Administrative Agent and Arranger, on behalf of itself and Lenders, directing the disbursement on the Closing Date of the proceeds of the Loans made on such date.

(r) PATRIOT Act. At least 10 days prior to the Closing Date, the Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001) the “**PATRIOT Act**”).

(s) Loan Amount as Maximum Percentage of Eligible Project Costs. The aggregate principal amount of the Loans advanced on the Closing Date shall not exceed 33% of the Eligible Project Costs incurred through the Closing Date, as demonstrated by Borrower to the reasonable satisfaction of Arranger and Administrative Agent.

(t) Due Diligence. Arranger shall be satisfied, in its discretion, that there have been no material adverse developments with respect to the diligence it has conducted prior to the date of the Commitment Letter regarding (i) the general affairs, management, prospects, financial position and results of operations of Borrower, (ii) the status and construction progress of the Project; (iii) the projected tax increment revenues included in the Pledged Revenues; and (iv) the accounting, legal, environmental, regulatory and other issues relevant to Borrower and the Project.

(u) TIFIA Borrowing Conditions. Arranger shall be satisfied, in its discretion, with the results of its due diligence with respect to the TIFIA Borrowing Conditions (including one or more conference calls with the TIFIA Lender).

(v) Interest Rate Agreements. Borrower shall have delivered evidence reasonably acceptable to Administrative Agent that Borrower has entered into one or more Interest Rate Agreement that satisfy Borrower’s obligation under Section 5.10.

(w) Funding Notice. Administrative Agent shall have received a fully executed and delivered a Funding Notice.

(x) No Event of Default. No event shall have occurred and be continuing or would result from the consummation of the Credit Extension that would constitute an Event of Default or a Default under any Credit Document or an “event of default” or a “default” under the TIFIA Loan Agreement or any other material Indebtedness of Borrower.

(y) Accuracy of Representations and Warranties. The representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects on and as of the Closing Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof.

**3.2. Notices.** Any Notice shall be executed by an Authorized Officer in a writing delivered to Administrative Agent. In lieu of delivering a Notice, Borrower may give Administrative Agent telephonic notice by the required time of any proposed borrowing, provided each such notice shall be promptly confirmed in writing by delivery of the applicable Notice to Administrative Agent on or before the close of business on the date that the telephonic notice is given. In the event of a discrepancy between the telephone notice and the written Notice, the written Notice shall govern. In the case of any Notice that is irrevocable once given, if Borrower provides telephonic notice in lieu thereof, such telephone notice shall also be irrevocable once given. Neither Administrative Agent nor any Lender shall incur any liability to Borrower in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of Borrower or for otherwise acting in good faith.

#### **SECTION 4. REPRESENTATIONS AND WARRANTIES**

In order to induce Agents and Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, Borrower represents and warrants to each Agent and Lender, on the Closing Date that the following statements are true and correct:

**4.1. Organization; Requisite Power and Authority.** Borrower (a) is a joint powers authority duly created and organized under the JPA Act and (b) has full legal right, power and authority to enter into the Credit Documents to which it is a party and to carry out and consummate all transactions contemplated hereby and thereby.

**4.2. Due Authorization.** The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of Borrower.

**4.3. Creation, Perfection and Priority of Liens.** Each of the Collateral Documents is effective to create in favor of Collateral Agent, for the benefit of the Secured Parties, as security for the Obligations, a Lien on, and security interest in, Borrower's right, title and interest in and to the Collateral subject thereto and proceeds thereof. Such Lien and security interest on the Collateral (other than any real property subject to a Mortgage) is effective, binding, and enforceable against Borrower, its successors, purchasers of such Collateral, creditors, and all others asserting the rights therein, to the extent set forth, and in accordance with, the applicable Collateral Documents, irrespective of whether those parties have notice of such Lien and security interest and without the need for any physical delivery, recordation, filing, or further act. The Lien on and security interest in any real property subject to a Mortgage, subject only to recording such Mortgage with the Recorder's Office, shall constitute a fully perfected First Priority Lien

(except with respect to Permitted Liens) on, and security interest in, all right, title and interest of Borrower in such Collateral and proceeds thereof.

**4.4. No Conflict.** The execution, delivery and performance by Borrower of the Credit Documents and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate (i) the JPA Act, the Constitution of the State or any other provision of any law or any governmental rule or regulation applicable to Borrower, (ii) any of the Organizational Documents of Borrower, or (iii) any order, judgment or decree of any court or other Governmental Authority binding on Borrower; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Borrower; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Borrower (other than any Liens created under any of the Credit Documents in favor of Collateral Agent, for the benefit of the Secured Parties); or (d) require any approval of the JPA Members or any approval or consent of any Person under any Contractual Obligation of Borrower, except for such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Lenders.

**4.5. Governmental Consents.** The execution, delivery and performance by Borrower of the Credit Documents and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, except for (i) approval thereof by Borrower's board of directors prior to the Closing Date, (ii) notice thereof to the California Debt and Investment Advisory Commission following the Closing Date and (iii) the filings and recordings with respect to the Collateral to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, as of the Closing Date.

**4.6. Binding Obligation.** (a) Each Credit Document has been duly executed and delivered by Borrower and constitutes the legally valid and binding obligation of Borrower, enforceable against Borrower in accordance with its respective terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally, (ii) equitable principles relating to enforceability (regardless of whether enforceability is considered in equity or at law) or (iii) the exercise of judicial discretion and the limitations on legal remedies against joint power authorities in the State.

(b) If a California court were to determine that the choice of the laws of the State of New York to govern the Credit Documents was not a valid choice of law and that, therefore, such choice of law should not be recognized and applied, such California court would apply the laws of the State of California the Credit Documents. Assuming that the law of the State of California were applied, the Credit Documents would constitute the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with the terms hereof and thereof, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally, (ii) equitable principles relating to enforceability (regardless of whether enforceability is considered in equity or at law) or (iii) the exercise of judicial discretion and the limitations on legal remedies against joint power authorities in the State.

**4.7. Historical Audited Financial Statements.** The Historical Audited Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial condition of Borrower described in such financial statements as of the dates thereof and the results of operations and cash flows of Borrower for each of the periods then ended. As of the Closing Date, Borrower has no contingent liability or liability for Taxes (other than Taxes not yet due and payable), long-term lease or unusual forward or long-term commitment that is not reflected in the Historical Audited Financial Statements or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Borrower or the Project.

**4.8. Financial Plan.** The Financial Plan delivered by Borrower to Administrative Agent and Arranger pursuant to Section 3.1(i)(iii) is based on good faith estimates and assumptions made by the management of Borrower; provided, that any projections or other forward-looking information included in the Financial Plan are not to be viewed as facts and that actual results during the period or periods covered by the Financial Plan may differ from such Financial Plan and that the differences may be material; provided, further, that as of the Closing Date, management of Borrower believes that the Financial Plan is reasonable and attainable.

**4.9. No Material Adverse Effect.** Since June 30, 2013, no event, circumstance or change has occurred that has caused or evidences, or could reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect.

**4.10. No Sovereign Immunity.** Borrower is not entitled to immunity from liability or suit in respect of the Obligations, and Borrower is subject to service of process and legal proceedings may be commenced and maintained against Borrower for enforcement and collection in respect of the Obligations.

**4.11. Adverse Proceedings, Etc.** There are no Adverse Proceedings, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. Borrower is not (a) in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**4.12. Properties.**

(a) Title. Borrower has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property) and (iii) good title to (in the case of all personal property), all of its properties and assets reflected in its Historical Audited Financial Statements referred to in Section 4.7 and in the most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements to the extent not prohibited by Section 6.6. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens, other than Permitted Liens.

(b) Real Estate. As of the Closing Date, Schedule 4.12 contains a true, accurate and complete list of (i) all Real Estate Assets, and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of Borrower, regardless of whether Borrower is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in clause (ii) of the immediately preceding sentence is in full force and effect and Borrower does not have knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally, (ii) equitable principles relating to enforceability (regardless of whether enforceability is considered in equity or at law) or (iii) the exercise of judicial discretion and the limitations on legal remedies against joint power authorities in the State.

**4.13. Environmental Matters.** None of Borrower, the Project, the Project Site, any Specified Real Property or any of Borrower's other properties is subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Borrower has not received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law. There are and, to Borrower's knowledge, have been, no conditions, occurrences, or Hazardous Materials Activities that could reasonably be expected to form the basis of an Environmental Claim against Borrower that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Borrower has not filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at the Project Site, any Specified Real Property or any of Borrower's other properties, and neither the Project nor the operations conducted at the Project Site, any of the Specified Real Property or any of Borrower's other properties involve the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent. Compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws could not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. No event or condition has occurred or is occurring with respect to Borrower or the Project or the operations conducted at the Project Site, any of the Specified Real Property or any of Borrower's other properties relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity which individually or in the aggregate has had, or could reasonably be expected to have, a Material Adverse Effect. With respect to the Project, Borrower has complied and will continue to comply with all applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.).

**4.14. No Defaults.** Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

**4.15. Material Contracts**Error! Bookmark not defined.. Schedule 4.15 contains a true, correct and complete list of all the Material Contracts in effect on the Closing Date, and except as described thereon, all such Material Contracts are in full force and effect and no defaults currently exist thereunder as of the Closing Date.

**4.16. Governmental Regulation.** Borrower is not subject to regulation under the Federal Power Act of 1920, as amended, or the Investment Company Act of 1940, as amended, or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. Borrower is not a “registered investment company” or a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940, as amended.

**4.17. Federal Reserve Regulations; Exchange Act.**

(a) Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No portion of the proceeds of any Credit Extension shall be used in any manner, whether directly or indirectly, that causes or could reasonably be expected to cause, such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

**4.18. Labor Matters**Error! Bookmark not defined.. Borrower is not engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. To the best of Borrower’s knowledge, there is (a) no unfair labor practice complaint pending or threatened against any of the contractors performing work on the Project before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending or threatened against any of them, (b) no strike or work stoppage in existence or threatened involving any of the contractors performing work on the Project and (c) no union representation question existing with respect to the employees of any of the contractors performing work on the Project and no union organization activity is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect (any of the foregoing, except such as is not reasonably likely to have a Material Adverse Effect, a “**Labor Event**”).

**4.19. Employee Benefit Plans.** Borrower is in compliance with all applicable provisions and requirements of Law to each Employee Benefit Plan, and has performed all its obligations under each Employee Benefit Plan. Without limiting the generality of the foregoing, (i) Borrower has satisfied its obligations to make contributions, or to pay or provide compensation or benefits, under each Employee Benefit Plan, and (ii) no circumstances or facts exist or are reasonably expected to occur relating to any Pension or Post-Employment Plan, whether relating to unfunded actuarial accrued liability or contribution obligations with respect to such Pension or Post-Employment Plan or otherwise, that individually or in the aggregate

could have a Material Adverse Effect. No Pension or Post-Employment Plan is subject to the requirements of ERISA or the funding requirements of the Internal Revenue Code.

**4.20. Certain Fees.** No broker's or finder's fee or commission will be payable with respect to the transactions contemplated by this as Agreement, except as payable to Agents and Lenders.

**4.21. Solvency.** Borrower is not and, upon the incurrence of any Obligation by Borrower on any date on which this representation and warranty is made, will not be Insolvent.

**4.22. Compliance with Statutes, Etc.** Borrower is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property (including compliance with all applicable Environmental Laws with respect to the Project Site and any Specified Real Property or governing its business and the requirements of any permits issued under such Environmental Laws with respect to the Project Site and any such Specified Real Property or the Project), except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**4.23. Disclosure.** No representation or warranty of Borrower contained in any Credit Document or in any other documents, certificates or written statements furnished to any Agent or Lender by or on behalf of Borrower for use in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact (known to Borrower, in the case of any document not furnished by Borrower) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Borrower to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or which should upon the reasonable exercise of diligence be known) to Borrower (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

**4.24. Parity Permitted Debt.** The Obligations constitute and will be treated as Parity Permitted Debt under the TIFIA Loan Agreement and the TIFIA Collateral Agency Agreement.

**4.25. Capital Cost Allocation.** After giving effect to the funding of the Loans, all sources of funds set forth in the Project Budget to pay the capital costs of the Project have been fully and completely programmed to Borrower by the provider thereof (other than funds from (x) the issuance of Mello-Roos Bonds and (y) the sale of State-owned Parcels).

**4.26. Sanctioned Persons; Anti-Corruption Laws; PATRIOT Act.** None of Borrower or any of its directors, officers or, to the knowledge of Borrower, employees, agents, advisors is subject to any sanctions or economic embargoes administered or enforced by the U.S.



Department of State or the U.S. Department of Treasury (including the Office of Foreign Assets Control) or any other applicable sanctions authority (collectively, “**Sanctions**”, and the associated laws, rules, regulations and orders, collectively, “**Sanctions Laws**”). Each of Borrower and its directors, officers and, to the knowledge of Borrower, employees, agents and advisors to the extent they are acting in their capacity as employees, agents or advisors of Borrower, is in compliance, in all material respects, with (i) all Sanctions Laws, (ii) the United States Foreign Corrupt Practices Act of 1977, as amended, and any other applicable anti-bribery or anti-corruption laws, rules, regulations and orders (collectively, “**Anti-Corruption Laws**”) and (iii) the PATRIOT Act and any other applicable terrorism and money laundering laws, rules, regulations and orders. No part of the proceeds of the Loans will be used, directly or indirectly, (A) for the purpose of financing any activities or business of or with any Person or in any country or territory that at such time is the subject of any Sanctions or (B) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of any Anti-Corruption Law.

#### **4.27. Matters Relating to the Project.**

(a) The Project has been included in the metropolitan transportation improvement program for the City in the State transportation plan and the approved State transportation improvement program as required by 23 U.S.C. §602(a)(1).

(b) The Principal Project Contracts which have been executed and delivered are all in full force and effect, Borrower is not in default under any of such agreements or contracts, and to the knowledge of Borrower no party to any of such agreements or contracts is in default thereunder, except as, in either case, could not reasonably be expected to have a Material Adverse Effect.

**4.28. Community Facilities District.** The City and County of San Francisco recorded the map of the proposed boundaries of CFD 2014-1 (a copy of which is attached as Schedule 4.28(a)) in the Official Records of the City and County of San Francisco, Book 001, Page 075, which identifies the property within the proposed CFD boundary. The properties in the proposed CFD include (i) those properties owned by private parties that have development entitlements from the City to construct improvements that trigger an obligation to participate in the CFD pursuant to Section 424.8 of the Planning Code or a disposition and development agreement with the Office of Community Investment and Infrastructure and (ii) those properties owned by a public agency where the public agency has stated in the course of proceedings in a letter to the Board of Supervisors that all or a portion of its land is intended to be transferred to private ownership, that its land will be subject to the special tax on the same basis as private property with the CFD and that it affirmatively waives any defense based on the fact of public ownership, to any action to foreclose on the property in the event of nonpayment of the special tax. The minimum number of votes required to form the CFD and levy the special tax is two-thirds of the votes cast. Each landowner within the proposed boundaries of the CFD has one vote for each acre or portion of an acre of land that the land owner owns within the proposed CFD that will be subject to the special tax. To the best of Borrower’s knowledge after due inquiry, as of the Closing Date, (a) Schedule 4.28(b) sets forth the primary remaining actions required for the adoption of legislation approving the CFD, (b) Schedule 4.28(c) sets forth the properties, or

portions thereof, that are publicly-owned but are intended to be transferred to private ownership and will be subject to the special tax on the same basis as private property within the proposed CFD and (c) fewer than 12 persons have been registered to vote within the territory of the CFD for each of the 90 days preceding the close of the public hearings conducted and concluded by the City on or before September 23, 2014.

**4.29. Ineligibility for Involuntary Bankruptcy.** An involuntary bankruptcy cannot properly be commenced against Borrower.

**4.30. Successor Agency.** To the best of Borrower’s knowledge after due investigation, the TIF Pledge Agreement, the Option Agreement, Transbay Affordable Housing Obligation and the Implementation Agreement, and each of the obligations, pledges and undertakings of Successor Agency thereunder, constitute “enforceable obligations” within the meaning of the Redevelopment Dissolution Law, which defines, at Sections 34171 (d) and 34177.3 (a) of the California Health and Safety Code, enforceable obligations as certain obligations that existed prior to June 28, 2011. To the best of Borrower’s knowledge after due investigation, the terms of the Credit Documents and the Collateral-Related Documents and all obligations, pledges, undertakings, actions and activities required thereunder do not conflict with, and will not have any material adverse effect on the Transbay Final and Conclusive Enforceable Obligations, or DOF’s Finding of Completion for Successor Agency, dated May 29, 2013, pursuant to California Health and Safety Code Section 34179.7.<sup>5</sup>

## **SECTION 5. AFFIRMATIVE COVENANTS**

Borrower covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations, Borrower shall perform all covenants in this Section 5.

**5.1. Financial Statements and Other Reports.** Borrower will deliver to Administrative Agent and Lenders:

(a) Annual Financial Statements. As soon as available for each Fiscal Year commencing with the Fiscal Year ending June 30, 2014, and in any event within the earlier of (x) 210 days after the end of such Fiscal Year and (y) the date when the audited financial statements and reports as described in clauses (i) and (ii) below for such Fiscal Year are presented to Borrower’s board of directors, (i) the audited statement of net position and statement of revenues, expenses and changes in fund net position of Borrower as of the end of such Fiscal Year and the related audited statement of cash flows of Borrower for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year covered by such financial statements, in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto; and (ii) with respect to such financial statements a report thereon of Vavrinek, Trine, Day & Co., LLP or other independent certified public accountants of recognized national standing selected by Borrower, and reasonably satisfactory to Administrative Agent (which report and/or the accompanying financial statements shall be unqualified as to going concern and scope of audit (except for a qualified opinion due to a scope limitation arising solely from the implementation of Governmental Accounting

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<sup>5</sup> Subordination of Option as “enforceable obligation” to be discussed.

Standards Board Statement No. 68, *Accounting and Financial Reporting for Pensions*)), and shall state that such financial statements fairly present, in all material respects, the financial position of Borrower as at the dates indicated and the changes in position cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards);

(b) Certificate Regarding Events of Default. Together with each delivery of the audited financial statements of Borrower pursuant to Section 5.1(a), a certificate of the chief financial officer of Borrower stating whether or not, during the annual period covered by such financial statements, there occurred any Event of Default or Default, and, if any such Event of Default or Default has occurred during such period, the nature of such Event of Default or Default and the actions that Borrower has taken or intends to take in respect thereof;

(c) Statements of Reconciliation After Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the Historical Audited Financial Statements, the financial statements of Borrower delivered pursuant to Section 5.1(a) will differ in any material respect from the financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance satisfactory to Administrative Agent;

(d) Notice of Default and Other Material Events. Promptly upon any officer of Borrower obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Borrower with respect thereto; (ii) that any Person has given any notice to Borrower or taken any other action with respect to any event or condition set forth in Section 8.1(b); (iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect or (iv) any default by Borrower in the timely performance of any covenant, agreement or obligation under any Material Contract or any termination of a Material Contract prior to its scheduled expiration, a certificate of an Authorized Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Borrower has taken, is taking and proposes to take with respect thereto;

(e) Notice of Litigation and Labor Events. Promptly upon any officer of Borrower obtaining knowledge of (i) any Adverse Proceeding not previously disclosed in writing by Borrower to Lenders, (ii) any development in any Adverse Proceeding that, in the case of either clause (i) or (ii), if adversely determined could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, or (iii) any Labor Event, written notice thereof together with such other information as may be reasonably available to Borrower to enable Lenders and their counsel to evaluate such matters;

(f) Employee Benefit Plans. (i) Promptly upon becoming aware of the occurrence of or forthcoming occurrence of any circumstances or facts relating to an Employee Benefit Plan that has or reasonably could be expected to have individually or in the aggregate a Material Adverse Effect, a written notice specifying the nature thereof, what action Borrower has taken, is taking or proposes to take with respect thereto; and (ii) with reasonable promptness, copies of such documents or reports or filings relating to any Employee Benefit Plan as Administrative Agent shall reasonably request;

(g) Financial Plan. No later than the earlier of (x) the date of delivery of the Financial Plan to the TIFIA Lender and (y) 60 days after the commencement of each Fiscal Year, the Financial Plan;

(h) Insurance Report. As soon as practicable and in any event by the last day of each Fiscal Year, a certificate from Borrower's insurance broker(s) in form and substance satisfactory to Administrative Agent outlining all material insurance coverage maintained as of the date of such certificate by Borrower;

(i) Information Regarding State-Owned Parcels. Borrower will furnish to Administrative Agent the following (to the extent not already furnished to Arranger prior to the Closing Date): (i) any request for proposals issued by Successor Agency to acquire and develop any State-owned Parcel, together with any written submissions in response to such request for proposals and the selection by the Successor Agency of the winning submission from such responses, (ii) copies of any Disposition and Development Agreement entered into by the Successor Agency after the Closing Date with any developer with respect to any State-owned Parcel, together with any written materials provided by such developer demonstrating that such developer has committed financing in place for the development of such State-owned Parcel, (iii) notice of the closing of the sale of any State-owned Parcel to any developer (including the final purchase price paid by such developer for such State-owned Parcel) and (iv) such other information as from time to time may be reasonably requested by Collateral Agent or any Lender with respect to the proposed or pending sale and development of any State-owned Parcel;

(j) Quarterly Construction Progress Reports. Concurrently with its delivery to the TIFIA Lender, each quarterly construction progress report delivered to the TIFIA Lender pursuant to Section 22(b) of the TIFIA Loan Agreement;

(k) Other Information. (A) Promptly upon their becoming available to members of Borrower's board of directors, copies of (i) all board meeting agenda packages and notices concerning material developments with respect to Borrower, the Project or the State-owned Parcels sent or made available generally by Borrower to the JPA Members, if any, (ii) in addition to the items specified in clause (i), all regular and periodic reports, if any, filed by Borrower with or delivered by Borrower to any Governmental Authority and (iii) all press releases and other statements made available generally by Borrower to the public concerning material developments with respect to Borrower, the Project or the State-owned Parcels, and (B) such other information and data with respect to Borrower, the Project, the State-owned Parcels, the CFD, any Mello-Roos Bonds or any TI Indebtedness as from time to time may be reasonably requested by Administrative Agent or any Lender; and

(1) Certification of Public Information. Borrower and each Lender acknowledge that certain of the Lenders may be Public Lenders and, if documents or notices required to be delivered pursuant to this Section 5.1 or otherwise are being distributed through IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform (the “**Platform**”), any document or notice that Borrower has indicated contains Private-Side Information shall not be posted on that portion of the Platform designated for such Public Lenders. Borrower agrees to clearly designate all information provided to Administrative Agent by or on behalf of Borrower which contains only Public-Side Information, and by doing so shall be deemed to have represented that such information contains only Public-Side Information. If Borrower has not indicated whether a document or notice delivered pursuant to this Section 5.1 contains Private-Side Information, Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Private Lenders.

**5.2. Existence.** Borrower shall maintain its existence as a joint powers authority under the Joint Powers Act.

**5.3. Payment of Taxes and Claims.** Borrower will pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim.

**5.4. Maintenance of Properties.** Borrower will maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Borrower and the Project and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

**5.5. Insurance.** Borrower will maintain or cause to be maintained, with financially sound and reputable insurers, such public liability insurance, third party property damage insurance, and casualty insurance with respect to liabilities, losses or damage in respect of the Project, the Project Site, and the Specified Real Property as may customarily be carried or maintained with respect to works and properties of like character, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such works and properties. Without limiting the generality of the foregoing, Borrower will maintain or cause to be maintained (a) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Program, in each case in compliance with any applicable regulations of the Board of Governors, and (b) replacement value casualty insurance on the Specified Real Property under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained for similar works and properties. Each such policy of insurance maintained by

Borrower shall (i) in the case of each liability insurance policy, name Collateral Agent, for the benefit of the Secured Parties, as an additional insured thereunder as its interests may appear, and (ii) in the case of each casualty insurance policy for any [Specified Real Property], contain a loss payable clause or endorsement, satisfactory in form and substance to Collateral Agent, that names Collateral Agent, for the benefit of the Secured Parties, as the loss payee thereunder and provide for at least thirty days' prior written notice to Collateral Agent of any modification or cancellation of such policy.

**5.6. Books and Records; Inspections.** Borrower will keep proper books of record and accounts in which full, true and correct entries in conformity in all material respects with GAAP shall be made of all dealings and transactions in relation to the Project and its business and activities. Borrower will permit any authorized representatives designated by the Lenders to visit and inspect any of the properties of Borrower to inspect, copy and take extracts from its financial and accounting records, and to discuss its affairs, finances and accounts with its officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested; provided that, so long as no Event of Default has occurred and is continuing, such inspections shall occur no more frequently than once in any 12-month period.

**5.7. Lenders Meetings.** Borrower will, upon the request of Administrative Agent or Requisite Lenders, participate in a meeting of Administrative Agent and Lenders once during each Fiscal Year to be held at Borrower's principal office (or at such other location as may be agreed to by Borrower and Administrative Agent) at such time as may be agreed to by Borrower and Administrative Agent.

**5.8. Compliance With Laws.** Borrower will comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), except to the extent that noncompliance therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect (or, in the case of the laws, rules, regulations and orders referred to in Section 4.26, except to the extent that noncompliance therewith is not material).

**5.9. Environmental.**

(a) Environmental Disclosure. Borrower will deliver to Administrative Agent and Lenders:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Borrower or by independent consultants, Governmental Authorities or any other Persons, with respect to significant environmental matters at the Project Site, any Specified Real Property or any of Borrower's other properties or with respect to any Environmental Claims affecting the Project Site, any Specified Real Property or any of Borrower's other properties;

(ii) promptly upon Borrower becoming aware of the occurrence thereof, written notice describing in reasonable detail any of the following affecting the

Project Site, any Specified Real Property or any of Borrower's other properties: (1) any Release required to be reported to any Governmental Authority under any applicable Environmental Laws, (2) any remedial action taken by Borrower or any other Person in response to (A) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect, or (B) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of resulting in a Material Adverse Effect, and (3) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project Site, any Specified Real Property or any of Borrower's other properties that could cause the Project Site, any Specified Real Property or any of Borrower's other properties or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) as soon as practicable following the sending or receipt thereof by Borrower, a copy of any and all written communications regarding any of the following affecting the Project, any Specified Real Property or any of Borrower's other properties with respect to (1) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of giving rise to a Material Adverse Effect, (2) any Release required to be reported to any Governmental Authority, and (3) any request for information from any Governmental Authority that suggests such Governmental Authority is investigating whether Borrower may be potentially responsible for any Hazardous Materials Activity;

(iv) prompt written notice describing in reasonable detail any proposed action to be taken by Borrower to modify current operations affecting the Project Site, any Specified Real Property or any of Borrower's other properties in a manner that could reasonably be expected to subject Borrower to any additional material obligations or requirements under any Environmental Laws; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by Administrative Agent in relation to any matters disclosed pursuant to this Section 5.9(a).

(b) Hazardous Materials Activities, Etc. Borrower shall promptly take any and all actions necessary to (i) cure any violation of applicable Environmental Laws by Borrower that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) make an appropriate response to any Environmental Claim against Borrower and discharge any obligations it may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**5.10. Interest Rate Protection.** On the Closing Date and at all times thereafter through the Maturity Date, Borrower shall obtain and cause to be maintained protection against fluctuations in interest rates to one or more Interest Rate Agreements in form and substance reasonably satisfactory to Administrative Agent, in order to ensure that the entire outstanding principal amount of the Loans is subject to such Interest Rate Agreements.

**5.11. Matters Relating to Pledged Revenues.** Borrower shall preserve and maintain the pledge of Net Tax Increment Revenues under the TIF Pledge Agreement. Without limitation of the foregoing, Borrower shall use its best efforts to cause the Net Tax Increment Revenues to not be reduced through a State mandate to the Successor Agency pursuant to clause (d) of the definition thereof. To the extent that Borrower or the Successor Agency has any remedy to prevent such reduction, Borrower shall take action to implement such remedy or use its best efforts to cause the Successor Agency to take action to implement such remedy.

**5.12. Project-Related Matters.**

(a) Prosecution of Work. Borrower shall cause the work relating to the Project to be diligently prosecuted and the Project to be completed in accordance with the Construction Schedule, in accordance with the highest standards of Borrower's industry, using its best efforts at all times.

(b) Operations and Maintenance. Borrower shall operate and maintain the Project, or cause the Project to be operated and maintained, in a reasonable and prudent manner and shall maintain the Project, or cause the Project to be maintained, in good repair, working order and condition. Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises and authorizations material to the conduct of its business, and comply or cause compliance in all material respects with all applicable laws, rules, regulations, orders, decrees, judgments or administrative decisions, whether now in effect or hereafter enacted, of any Governmental Authority having jurisdiction over Borrower or its assets or operations (including, without limitation, the National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.) and all other federal, state and local laws, rules, regulations, orders, decrees, judgments and administrative decisions relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters).

**5.13. TIFIA Loan Matters.**

(a) TIFIA Borrowing Conditions. Borrower shall make diligent efforts to cause the TIFIA Borrowing Conditions to be satisfied as soon as possible following the Lockout Date (taking into account the timeline for sale of the State-owned Parcels established by Borrower prior to the Closing Date) but in no event later than the last permitted date for drawing on the TIFIA Loan, which efforts shall include (i) diligently cooperating with the City on the creation of a CFD in compliance with the Mello-Roos Community Facilities Act of 1982 and the authorization of the issuance of Mello-Roos Bonds in an aggregate amount no less than the amount required to satisfy the TIFIA Borrowing Conditions and (ii) diligently prosecuting the work relating to the Redevelopment Plan, including, without limitation, the sale and private development of State-owned Parcels so as to obtain gross sales proceeds aggregating not less than \$429.0 million (inclusive of any sales of State-owned Parcels prior to the Closing Date).

(b) TIFIA Loan Disbursement. Promptly after the satisfaction of the TIFIA Borrowing Conditions, Borrower shall request that the TIFIA Lender disburse an amount of the TIFIA Loan commitment necessary to repay the Obligations in full.



(c) Termination of TIFIA Loan Agreement. At the request of the Requisite Lenders, Borrower shall terminate the TIFIA Loan Agreement (except for provisions of the TIFIA Loan Agreement that by their express terms survive the termination of the TIFIA Loan Agreement) if the TIFIA Borrowing Conditions are not satisfied prior to the fourth (4th) anniversary of the Closing Date.

**5.14. Further Assurances.** At any time or from time to time upon the request of Administrative Agent, Borrower will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent or Collateral Agent may reasonably request in order to effect fully the purposes of the Credit Documents.

**5.15. Disposition and Development Agreements.**

(a) Borrower shall provide a copy of each Disposition and Development Agreement to the Administrative Agent promptly after execution thereof.

(b) With respect to each Disposition and Development Agreement, Borrower shall ensure that the Successor Agency will (or otherwise cause the Successor Agency to):

(i) (x) include a provision in each Disposition and Development Agreement entered into after the Closing Date by which the applicable developer shall agree that the assessed value of the property that is the subject of the Disposition and Development Agreement shall be the greater of: (A) the existing assessed value of such property as determined by the County Assessor or (B) the sum of the purchase price of such property plus the cost of the building(s) constructed pursuant to such Disposition and Development Agreement and (y) prepare a revised projection of Net Tax Increment Revenues if assessment appeals in the aggregate result in a material reduction in assessed value in the State-owned Parcels from that in the current projection, demonstrating adequate Net Tax Increment Revenues for repayment of the Loans;

(ii) diligently prosecute the exercise of remedies against a property owner upon the occurrence and continuation of a default under an Disposition and Development Agreement that has, or is likely to result in a material reduction of the real estate tax assessment and the amount of Net Tax Increment Revenues to be collected with respect to such property;

(iii) include in each Disposition and Development Agreement the obligation to apply fire and casualty property insurance proceeds to the restoration of the subject property if, in the reasonable judgment of the Successor Agency, the funds available to the subject property owner are sufficient to restore the property to its prior use and condition; and

(iv) record a deed restriction for no less than the term of the Loans on each property that is the subject of an Disposition and Development Agreement that such property will not be used, in whole or in part, by an entity or for a purpose that will result in an exemption from the payment of real estate taxes being granted in any amount, without the prior written consent of the Requisite Lenders, with the exception of the following: (x) property that is used for infrastructure and other public facilities and

(y) property that is used for the production of affordable housing, as contemplated by the Redevelopment Plan.

**5.16. Maintenance of Debt Service Reserve Subaccount.** Borrower shall maintain in the Debt Service Reserve Subaccount at all times a reserve in an amount equal to the Available Pledged Revenues for any Obligations that may thereafter become due and payable.

**5.17. Block 4 Matters.**

(a) If the Obligations have not been repaid in full on or prior to the date that is 18 months after the Closing Date, Borrower shall use its commercially reasonable efforts to take such action as may be necessary to apply for and pursue to completion the subdivision of Block 4 into a separate legal parcel and to provide Collateral Agent, as security for the Obligations, a First Priority Mortgage on Block 4 and such title insurance policies, opinions and other deliverables with respect to such Mortgage as may be reasonably requested by Collateral Agent that are consistent with the deliverables obtained for the Mortgage with respect to the Closing Date Mortgaged Property on the Closing Date.

(b) After the completion of construction of the Project and the relocation of operations of AC Transit and other applicable transit operators to the Transbay Transit Center from the Temporary Terminal, Borrower will use commercially reasonable efforts, on a schedule to be determined by Borrower and Administrative Agent (with input from the Requisite Lenders) to (i) enter into (or cause the Successor Agency to enter into) a Disposition and Development Agreement for the sale of Block 4 consistent with the Transbay Final and Conclusive Enforceable Obligations and the TIFIA Loan Agreement and (ii) sell (or cause the Successor Agency to sell) Block 4 for an amount no less than the Lien Release Price ; provided, however, that if any Event of Default described in Section 8.1(a) occurs and is continuing, Borrower shall use commercially reasonable efforts to sell (or cause the Successor Agency to sell) Block 4 for an amount no less than the Lien Release Price for Block 4 as soon as practicable after the occurrence of such Event of Default. Each of the Lenders and the Agents acknowledges and agrees that any Disposition and Development Agreement for Block 4, and any sale of Block 4, pursuant to this subsection shall be subject to and affected by the Transbay Affordable Housing Obligation. Block 4 may not be developed in a way that will prevent Successor Agency from meeting the requirements of the Transbay Affordable Housing Obligation. Nothing in this Agreement shall affect the Transbay Affordable Housing Obligation nor the Successor Agency's right to determine the infrastructure, affordable housing, and open space requirements that will apply to any development on all or any portion of Block 4 to meet the Transbay Affordable Housing Obligation and the requirements of the Redevelopment Plan.

**5.18. Tax Increment Financing.** If the Obligations have not been repaid in full on or prior to the date that is 3 years after the Closing Date, Borrower shall commence and diligently pursue the process for issuing (or causing to be issued) one or more series of bonds or other Indebtedness secured by Net Tax Increment Revenues in an aggregate amount at least sufficient to repay in full the Obligations (the “**TI Indebtedness**”), including taking (or causing to be taken) the following actions:

(a) engaging one or more financial advisors to advise on the issuance of the TI Indebtedness;

(b) engaging as the lead underwriter or arranger for the TI Indebtedness an investment banking firm that is (x) nationally recognized for its expertise in underwriting or arranging tax increment financings as demonstrated by its inclusion in the top ten underwriters of Securities Data Corporation's ranking of underwriters and arrangers of tax increment financings or other equivalent annual rankings of underwriters and arrangers of tax increment financings or (y) otherwise reasonably satisfactory to Administrative Agent;

(c) meeting with Nationally Recognized Rating Agencies, if applicable, to procure a proposed rating of the TI Indebtedness;

(d) preparing customary offering or information materials for the TI Indebtedness; and

(e) taking such other action as may be reasonably necessary to issue the TI Indebtedness prior to the Maturity Date.

## **SECTION 6. NEGATIVE COVENANTS**

Borrower covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations, Borrower shall perform all covenants in this Section 6.

**6.1. Indebtedness.** Borrower shall not, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) the TIFIA Loan or, if the TIFIA Borrowing Conditions are not satisfied, TI Indebtedness, but only if the net proceeds of the TIFIA Loan or such TI Indebtedness, as applicable, are in an aggregate amount at least sufficient to repay, and are in fact used to repay, the Obligations in full;

(c) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business;

(d) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with Deposit Accounts;

(e) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Borrower; and

(f) reimbursement obligations in respect of letters of credit, and other financial obligations, arising under the Principal Project Contracts or any other agreement executed by Borrower in connection with the Project that are payable as Project Costs, Eligible

Project Costs, or Operations and Maintenance Expenses (as defined in the TIFIA Loan Agreement) or that do not in the aggregate have face amounts exceeding \$5,000,000 (inflated annually by CPI).

**6.2. Liens.** Borrower shall not, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including Specified Real Property) of Borrower, whether now owned or hereafter acquired or licensed, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under any recording or notice statute, except:

(a) Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Credit Document;

(b) the Lien on the Pledged Revenues securing the TIFIA Loan and securing the fees owing to TIFIA Collateral Agent under the TIFIA Collateral Agency Agreement;

(c) Liens for Taxes if obligations with respect to such Taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and adequate reserves have been made in accordance with GAAP;

(d) statutory Liens of landlords, banks (and rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed with respect to any Pension or Post-Employment Plan), in each case incurred in the ordinary course of business (i) for amounts not yet overdue or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of five days) are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(e) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(f) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of Borrower;

(g) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(h) any easements, zoning restrictions or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property;

(i) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 8.1(h); and

(j) Liens described in Schedule 6.2 or on the title report delivered pursuant to Section 3.1(e)(iv);

**6.3. No Further Negative Pledges.** Except (a) for the Negative Pledge and (b) in connection with sales of State-owned Parcels for purposes of development pursuant to a Disposition and Development Agreement (and, in the case of a sale of any Specified Real Property, only to the extent such sale is permitted under Section 6.6), Borrower shall not enter into any agreement prohibiting the creation or assumption of any Lien upon any of Borrower's property to secure the Obligations.

**6.4. Leases of or Easements Over Specified Real Property.** Borrower shall not lease or grant any easements or rights of occupancy over any portion of the Specified Real Property, other than (a) with respect to Block 4 (i) pursuant to the Lease and Use Agreement and (ii) easements and rights-of-way over Block 4 granted to any transportation operator in connection with its lease of any remaining portion of the Temporary Terminal and (b) with respect to Parcel F, the occupancy rights of the CM/GC under the CM/GC Agreement.

**6.5. Investments; Other Business Transactions.**

(a) Borrower shall not, directly or indirectly, make or own any Investment in any Person, except:

(i) Investments in Cash and Permitted Investments;

(ii) deposits, prepayments and other credits to suppliers and contractors made in the ordinary course of business consistent with the past practices of Borrower; and

(iii) Hedge Agreements which constitute Investments.

(b) Borrower shall not form, acquire, contribute to or invest in any subsidiary entities or joint ventures or acquire all or substantially all of the assets of any Person.

**6.6. No Sale or Assignment of Project or Specified Real Property.** Borrower shall not sell (including by way of any sale-leaseback) or assign any of its rights in and to the Project or the Specified Real Property, other than (a) with respect to the Project, sales, leases, licenses or other transfers of space or rights to advertisers, concessionaires, vendors, sponsors and others in the ordinary course of business, (b) subject to the terms and conditions set forth in the related Subordination of Option Agreement, a bona fide sale of Parcel F or Block 4 to (or a conveyance of Parcel F or Block 4 to the Successor Agency under the Option Agreement in connection with a substantially contemporaneously bona fide sale by the Successor Agency of Parcel F or Block 4 to) a third-party developer for a price that is no less than the Lien Release Price for Parcel F or Block 4, as the case may be, and (c) a bona fide sale of the MTC Parcels to a third-party developer, but only to the extent such sale of the MTC Parcels is made concurrently with the sale of Parcel F to the same third-party developer in a transaction permitted under clause (b) above.

**6.7. Fundamental Changes.** Borrower shall not enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution).

**6.8. Pledged Revenues.** Borrower shall not take any action or omit to take any action that would impair the pledge of Net Tax Increment Revenues under the TIF Pledge Agreement. Borrower shall not use Pledged Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of the TIFIA Collateral Agency Agreement and shall not apply any portion of the Pledged Revenues in contravention of the TIFIA Collateral Agency Agreement.

**6.9. Conduct of Business.** From and after the Closing Date, Borrower shall not at any time engage in any business or activity other than the design, construction, operation and maintenance of the Transbay Transit Center Program and activities incidental or related thereto

**6.10. Amendments or Waivers of Organizational Documents; Material Contracts.**

(a) Borrower shall not, without obtaining the prior written consent of Requisite Lenders (such consent not to be unreasonably withheld), agree to any material amendment, restatement, supplement or other modification to, or waiver of (i) Section 18 or Section 21 of the Joint Powers Agreement, (ii) Section 13.1 of Borrower's by-laws or (iii) except as could not reasonably be expected to have a Material Adverse Effect, any other provision of Borrower's Organizational Documents.

(b) Borrower shall not, without the prior consent of the Requisite Lenders (such consent not to be unreasonably withheld): (i) amend, modify or supplement, waive the performance by any Person of its obligations under, or permit the termination or assignment of, (x) the CM/GC Agreement if the effect thereof would be to (A) reduce the maximum aggregate amount of liquidated damages payable by the CM/GC by more than 10%, unless such reduction is offset by an equivalent or greater reduction in the amount of Project costs payable by Borrower to the CM/GC under the CM/GC Agreement, (B) postpone by more than 60 days the first date on which liquidated damages are payable by CM/GC in the event of delay in completing the Project or (C) extend the period of time during which CM/GC is permitted to use Parcel F as a construction staging area for the Project, (y) except as could not reasonably be expected to materially adversely affect the interests of the Lenders, any Collateral-Related Document or (z) except as could not reasonably be expected to have a Material Adverse Effect, any Principal Project Contract, (ii) amend, modify or supplement, waive the performance by the TIFIA Lender of its obligations under, or permit the termination or assignment of, the TIFIA Loan Agreement in any manner that could reasonably be expected to make it more burdensome or less likely for Borrower to satisfy the TIFIA Borrowing Conditions, (iii) amend or modify the Project Budget unless (x) such amendment or modification does not increase the Project Budget beyond the resources available or programmed to Borrower to pay such costs as set forth in the Financial Plan and (y) the TIFIA Lender has approved such amendment or modification to the extent such approval is required under the TIFIA Loan Agreement, or (iv) amend or modify the Construction Schedule if the effect thereof is to extend the date for Substantial Completion beyond December 31, 2017. Borrower shall provide to Administrative Agent copies of any proposed amendments or modifications to any Material Contract, the TIFIA Loan Agreement,

the Project Budget or the Construction Schedule requiring the consent of the Requisite Lenders under this Section 6.10(b) at least 30 days prior to the effective date thereof.

## **SECTION 7. SECURITY INTEREST IN REVENUE AND PROCEEDS COLLATERAL.**

**7.1. Grant of Security Interest.** Borrower hereby grants to Collateral Agent, for the benefit of Secured Parties, as collateral security for the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, of all Obligations, a security interest and continuing First Priority Lien on all of Borrower's right, title and interest in, to and under all of the following property described in clauses (a) through (h) of this Section 7.1, in each case whether now or hereafter existing or in which Borrower now has or hereafter acquires an interest and wherever the same may be located (all of which being hereinafter collectively referred to as the **"Revenue and Proceeds Collateral"**):

- (a) all Pledged Revenues;
- (b) all accounts, general intangibles and contract or other rights to receive Pledged Revenues and all rights under the Collateral-Related Documents;
- (c) the TIFIA Collateral Agency Agreement, including all of Borrower's rights and interests to and in the funds, money and securities held thereunder (excluding amounts used to pay fees of the TIFIA Lender and TIFIA Collateral Agent);
- (d) all Additional AC Transit Capital Contributions;
- (e) the Facility Collateral Agency Agreement, including all of Borrower's rights and interests to the funds, money and securities held thereunder;
- (f) the Capitalized Interest Account, the Expense Reserve Account, the Lockbox Account, the Debt Service Subaccount and the Debt Service Reserve Subaccount and all funds, moneys and securities from time to time held therein;
- (g) all rights to payment and proceeds from the sale, lease or other disposition of all or any portion of the Specified Real Property; and
- (h) to the extent not otherwise included above, all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

**7.2. Continuing Liability under Collateral-Related Documents.** Notwithstanding anything herein to the contrary, (a) Borrower shall remain liable hereunder and under each Collateral-Related Document to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither Collateral Agent nor any Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall Collateral Agent nor any Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect

or enforce any rights under any agreement included in the Revenue and Proceeds Collateral and (b) the exercise by Collateral Agent of any of its rights hereunder shall not release Borrower from any of its duties or obligations hereunder or under the Collateral-Related Documents.

**7.3. Power of Attorney.** Borrower hereby irrevocably appoints Collateral Agent (such appointment being coupled with an interest) as Borrower's attorney-in-fact, with full authority in the place and stead of Borrower and in the name of Borrower, Collateral Agent or otherwise, from time to time in Collateral Agent's discretion to take any action and to execute any instrument that Collateral Agent may deem reasonably necessary or advisable to accomplish the purposes of this Agreement.

**7.4. No Duty on the Part of Collateral Agent or Secured Parties.** The powers conferred on Collateral Agent hereunder are solely to protect the interests of the Secured Parties in the Revenue and Proceeds Collateral and shall not impose any duty upon Collateral Agent or any other Secured Party to exercise any such powers. Collateral Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to Borrower for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

## **SECTION 8. EVENTS OF DEFAULT**

**8.1. Events of Default.** If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by Borrower to pay (i) when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or (ii) any interest on any Loan or any fee or any other amount due hereunder within three Business Days after the date due; or

(b) Default in Other Agreements. (i) Failure of Borrower to pay when due any principal of or interest on or any other amount, including any payment in settlement, payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) in an aggregate principal amount (or Net Mark-to-Market Exposure) of \$5,000,000 or more, in each case beyond the grace period, if any, provided therefor; (ii) breach or default by Borrower with respect to any other material term of (1) one or more items of Indebtedness in the individual or aggregate principal amounts (or Net Mark-to-Market Exposure) referred to in clause (i) above or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; (iii) any Event of Default (as defined in the TIFIA Loan Agreement) shall occur or (iv) Borrower shall default in the timely performance of any covenant, agreement or obligation under any Material Contract or any Material Contract shall be terminated prior to its scheduled



expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect), and Borrower shall have failed to cure such default or to obtain an effective written waiver thereof, or to obtain an effective revocation of such termination (as the case may be), within 30 days after receipt of written notice thereof from Administrative Agent (unless Borrower shall have failed to comply with its obligation under Section 5.1(d)(iv) to deliver to Administrative Agent and Lenders written notice of such default or termination, which case such 30-day period shall commence with the occurrence of such default or termination); provided, however, that if such cure or waiver or revocation (as the case may be) cannot reasonably be obtained within such 30-day period, then no Event of Default shall be deemed to have occurred or be continuing under this clause if and so long as within such 30-day period Borrower shall commence actions reasonably designed to obtain a cure or waiver of such default or a revocation of such termination (as the case may be) and shall obtain such cure, waiver or revocation within 90 days after the end of such 30-day period; or

(c) Breach of Certain Covenants. Failure of Borrower to perform or comply with any term or condition contained in Section 2.3, Sections 5.1(a), 5.1(b), 5.1(d) (excluding clause (iv) thereof), Section 5.2, Section 5.11, Section 5.16 or Section 6; or

(d) Breach of Representations, Etc. Any representation, warranty, certification or other statement made or deemed made by Borrower in any Credit Document or in any statement or certificate at any time given by Borrower in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Credit Documents. Borrower shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents, other than any such term referred to in any other paragraph of this Section 8.1, and such default shall not have been remedied or waived within 30 days after the earlier of (i) an officer of Borrower becoming aware of such default or (ii) receipt by Borrower of notice from Administrative Agent or any Lender of such default; provided, however, that if such remedy cannot reasonably be performed or obtained within such 30-day period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 8.1(e) if and so long as, within such 30-day period, Borrower shall commence actions designed to remedy such default and make diligent efforts in good faith to remedy such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Borrower in an involuntary case under any Debtor Relief Laws now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Borrower under any Debtor Relief Laws now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Borrower, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Borrower for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial

part of the property of Borrower, and any such event described in this clause (ii) shall continue for 60 days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) Borrower shall have an order for relief entered with respect to it or shall commence a voluntary case under any Debtor Relief Laws now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Borrower shall make any assignment for the benefit of creditors; or (ii) Borrower shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors of Borrower (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.1(f); or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving in the aggregate at any time an amount in excess of \$5,000,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Borrower or any of its assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree shall be entered against Borrower decreeing the dissolution or split up of Borrower and such order shall remain undischarged or unstayed for a period in excess of thirty days; or

(j) Employee Benefit Plans. (i) There shall exist any fact or circumstance relating to a Pension or Post-Employment Plan which individually or in the aggregate results in or might reasonably be expected to result in liability of Borrower to make contributions in excess of \$5,000,000 annually (or such greater amount that does not materially alter the Project Budget and is not reasonably likely to have a Material Adverse Effect); or (ii) there exists any fact or circumstance that reasonably could be expected to result in the imposition of a Lien or security interest with respect to a Pension or Post-Employment Plan; or

(k) Collateral Documents and Other Credit Documents. At any time after the execution and delivery thereof, (i) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Collateral Agent or any Secured Party to take any action within its control, or (ii) Borrower shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Credit Document to which it is a party or shall contest the validity or perfection of any Lien in any Collateral purported to be covered by the Collateral Documents; or

(l) Development Default. (i) Borrower fails to reasonably prosecute the work relating to the Project or (ii) Borrower fails to complete the Project in accordance with the Construction Schedule, unless in each such case Borrower demonstrates to the Requisite Lenders' reasonable satisfaction that Borrower is proceeding with the construction of the Project with due diligence toward reaching Substantial Completion by no later than December 31, 2017; or

(m) Project Abandonment. Borrower shall abandon the Project; or

(n) Cessation of Operations. Operation of the Project shall cease for a continuous period of not less than 180 days;

**THEN**, (1) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence and during the continuance of any other Event of Default, at the request of (or with the consent of) Requisite Lenders, upon notice to Borrower by Administrative Agent, (A) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Borrower: the unpaid principal amount of and accrued interest and, if applicable, Make-Whole Premium on the Loans, and all other Obligations; and (B) Administrative Agent may cause Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents or as otherwise permitted by applicable laws.

**8.2. Application of Proceeds.** All proceeds received by Collateral Agent in the event that an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to Section 8.1 and in respect of any sale of, any collection from, or other realization upon all or any part of the Collateral shall be applied in full or in part by the Collateral Agent against, the Obligations in the following order of priority:

*first*, to the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to Collateral Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by the Collateral Agent in connection therewith, and all amounts for which Collateral Agent is entitled to indemnification hereunder (in its capacity as Collateral Agent and not as a Lender) and all advances made by Collateral Agent for the account of Borrower, and to the payment of all costs and expenses paid or incurred by Collateral Agent in connection with the exercise of any right or remedy hereunder or under any Collateral Document all in accordance with the terms hereof or thereof;

*second*, to the payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans for the ratable benefit of the Lenders in proportion to the respective amounts described in this clause *second* payable to them;

*third*, to the payment of that portion of the Obligations constituting unpaid principal of the Loans for the ratable benefit of the Lenders in proportion to the respective amounts described in this clause *third* payable to them;

*fourth*, to the payment of that portion of the Obligations constituting termination amounts payable in connection with the early termination of Hedge Agreements for the

ratable benefit of the Lender Counterparties in proportion to the respective amounts described in this clause *fourth* payable to them;

*fifth*, to the payment of all other Obligations not described in clauses *first* through *fourth* above for the ratable benefit of the Secured Parties in proportion to the respective amounts described in this clause *fifth* payable to them; and

*sixth*, to the extent of any excess of such proceeds, to the payment to or upon the order of Borrower or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct;

provided, however, that to the extent that the TIFIA Collateral Agency Agreement or the Facility Collateral Agency Agreement sets forth the application of amounts on deposit in any of the Accounts (as defined in the TIFIA Collateral Agency Agreement) or the Capitalized Interest Account, the Lockbox Account or the Expense Reserve Account, then the terms of the TIFIA Collateral Agency Agreement or the Facility Collateral Agency Agreement, as applicable, shall control.

## SECTION 9. AGENTS

**9.1. Appointment of Agents.** Goldman Sachs is hereby appointed Syndication Agent and Bookrunner hereunder, and each Lender hereby authorizes Goldman Sachs to act as Syndication Agent and Bookrunner in accordance with the terms hereof and the other Credit Documents. Goldman Sachs is hereby appointed Administrative Agent and Collateral Agent hereunder and under the other Credit Documents and each Lender hereby authorizes Goldman Sachs to act as Administrative Agent and Collateral Agent in accordance with the terms hereof and the other Credit Documents. Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this Section 9 are solely for the benefit of Agents and Lenders and Borrower shall not have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Borrower. Syndication Agent, without consent of or notice to any party hereto, may assign any and all of its rights or obligations hereunder to any of its Affiliates. As of the Closing Date, Goldman Sachs, in its capacity as Syndication Agent or Bookrunner, shall have no obligations but shall be entitled to all benefits of this Section 9. Each of Syndication Agent, Bookrunner and any Agent described in clause (v) of the definition thereof may resign from such role at any time, with immediate effect, by giving prior written notice thereof to Administrative Agent and Borrower.

**9.2. Powers and Duties.** Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall

have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender or any other Person; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

### **9.3. General Immunity.**

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of Borrower to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of Borrower or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the component amounts thereof.

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Credit Documents except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Borrower), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in

accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5).

(c) Delegation of Duties. Administrative Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Credit Document by or through any one or more sub-agents appointed by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 9.3 and of Section 9.6 shall apply to any the Affiliates of Administrative Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 9.3 and of Section 9.6 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by Administrative Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of Borrower and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to Administrative Agent and not to Borrower, Lender or any other Person and none of Borrower, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

**9.4. Agents Entitled to Act as Lender.** The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term “Lender” shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Borrower as if it were not performing the duties specified herein, and may accept fees and other consideration from Borrower for services in connection herewith and otherwise without having to account for the same to Lenders.

**9.5. Lenders’ Representations, Warranties and Acknowledgment.**

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Borrower in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Borrower. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders

or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement or an Assignment Agreement and funding its Loan on the Closing Date shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable on the Closing Date.

**9.6. Right to Indemnity.** Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, to the extent that such Agent shall not have been reimbursed by Borrower, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Agent in any way relating to or arising out of this Agreement or the other Credit Documents; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

**9.7. Successor Administrative Agent and Collateral Agent.**

(a) Administrative Agent shall have the right to resign at any time by giving prior written notice thereof to Lenders and Borrower and Administrative Agent may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to Borrower and Administrative Agent and signed by Requisite Lenders. Administrative Agent shall have the right to appoint a financial institution to act as Administrative Agent and/or Collateral Agent hereunder, subject to the reasonable satisfaction of Borrower and the Requisite Lenders, and Administrative Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the acceptance of such successor Administrative Agent by Borrower and the Requisite Lenders or (iii) such other date, if any, agreed to by the Requisite Lenders. Upon any such notice of resignation or any such removal, if a successor Administrative Agent has not already been appointed by the retiring Administrative Agent, Requisite Lenders shall have the right, upon five Business Days' notice to Borrower, to appoint a successor Administrative Agent.

If neither Requisite Lenders nor Administrative Agent have appointed a successor Administrative Agent, Requisite Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that, until a successor Administrative Agent is so appointed by Requisite Lenders or Administrative Agent, any collateral security held by Administrative Agent in its role as Collateral Agent on behalf of the Lenders under any of the Credit Documents shall continue to be held by the retiring Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent and the retiring or removed Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, and (ii) take actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Collateral Documents, whereupon such retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder. Except as provided above, any resignation or removal of Goldman Sachs or its successor as Administrative Agent pursuant to this Section 9.7 shall also constitute the resignation or removal of Goldman Sachs or its successor as Collateral Agent. After any retiring or removed Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder. Any successor Administrative Agent appointed pursuant to this Section 9.7 shall, upon its acceptance of such appointment, become the successor Collateral Agent for all purposes hereunder.

(b) In addition to the foregoing, Collateral Agent may resign at any time by giving prior written notice thereof to Lenders and Borrower, and Collateral Agent may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to Collateral Agent signed by Requisite Lenders. Administrative Agent shall have the right to appoint a financial institution as Collateral Agent hereunder, subject to the reasonable satisfaction of Borrower and the Requisite Lenders and Collateral Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation, (ii) the acceptance of such successor Collateral Agent by Borrower and the Requisite Lenders or (iii) such other date, if any, agreed to by the Requisite Lenders. Upon any such notice of resignation or any such removal, Requisite Lenders shall have the right, upon five Business Days' notice to Administrative Agent, to appoint a successor Collateral Agent. Until a successor Collateral Agent is so appointed by Requisite Lenders or Administrative Agent, any collateral security held by Collateral Agent on behalf of the Lenders under any of the Credit Documents shall continue to be held by the retiring Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Collateral Agent under this Agreement and the Collateral Documents, and the retiring or removed Collateral Agent under this Agreement shall promptly (i) transfer to such successor Collateral Agent all sums, securities and other items of Collateral held hereunder or under the



Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreement and the Collateral Documents, and (ii) take such actions as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the security interests created under the Collateral Documents, whereupon such retiring or removed Collateral Agent shall be discharged from its duties and obligations under this Agreement and the Collateral Documents. After any retiring or removed Collateral Agent's resignation or removal hereunder as Collateral Agent, the provisions of this Agreement and the Collateral Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement or the Collateral Documents while it was Collateral Agent hereunder.

## **9.8. Collateral Documents.**

(a) Agents Under Collateral Documents. Each Secured Party hereby further authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of Secured Parties with respect to the Collateral and the Collateral Documents; provided that neither Administrative Agent nor Collateral Agent shall owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure or any other obligation whatsoever to any holder of Obligations with respect to any Hedge Agreement. Subject to Section 10.5, without further written consent or authorization from any Secured Party, Administrative Agent or Collateral Agent, as applicable, may execute any documents or instruments necessary to in connection with a sale or disposition of assets permitted by this Agreement, release any Lien encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented.

(b) Right to Realize on Collateral. Anything contained in any of the Credit Documents to the contrary notwithstanding, Borrower, Administrative Agent, Collateral Agent and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Credit Documents may be exercised solely by Administrative Agent or Collateral Agent, as applicable, for the benefit of the Secured Parties in accordance with the terms hereof and thereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Administrative Agent for the benefit of the Secured Parties in accordance with the terms thereof, and (ii) in the event of a foreclosure or similar enforcement action by Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including, without limitation, pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), Collateral Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code,) may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities) shall be entitled, upon instructions from Requisite Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale or other disposition.

(c) Rights Under Hedge Agreements. No Hedge Agreement will create (or be deemed to create) in favor of any Lender Counterparty that is a party thereto any rights in connection with the management or release of any Collateral except as expressly provided in Section 10.5(c)(i) of this Agreement. By accepting the benefits of the Collateral, such Lender Counterparty shall be deemed to have appointed Collateral Agent as its agent and agreed to be bound by the Credit Documents as a Secured Party, subject to the limitations set forth in this clause (c).

(d) Release of Collateral, Termination of Credit Documents. Notwithstanding anything to the contrary contained herein or any other Credit Document, when all Obligations (other than obligations in respect of any Hedge Agreement) have been paid in full, all Commitments have terminated or expired, upon request of Borrower, Administrative Agent shall (without notice to, or vote or consent of, any Lender, or any affiliate of any Lender that is a party to any Hedge Agreement) take such actions as shall be required to release its security interest in all Collateral, and to release all guarantee obligations provided for in any Credit Document, whether or not on the date of such release there may be outstanding Obligations in respect of Hedge Agreements. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower or any substantial part of its property, or otherwise, all as though such payment had not been made.

(e) Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Collateral Agent's Lien thereon, or any certificate prepared by Borrower in connection therewith, nor shall Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

**9.9. Withholding Taxes.** To the extent required by any applicable law, Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, or if Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding tax from such payment, such Lender shall indemnify Administrative Agent fully for all amounts paid, directly or indirectly, by Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred.

**9.10. Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Laws relative to Borrower,

Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its respective agents and counsel and all other amounts due Administrative Agent under Sections 2.8, 10.2 and 10.3 allowed in such judicial proceeding; and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 2.8, 10.2 and 10.3. To the extent that the payment of any such compensation, expenses, disbursements and advances of Administrative Agent, its agents and counsel, and any other amounts due Administrative Agent under Sections 2.8, 10.2 and 10.3 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

## **SECTION 10. MISCELLANEOUS**

### **10.1. Notices.**

(a) Notices Generally. Any notice or other communication herein required or permitted to be given to Borrower, Syndication Agent, Collateral Agent or Administrative Agent, shall be sent to such Person's address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or

otherwise indicated to Administrative Agent in writing. Except as otherwise set forth in Section 3.2 or paragraph (b) below, each notice hereunder shall be in writing and may be personally served or sent by telefacsimile (except for any notices sent to Administrative Agent) or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to any Agent shall be effective until received by such Agent; provided further, any such notice or other communication shall at the request of Administrative Agent be provided to any sub-agent appointed pursuant to Section 9.3(c) as designated by Administrative Agent from time to time.

(b) Electronic Communications.

(i) Notices and other communications to any Agent and Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including the Platform) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Agent or any Lender pursuant to Section 2 if such Person has notified Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(ii) Borrower understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(iii) The Platform and any Approved Electronic Communications are provided "as is" and "as available". None of the Agents or any of their respective officers, directors, employees, agents, advisors or representatives (the "**Agent Affiliates**") warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or

omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by the Agent Affiliates in connection with the Platform or the Approved Electronic Communications.

(iv) Borrower, each Lender and each Agent agrees that Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with Administrative Agent's customary document retention procedures and policies.

(v) Any notice of Default or Event of Default may be provided by telephone if confirmed promptly thereafter by delivery of written notice thereof.

(c) Private Side Information Contacts. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States federal and state securities laws, to make reference to information that is not made available through the "Public-Side Information" portion of the Platform and that may contain Private-Side Information. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither Borrower nor Administrative Agent has any responsibility for such Public Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Credit Documents.

**10.2. Expenses.** Whether or not the transactions contemplated hereby shall be consummated, Borrower agrees to pay promptly (a) all the actual and reasonable costs and expenses incurred in connection with the negotiation, preparation and execution of the Credit Documents and any consents, amendments, waivers or other modifications thereto; (b) all the costs of furnishing all opinions by counsel for Borrower; (c) the reasonable fees, expenses and disbursements of counsel to Agents in connection with the negotiation, preparation, execution and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrower; (d) all the actual costs and reasonable expenses of creating, perfecting, recording, maintaining and preserving Liens in favor of Collateral Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to each Agent and of counsel providing any opinions that any Agent or Requisite Lenders may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) all the actual costs and reasonable fees, expenses and disbursements of any auditors, accountants, consultants or appraisers; (f) all the actual costs and reasonable expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) all other actual and reasonable costs and expenses incurred by each Agent in connection with the syndication of the Loans and Commitments and the transactions

contemplated by the Credit Documents and any consents, amendments, waivers or other modifications thereto and (h) after the occurrence of a Default or an Event of Default, all costs and expenses, including reasonable attorneys' fees and costs of settlement incurred by any Agent and Lenders in enforcing any Obligations of or in collecting any payments due from Borrower hereunder or under the other Credit Documents by reason of such Default or Event of Default (including in connection with the sale, lease or license of, collection from, or other realization upon any of the Collateral) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings; provided that Borrower shall not be required pursuant to this clause (h) to reimburse such costs and expenses of more than one counsel to Agents and all the Lenders, taken as a whole, unless the representation of one or more Lenders by such counsel would be inappropriate due to the existence of an actual or potential conflict of interest, in which case, upon prior written notice to Borrower, Borrower shall also be required to reimburse the costs and expenses of one additional counsel to such affected Lenders.

### **10.3. Indemnity.**

(a) In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, Borrower agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Agent and Lender and each of their respective officers, partners, members, directors, trustees, advisors, employees, agents, sub-agents and affiliates (each, an "**Indemnitee**"), from and against any and all Indemnified Liabilities; provided, Borrower shall not have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of such Indemnitee, in each case, as determined by a final, non-appealable judgment of a court of competent jurisdiction. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(b) To the extent permitted by applicable law, Borrower shall not assert, and Borrower hereby waives, any claim against each Lender, each Agent and their respective Affiliates, directors, employees, attorneys, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and Borrower hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(c) Borrower also agrees that no Lender, Agent nor their respective Affiliates, directors, employees, attorneys, agents or sub-agents will have any liability to Borrower or any

person asserting claims on behalf of or in right of Borrower or any other person in connection with or as a result of this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, in each case, except in the case of Borrower to the extent that any losses, claims, damages, liabilities or expenses incurred by Borrower or its affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Lender, Agent or their respective Affiliates, directors, employees, attorneys, agents or sub-agents in performing its obligations under this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein; provided, however, that in no event will such Lender, Agent, or their respective Affiliates, directors, employees, attorneys, agents or sub-agents have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such Lender's, Agent's or their respective Affiliates', directors', employees', attorneys', agents' or sub-agents' activities related to this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein.

**10.4. Set-Off.** In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender is hereby authorized by Borrower at any time or from time to time subject to the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to Borrower or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of Borrower against and on account of the obligations and liabilities of Borrower to such Lender hereunder and under the other Credit Documents, including all claims of any nature or description arising out of or connected hereto, or with any other Credit Document, irrespective of whether or not (a) such Lender shall have made any demand hereunder or (b) the principal of or the interest on the Loans or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of Sections 2.14 and 2.19 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and its respective Affiliates under this Section 10.4 are in addition to other rights and remedies (including other rights of setoff) that such Lender or its respective Affiliates may have.

#### **10.5. Amendments and Waivers.**

(a) Requisite Lenders' Consent. Subject to the additional requirements of Sections 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by Borrower therefrom, shall in any event be effective without the written concurrence of Requisite Lenders; provided that Administrative Agent may, with the consent of Borrower only, amend, modify or supplement this Agreement or any other Credit Document to cure any ambiguity, omission, defect or inconsistency (as reasonably determined by Administrative Agent), so long as such amendment, modification or supplement does not adversely affect the rights of any Lender or the Lenders shall have received at least five Business Days' prior written notice thereof and Administrative Agent shall not have received, within five Business Days of the date of such notice to the Lenders, a written notice from the Requisite Lenders stating that the Requisite Lenders object to such amendment.

(b) Affected Lenders' Consent. Without the written consent of each Lender that would be directly affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

- (i) extend the Maturity Date;
- (ii) accelerate the Lockout Date;
- (iii) waive, reduce or postpone any scheduled repayment (but not prepayment);
- (iv) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.7) or any fee or any premium (including the Make-Whole Premium) payable hereunder;
- (v) extend the time for payment of any such interest, fees or premium;
- (vi) amend, modify, terminate or waive any provision of this Section 10.5(b), Section 10.5(c) or any other provision of this Agreement that expressly provides that the consent of all Lenders is required;
- (vii) amend the definition of "Requisite Lenders" or "Pro Rata Share";
- (viii) release all or substantially all of the Collateral except as expressly provided in the Credit Documents and except in connection with a "credit bid" undertaken by Collateral Agent at the direction of the Requisite Lenders pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code or other sale or disposition of assets in connection with an enforcement action with respect to the Collateral permitted pursuant to the Credit Documents (in which case only the consent of the Requisite Lenders will be needed for such release); or
- (ix) consent to the assignment or transfer by Borrower of any of its rights and obligations under any Credit Document;



provided that, for the avoidance of doubt, all Lenders shall be deemed directly affected thereby with respect to any amendment described in clauses (vi), (vii), (viii) and (ix).

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by Borrower therefrom, shall:

(i) amend, modify or waive this Agreement so as to alter the ratable treatment of Obligations arising under the Credit Documents and Obligations arising under Hedge Agreements or the definition of “Lender Counterparty,” “Hedge Agreement” or “Obligations,” in each case in a manner adverse to any Lender Counterparty with Obligations then outstanding without the written consent of any such Lender Counterparty; or

(ii) amend, modify, terminate or waive any provision of the Credit Documents as the same applies to any Agent or Arranger, or any other provision hereof as the same applies to the rights or obligations of any Agent or Arranger, in each case without the consent of such Agent or Arranger, as applicable.

(d) Execution of Amendments, Etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by Borrower, on Borrower.

#### **10.6. Successors and Assigns; Participations.**

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders. Neither Borrower’s rights or obligations hereunder nor any interest therein may be assigned or delegated by Borrower without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Agents and Lenders and other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until recorded in the Register following receipt of a fully executed Assignment Agreement effecting the assignment or transfer thereof, together with the required forms and certificates regarding tax matters and any

fees payable in connection with such assignment, in each case, as provided in Section 10.6(d). Each assignment shall be recorded in the Register promptly following receipt by Administrative Agent of the fully executed Assignment Agreement and all other necessary documents and approvals, prompt notice thereof shall be provided to Borrower and a copy of such Assignment Agreement shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the “**Assignment Effective Date.**” Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment or Loans owing to it or other Obligations (provided, however, that pro rata assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan and any related Commitments):

(i) to any Person meeting the criteria of clause (i) of the definition of the term “Eligible Assignee” upon the giving of notice to Borrower and Administrative Agent; and

(ii) to any Person meeting the criteria of clause (ii) of the definition of the term “Eligible Assignee” upon giving of notice to Borrower and Administrative Agent and (except in the case of assignments made by or to Goldman Sachs) consented to by Administrative Agent (such consent not to be unreasonably withheld or delayed); provided that each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than (w) \$5,000,000 and integral multiples of \$1,000,00 thereof with respect to the assignment of the Loans, (x) such lesser amount as agreed to by Administrative Agent and, so long as no Event of Default has occurred and is continuing, Borrower (in the case of Borrower, such consent not to be unreasonably withheld or delayed), (y) the aggregate amount of the Loans of the assigning Lender with respect to the Loans being assigned or (z) the amount assigned by an assigning Lender to an Affiliate or Related Fund of such Lender.

(d) Mechanics.

(i) Assignments and assumptions of Loans and Commitments by Lenders shall be effected by manual execution and delivery to Administrative Agent of an Assignment Agreement. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to Administrative Agent such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver pursuant to Section 2.17(c), together with payment to Administrative Agent of a registration and processing fee of \$3,500 (except that no such registration and processing fee shall be payable (y) in connection with an assignment by or to Goldman Sachs or any Affiliate

thereof or (z) in the case of an assignee which is already a Lender or is an affiliate or Related Fund of a Lender or a Person under common management with a Lender).

(ii) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of Borrower and Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(e) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; and (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control).

(f) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the Assignment Effective Date (i) the assignee thereunder shall have the rights and obligations of a “Lender” hereunder to the extent of its interest in the Loans and Commitments as reflected in the Register and shall thereafter be a party hereto and a “Lender” for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender’s rights and obligations hereunder, such Lender shall cease to be a party hereto on the Assignment Effective Date; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect any Commitment of such assignee; and (iv) if any such assignment occurs

after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation, and thereupon Borrower shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the outstanding Loans of the assignee and/or the assigning Lender.

(g) Participations.

(i) Each Lender shall have the right at any time to sell one or more participations to any Person (other than Borrower or any natural person) in all or any part of its Commitments, Loans or in any other Obligation. Each Lender that sells a participation pursuant to this Section 10.6(g) shall, acting solely for U.S. federal income tax purposes as an agent of Borrower, maintain a register on which it records the name and address of each participant and the principal amounts of each participant's participation interest with respect to the Loan (each, a **"Participant Register"**); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any Commitments, Loans or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. Unless otherwise required by the Internal Revenue Service, any disclosure required by the foregoing sentence shall be made by the relevant Lender directly and solely to the Internal Revenue Service. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of a participation with respect to the Loan for all purposes under this Agreement, notwithstanding any notice to the contrary.

(ii) The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (A) extend the final scheduled maturity of any Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (B) consent to the assignment or transfer by Borrower of any of its rights and obligations under this Agreement or (C) release all or substantially all of the Collateral under the Collateral Documents (in each case, except as expressly provided in the Credit Documents) supporting the Loans hereunder in which such participant is participating.

(iii) Borrower agrees that each participant shall be entitled to the benefits of Sections 2.15(c), 2.16 and 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (c) of this Section; provided, (x) a participant shall not be entitled to receive any greater payment under Section 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, unless the sale of the participation to such participant is made with Borrower's prior written consent (not to be unreasonably withheld or delayed) and (y) a participant that would be a Non-U.S. Lender if it were a Lender shall not be entitled to the benefits of Section 2.17 unless Borrower is notified of the participation sold to such participant and such participant agrees, for the benefit of Borrower, to comply with Section 2.17 as though it were a Lender; provided further that, except as specifically set forth in clauses (x) and (y) of this sentence, nothing herein shall require any notice to Borrower or any other Person in connection with the sale of any participation. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.4 as though it were a Lender, provided such participant agrees to be subject to Section 2.14 as though it were a Lender.

(h) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.6 any Lender may assign, pledge and/or grant a security interest in all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank; provided that no Lender, as between Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee, be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

**10.7. Independence of Covenants.** All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

**10.8. Survival of Representations, Warranties and Agreements.** All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of Borrower set forth in Sections 2.12(b), 2.15(c), 2.16, 2.17, 10.2, 10.3, 10.4 and 10.24 and the agreements of Lenders set forth in Sections 2.14, 9.3(b) and 9.6 shall survive the payment of the Loans and the termination hereof.

**10.9. No Waiver; Remedies Cumulative.** No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are

cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents or any of the Hedge Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

**10.10. Marshalling; Payments Set Aside.** Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that Borrower makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, on behalf of Lenders), or any Agent or Lender enforces any security interests or exercises any right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

**10.11. Severability.** In case any provision in or obligation hereunder or under any other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**10.12. Obligations Several; Independent Nature of Lenders' Rights.** The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

**10.13. Headings.** Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

**10.14. APPLICABLE 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, THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN.**

**10.15. CONSENT TO JURISDICTION. SUBJECT TO CLAUSE (E) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENTS, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN ANY FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, BORROWER, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE (SUBJECT TO CLAUSE (E) BELOW) JURISDICTION AND VENUE OF SUCH COURTS; (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO BORROWER AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER BORROWER IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) AGREES THAT AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST BORROWER IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY CREDIT DOCUMENT OR AGAINST ANY COLLATERAL OR THE ENFORCEMENT OF ANY JUDGMENT, AND HEREBY SUBMITS TO THE JURISDICTION OF, AND CONSENTS TO VENUE IN, ANY SUCH COURT.**

**10.16. 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 LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. 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 TRANSACTION, 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 10.16 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 HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

**10.17. Confidentiality.** Each Agent and each Lender shall hold all non-public information regarding Borrower and its businesses identified as such by Borrower and obtained by such Agent or such Lender pursuant to the requirements hereof in accordance with such Agent's and such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by Borrower that, in any event, Administrative Agent may disclose such information to the Lenders and each Agent and each Lender and each Agent may make (i) disclosures of such information to Affiliates of such Lender or Agent and to their respective officers, directors, partners, members, employees, legal counsel, independent auditors and other advisors, experts or agents who need to know such information and on a confidential basis (and to other Persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17), (ii) disclosures of such information reasonably required by any potential or prospective assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Loans or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to Borrower and its obligations (provided, such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by either the provisions of this Section 10.17 or other provisions at least as restrictive as this Section 10.17), (iii) disclosure to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to Borrower received by it from any Agent or any Lender, (iv) disclosure on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, (v) disclosures in connection with the exercise of any remedies hereunder or under any other Credit Document, (vi) disclosures made pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process (in which case such Person agrees to inform Borrower promptly thereof to the extent not prohibited by law) and (vii) disclosures made upon the request or demand of any regulatory or quasi-regulatory authority purporting to have jurisdiction over such Person or any of its Affiliates. In addition, each Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in



connection with the administration and management of this Agreement and the other Credit Documents.

**10.18. Usury Savings Clause.** Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrower shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to Borrower.

**10.19. Effectiveness; Counterparts.** This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Borrower and Administrative Agent of written notification of such execution and authorization of delivery thereof. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic format (i.e., "pdf" or "tif" shall be effective as delivery of a manually executed counterpart of this Agreement.

**10.20. Entire Agreement.** With the exception of those terms contained in Sections 3, 4, 5 (including Annex A), 7, 8 and 9 of the Commitment Letter, dated [●], 2014, between Goldman Sachs and Borrower (the "**Commitment Letter**"), which by the terms of the Commitment Letter remain in full force and effect (such terms the "**Surviving Terms**") all of Goldman Sachs' and its Affiliates obligations under the Commitment Letter shall terminate and be superseded by the Credit Documents and Goldman Sachs and its Affiliates shall be released from all liability in connection therewith, including any claim for injury or damages, whether consequential, special, direct, indirect, punitive or otherwise.

**10.21. PATRIOT Act.** Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will

allow such Lender or Administrative Agent, as applicable, to identify Borrower in accordance with the PATRIOT Act.

**10.22. Electronic Execution of Assignments.** The words “execution,” “signed,” “signature,” and words of like import in any Assignment Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**10.23. No Fiduciary Duty.** Each Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the “**Lenders**”), may have economic interests that conflict with those of Borrower and/or its Affiliates. Borrower agrees that nothing in the Credit Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and Borrower or its Affiliates, on the other. Borrower acknowledges and agrees that (i) the transactions contemplated by the Credit Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Lenders, on the one hand, and Borrower, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of Borrower or its Affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise Borrower or its Affiliates on other matters) or any other obligation to Borrower except the obligations expressly set forth in the Credit Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of Borrower, its management, its JPA Members, its creditors or any other Person. Borrower acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Borrower agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to Borrower, in connection with such transaction or the process leading thereto.

**10.24. Waiver of Sovereign Immunity.** Borrower hereby waives and irrevocably agrees not to assert against any Agent or Lender, to the fullest extent permitted by law, any right of immunity whatsoever, including without limitation, on the grounds of sovereignty or otherwise, from any action, suit or proceeding, from setoff or counterclaim, from the jurisdiction of any court, from service of process upon it or any agent, from attachment prior to judgment, from attachment upon or in aid of execution of judgment or from execution of judgment or other legal process or proceeding for the giving of any relief or for the enforcement of judgments, in any jurisdiction, with respect to Borrower’s obligations, liabilities or any other matter under or arising out of or in connection this Agreement or any of the other Credit Documents.

[Remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**TRANSBAY JOINT POWERS AUTHORITY**

By: \_\_\_\_\_  
Name: Maria Ayerdi-Kaplan  
Title: Executive Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Deborah Miller  
Shute, Mihaly & Weinberger

**GOLDMAN SACHS BANK USA,**  
as Sole Lead Arranger, Syndication Agent, Sole  
Lead Bookrunner and Administrative Agent,  
Collateral Agent and a Lender

By: \_\_\_\_\_  
Name:  
Title:

**APPENDIX A  
TO CREDIT AGREEMENT**

**Commitments**

<b>Lender</b>	<b>Commitment</b>	<b>Pro Rata Share</b>
Goldman Sachs Bank USA	\$ __, __, __. __	__ . __ %
	\$ __, __, __. __	__ . __ %
	\$ __, __, __. __	__ . __ %
<b>Total</b>	<b>\$ __, __, __. __</b>	<b>100%</b>

**APPENDIX B  
TO CREDIT AGREEMENT**

**Notice Addresses**

**TRANSBAY JOINT POWERS AUTHORITY**

201 Mission Street, Suite 2100  
San Francisco, CA 94105  
Attention: Executive Director  
Facsimile: 415-597-4615  
E-mail: mayerdi-kaplan@transbaycenter.org

with a copy to:

201 Mission Street, Suite 2100  
San Francisco, CA 94105  
Attention: Chief Financial Officer  
E-mail: sgigliotti@transbaycenter.org

GOLDMAN SACHS BANK USA,  
Administrative Agent's Principal Office and as Lender:

Goldman Sachs Bank USA  
c/o Goldman, Sachs & Co.  
30 Hudson Street, 36th Floor  
Jersey City, NJ 07302  
Attention: SBD Operations  
Email: gsd.link@gs.com and ficc-sbdagency-nydallas@ny.email.gs.com

with a copy to:

Goldman Sachs Bank USA  
200 West Street  
New York, New York 10282-2198  
Attention: [\_\_\_\_\_]

GOLDMAN SACHS BANK USA,  
as Administrative Agent, Collateral Agent and a Lender

Administrative Agent's Principal Office:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention:

E-mail:

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention:

E-mail:

633742.7