

LIMITED PAYMENT GUARANTY

This Limited Payment Guaranty (the "**Guaranty**") is dated for reference purposes as of _____, 2020, by the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development ("**MOHCD**") and the **TREASURE ISLAND DEVELOPMENT AUTHORITY**, a California public benefit corporation ("**TIDA**") and, together with MOHCD, the "**Guarantor**") in favor of **SILICON VALLEY BANK**, as majority owner of the Bonds (as defined below) ("**Bank**").

Factual Background

A. TIDA intends to convey a leasehold interest in the real property located at 401 Avenue of the Palms, on Treasure Island in San Francisco, California (the "**Property**") to Maceo May Apts, L.P., a California limited partnership ("**Borrower**") under a ground lease for Borrower to develop on the Property a new 105-unit multifamily rental housing development (including one manager unit) affordable to low-income veteran households which will be commonly known as the Maceo May Apartments (the "**Project**").

B. Reference is made to that certain Trust Indenture executed by U.S. Bank National Association ("**Bond Trustee**") and the City and County of San Francisco, California, a municipal corporation and chartered city and county duly organized and existing under its City Charter and the Constitution and the laws of the State of California ("**Issuer**") and dated as of _____, 2020 ("**Indenture**"), pursuant to which Issuer has issued its \$43,040,000 City and County of San Francisco, California Multifamily Housing Revenue Bonds (Maceo May Apartments), Series 2020C (the "**Bonds**"). Pursuant to that certain Loan Agreement executed among Issuer, Bond Trustee and Borrower and dated as of _____, 2020 (the "**Loan Agreement**"), Issuer has agreed to lend to Borrower certain proceeds of the sale of the Bonds (the "**Loan**") for the construction of the Project. Pursuant to the Indenture and the Assignment of Deed of Trust Documents dated as of _____, 2020 and by Issuer in favor of Bond Trustee, the rights of Issuer in and to the Loan Agreement and the Note (defined below) have been assigned to Bond Trustee. Bank, as majority owner of the Bonds has agreed to purchase the Bonds pursuant to that certain Construction Disbursement and Permanent Loan Agreement dated as of _____, 2020 and executed by and between Bank and Borrower (the "**Construction Disbursement Agreement**").

C. The obligation of Borrower to repay the Loan is evidenced by a Promissory Note made as of _____, 2020 by Borrower to the order of Issuer in the original principal amount of \$43,040,000.00 (the "**Note**") and all modifications, extensions, renewals and replacements thereof. The obligations of Borrower under the Loan Agreement and the Note are secured by a Construction and Permanent Leasehold Deed of Trust with Assignment of Leases and Rents, Security Agreement, and Fixture Filing executed by Borrower as trustor in favor of Issuer (the "**Deed of Trust**"), to be recorded in the Official Records of San Francisco County, California covering the Property. The obligations of Borrower under the Loan Agreement and the Note are also secured by other collateral, as more fully explained in the Loan Agreement.

D. MOHCD has provided a loan to the Borrower in the aggregate amount of \$24,255,000.00 (the "**MOHCD Loan**") pursuant to that certain Amended and Restated Loan Agreement by and between the Borrower and the MOHCD for the purpose of development, construction and permanent financing of the Project. In connection with the Loan and the MOHCD Loan MOHCD and Bank have entered into that certain Subordination Agreement dated _____, 2020 (the "**Loan Subordination Agreement**") related to their respective rights and obligations under the Loan and the MOHCD Loan.

E. Treasure Island Former and Current Residents, Andre Patterson, Felita Sample and certain other plaintiffs as named in that certain Class Action Lawsuit Complaint for Damages, including all parties listed and incorporated therein and Doe Plaintiffs 1-2,000 (collectively, "**Plaintiffs**") have filed a complaint with the Superior Court of the State of California County of San Francisco against the Treasure Island Development Authority, Treasure Island Homeless Development Initiative, Shaw Environmental, U.S. Navy Treasure Island Clean Up Director Jim Sullivan, in his individual capacity, U.S. Navy Treasure

Island Clean Up Lead Project Manager David Clark, in his individual capacity, U.S. Navy Representative Keith Forman, in his individual capacity, Tetra Tech EC, Inc., Dan L. Batrack, in his individual and official capacity, State Department of Toxic Substance Control, San Francisco Department of Public Health, Lennar Inc, Five Point Holdings, LLC, John Stewart Company and Does 1-100 inclusive (collectively, the "**Defendants**") (the "**Lawsuit**"), claiming, among other things, that Treasure Island has not been adequately environmentally remediated and demanding, among other things, that the Defendants be ordered to stop all development and construction on Treasure Island until independent verified reports demonstrate complete remediation of all toxic substances including radioactive materials from Treasure Island.

F. The Plaintiffs have not filed for a preliminary injunction to immediately halt construction. **[WILL NEED TO BE CONFIRMED AT TIME GUARANTY IS EXECUTED]**

G. The Plaintiffs' final prayer for relief seeks to stop all development and construction on Treasure Island until independent verified reports demonstrate complete remediation of all toxic substances including radioactive materials from Treasure Island. According to the Finding of Suitability to Transfer (FOST) dated February 15, 2006 and the Amendment Number 1 to the FOST dated November 1, 2014, the Property has been fully remediated of all toxic substances.

H. TIDA, MOHCD and the Borrower desire for the Project to begin construction (including construction of the modular units to be incorporated into the Project) as soon as possible in order for the Borrower to retain its modular production window and to retain the Project's additional public financing awards, including an allocation of bond proceeds from the California Debt Limit Allocation Committee, an allocation of federal low income housing tax credits through the California Tax Credit Allocation Committee, an allocation of funds from the Veterans Housing and Homelessness Prevention Program through the California Department of Housing and Community Development and an allocation of Section 8 Project-Based VASH rental vouchers. Accordingly, the MOHCD has agreed to begin disbursements of the MOHCD Loan proceeds so Borrower can begin construction of the Project (including construction of the modular units).

I. In order for the Borrower to secure the financing and approvals necessary to execute the Ground Lease and close the Loan prior to final resolution of the Lawsuit, Bank requires that Guarantor execute this Guaranty.

J. Capitalized terms used in this Guaranty and not otherwise defined shall have the meanings set forth for such terms in the Loan Agreement, Indenture and Construction Disbursement Agreement. This Guaranty, the Loan Agreement, the Construction Disbursement Agreement, the Note and all other agreements executed by Borrower in connection with the Loan and the Bonds are referred to herein, collectively, as the "**Loan Documents**."

Guaranty

1. Guaranty of Loan.

1.1 Guarantor for value received, jointly and severally if more than one, unconditionally and absolutely guarantee(s) to Bank payment when due, whether by stated maturity, demand, acceleration or otherwise, of all existing and future indebtedness of Borrower (or any successor in interest of Borrower, including without limit any debtor-in-possession or trustee in bankruptcy which succeeds to the interest of this party or person) to Bank (collectively, the "**Loan Obligations**"); *provided, however*, that until the occurrence of a Triggering Event (as defined below), Bank will not make demand on Guarantor nor shall Guarantor have any liability for the due and punctual payment of the Loan or any portion thereof (it being understood, however, that this proviso shall not affect Guarantor's liability under **Section 22**).

As used herein, a "**Triggering Event**" shall mean failure of any of the Conversion Conditions to be satisfied on or prior to the Initial Maturity Date (as such Initial Maturity Date may be extended pursuant to the terms of the Construction Disbursement Agreement) as a result of a temporary restraining order or any preliminary, permanent or other injunction to stop work or other similar notice or filing affecting or which could affect the Property or construction of the Improvements issued by a court as a result of the Lawsuit or other similar lawsuit brought by one or more of the Plaintiffs on related causes of action, or any amendments, renewals, reinstatement or restoration of any such Lawsuit or similar lawsuit.

1.2 In addition to the foregoing (and as part of the Loan Obligations), Guarantor hereby agrees to pay any and all costs and expenses (including, without limitation, reasonable attorneys' fees and costs, including allocated costs for services of Bank's in-house counsel, to the extent not prohibited by applicable law) incurred by Bank in enforcing any rights or remedies under this Guaranty, including in the context of any Insolvency Proceeding (as that term is hereinafter defined), but only (i) if Guarantor, in bad faith as determined by a court of competent jurisdiction, contests Bank's enforcement of the Guarantor's obligations under this Guaranty, or (ii) as a result of any representation or warranty of the Guarantor contained in this Guaranty being false, incorrect, incomplete or misleading in any material respect. From the time incurred until paid in full to Bank, all such sums shall bear interest at the Default Rate as defined in the Note and if no Default Rate is specified therein, then at the rate of interest applicable under the Note from time to time, plus five percent (5%) per annum.

1.3 This is a guaranty of payment, not of collection. Guarantor shall be liable for the payment and performance of the Loan Obligations as a primary obligor. If a Triggering Event occurs Guarantor shall in lawful money of the United States pay to Bank or its order, within sixty (60) days of any Guarantor's receipt of written demand from Bank, all sums due with respect to the outstanding Loan Obligations. Upon a Triggering Event, Bank shall deliver to Guarantor at each of their addresses, a written demand for payment, which shall set forth the outstanding amount of the Loan then due by Borrower. If the amount outstanding under the Loan is determined by a court of competent jurisdiction, that determination shall be conclusive and binding on Guarantor, regardless of whether Guarantor was a party to the proceeding in which the determination was made or not.

1.4 Guarantor shall be released from its obligations under this Guaranty only upon the first to occur of the following: (a) by a writing signed by Bank releasing Guarantor; (b) satisfaction of the Conversion Conditions; or (c) when all obligations of Guarantor under this Guaranty have been paid and performed in full. Bank shall be entitled to continue to hold this Guaranty in its possession for so long as any Loan Obligations remain outstanding. Return of this Guaranty to Guarantor while Loan Obligations remain outstanding is not intended to be, nor shall it be, a waiver of any rights that may remain available to Bank under this Guaranty.

2. **Loan.** In this Guaranty, the term "Loan" is broadly defined to mean the loan evidenced by the Loan Documents and include all primary, secondary, direct, indirect, fixed, and contingent obligations of Borrower to pay principal, interest, prepayment charges, late charges, loan fees, and any other fees, charges, sums, costs and expenses which may be owing at any time under the Note or the other Loan Documents, as any or all of them may from time to time be modified, amended, extended, or renewed. For purposes of this Guaranty, the Loan includes any and all such obligations which may arise in connection with (a) any advances made before recording of the Deed of Trust, and (b) any interest rate lock, swap, or protection provisions or agreements.

3. **Intentionally Omitted.**

4. **Rights of Bank.** Guarantor authorizes Bank to perform any or all of the following acts at any time in its sole and absolute discretion in accordance with Bank's rights under the Loan Documents or under any applicable laws, all without notice to Guarantor and without affecting Guarantor's obligations under this Guaranty:

4.1 Bank may alter any terms of the Loan or any part of it, including renewing, compromising, extending or accelerating, or otherwise changing the time for payment of, or increasing or decreasing the

rate of interest on, the Loan or any part of it, except for (i) increases in the principal amount of the Note, or (ii) advancement of the maturity date of the Note where no uncured default exists under the Loan Documents.

4.2 Bank may take and hold security for the Loan, accept additional or substituted security for either, and subordinate, exchange, enforce, waive, release, compromise, fail to perfect and sell or otherwise dispose of any such security.

4.3 Bank may direct the order and manner of any sale of all or any part of any security now or later to be held for the Loan, and Bank may also bid at any such sale.

4.4 Subject to the terms of the Loan Documents, Bank may apply any payments or recoveries from Borrower, Guarantor or any other source, and any proceeds of any security, to the Loan Obligations in such manner, order, and priority as Bank may elect, whether or not those obligations are guaranteed by this Guaranty or secured at the time of the application.

4.5 Bank may release Borrower of its liability for the Loan, the Loan Obligations, or any portion thereof, provided that such release shall not, in and of itself, create any obligation on the part of Guarantor under this Guaranty unless such release is related to a Triggering Event.

4.6 Bank may substitute, add or release any one or more guarantors or endorsers.

4.7 In addition to the Loan, Bank may extend other credit to Borrower with the prior written consent of the Guarantor in their sole discretion, and may take and hold security for the credit so extended, all without affecting Guarantor's liability under this Guaranty.

4.8 Bank may approve modifications to the Plans and Specifications, change the terms and conditions of disbursement of the Loan, or advance additional funds to Borrower for purposes related to the Loan Documents.

5. Guaranty to be Absolute; No Deductions. Guarantor expressly agrees that until (a) this Guaranty is released pursuant to the terms hereof; or (b) the Loan Obligations are paid in full, and each and every term, covenant, and condition of this Guaranty is fully performed, Guarantor (in its role as a guarantor under this Guaranty only) shall not be released by or because of:

5.1 Any act or event which might otherwise discharge, reduce, limit, or modify Guarantor's obligations under this Guaranty;

5.2 Any waiver, extension, modification, forbearance, delay or other act or omission of Bank, or Bank's failure to proceed promptly or otherwise as against Borrower, Guarantor or any security;

5.3 Any action, omission or circumstance which might increase the likelihood that Guarantor may be called upon to perform under this Guaranty or which might affect the rights or remedies of Guarantor as against Borrower;

5.4 Any dealings occurring at any time between Borrower and Bank, whether relating to the Loan or otherwise; or

5.5 Any action of Bank described in [Section 4](#) above.

Guarantor hereby expressly waives and surrenders any defense to any liability under this Guaranty based upon any of such acts, omissions, agreements, waivers or matters. It is the purpose and express intent of Guarantor that Guarantor's obligations under this Guaranty are and shall be absolute, unconditional, and irrevocable. All payments by Guarantor hereunder shall be paid in full without setoff, counterclaim, or deduction.

6. Guarantor's Waivers. Except as may be prohibited by applicable law, Guarantor waives (in its role as a guarantor under this Guaranty only):

6.1 All statutes of limitations as a defense to any action or proceeding brought against Guarantor by Bank pursuant to this Guaranty;

6.2 Any right it may have to require Bank to proceed against Borrower, proceed against or exhaust any security held from Borrower, or pursue any other remedy in Bank's power to pursue, and any defense based on any homestead exemption or other exemption under applicable law, whether available to Borrower or Guarantor;

6.3 Any defense based on any limitation of liability or recourse in any other Loan Document or arising under law or any claim that Guarantor's obligations exceed or are more burdensome than those of Borrower;

6.4 Any defense based on: (a) any legal disability of Borrower, (b) any release, discharge, modification, impairment or limitation of the liability of Borrower to Bank from any cause, whether consented to by Bank or arising by operation of law or from any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, including any proceeding under the Bankruptcy Reform Act of 1978, as amended or recodified (the "**Bankruptcy Code**"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "**Debtor Relief Laws**") (any such proceeding referred to as an "**Insolvency Proceeding**"), or (c) any rejection or disaffirmance of the Loan, or any part of it, or any security held for it, in any such Insolvency Proceeding;

6.5 Any defense based on any action taken or omitted by Bank in any Insolvency Proceeding involving Borrower, including any election to have Bank's claim allowed as being secured, partially secured or unsecured, any extension of credit by Bank to Borrower in any Insolvency Proceeding, and the taking and holding by Bank of any security for any such extension of credit;

6.6 All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of intention to accelerate, notices of acceleration, notices of any suit or any other action against Borrower or any other person, notices of default, notices of dishonor, notices of acceptance of this Guaranty and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind except for any demand or notice by Bank to Guarantor expressly provided for elsewhere in this Guaranty;

6.7 Any defense based on or arising out of any defense that Borrower may have to the payment or performance of the Loan Obligations or any part of them;

6.8 Any defense based on any lack of authority of the officers, directors, partners, members or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; and

6.9 Any defense based on or arising out of any action of Bank described in [Section 4](#) or [Section 5](#) above.

7. Waivers of Subrogation and Other Rights and Defenses.

7.1 Upon a default by Borrower under the Loan Documents, Bank, without prior notice to or consent of Guarantor, may elect to: (a) foreclose either judicially or nonjudicially (as allowed by applicable law) against any real or personal property security it may hold for the Loan; (b) accept a transfer of any such security in lieu of foreclosure; (c) compromise or adjust the Loan or any part of it or make any other accommodation with Borrower or Guarantor; or (d) exercise any other remedy available against Borrower or any security. No such action by Bank shall release or limit the liability of Guarantor, who shall remain

liable under this Guaranty after the action, even if the effect of the action is to deprive Guarantor of any subrogation rights, rights of indemnity, or other rights to collect reimbursement from Borrower for any sums paid to Bank, whether contractual or arising by operation of law or otherwise. Guarantor expressly agrees that under no circumstances shall it be deemed to have any right, title, interest or claim in or to any real or personal property to be held by Bank or any third party after any foreclosure or transfer in lieu of foreclosure of any security for the Loan.

7.2 Regardless of whether Guarantor may have made any payments to Bank, Guarantor (in its role as a guarantor under this Guaranty only) hereby waives: (a) all rights of subrogation, indemnification, contribution, and any other rights to collect reimbursement from Borrower or any other party for any sums paid to Bank, whether contractual or arising by operation of law (including, without limitation, under any provisions of the Bankruptcy Code, or any successor or similar statutes) or otherwise; (b) all rights to enforce any remedy that Bank may have against Borrower; and (c) all rights to participate in any security now or later to be held by Bank for the Loan. Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification, and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement, indemnification, and contribution Guarantor may have against Borrower or against any collateral or security, shall be junior and subordinate to any rights Bank may have against Borrower, and to all right, title and interest Bank may have in any such collateral or security. If any amount shall be paid to Guarantor on account of any such subrogation, reimbursement, indemnification, or contribution rights at any time when all obligations under the Loan have not been paid in full, such amount shall be held in trust for Bank and shall forthwith be paid over to Bank to be credited and applied against the Loan, whether matured or unmatured, in accordance with the terms of the Loan Documents. The covenants and waivers of Guarantor contained in this [Section 7.2](#) shall be effective until the Loan Obligations have been paid and performed in full, and are made for the benefit of Bank, Borrower, and any other person against whom Guarantor shall at any time have any rights of subrogation, reimbursement, indemnification, or contribution with respect to Guarantor's obligations under this Guaranty.

7.3 Guarantor understands and acknowledges that if Bank, Issuer or Bond Trustee forecloses judicially or nonjudicially against any real property security for the Loan, that foreclosure could impair or destroy any ability that Guarantor may have to seek reimbursement, contribution, or indemnification from Borrower or others based on any right Guarantor may have of subrogation, reimbursement, contribution or indemnification for any amounts paid by Guarantor under this Guaranty. Guarantor further understands and acknowledges that in the absence of this [Section 7](#), such potential impairment or destruction of Guarantor's rights, if any, may entitle Guarantor to assert a defense to this Guaranty. By executing this Guaranty, Guarantor freely, irrevocably, and unconditionally (in its role as a guarantor under this Guaranty only): (a) waives and relinquishes that defense and agrees that Guarantor shall be fully liable under this Guaranty even though Bank, Issuer or Bond Trustee may foreclose judicially or nonjudicially against any real property security for the Loan; (b) agrees that Guarantor shall not assert that defense in any action or proceeding which Bank may commence to enforce this Guaranty; (c) acknowledges and agrees that the rights and defenses waived by Guarantor under this Guaranty include any right or defense that Guarantor may have or be entitled to assert based upon or arising out of any one-action, anti-deficiency, reimbursement, or other borrower or guarantor protective statute (including, without limitation, any defense that any exercise by Bank, Bond Trustee or Issuer of any right or remedy hereunder or under the Loan Documents violates, or would, in combination with the previous or subsequent exercise by Guarantor of any rights of subrogation, reimbursement, contribution, or indemnification against Borrower or any other person, directly or indirectly result in, or be deemed to be, a violation of, any of such statutory provisions); and (d) acknowledges and agrees that Bank is relying on this waiver in agreeing to purchase the Bonds to fund the Loan, and that this waiver is a material part of the consideration which Bank is receiving for agreeing to purchase the Bonds to fund the Loan.

7.4 Guarantor (in its role as a guarantor under this Guaranty only) waives any rights and defenses that are or may become available to Guarantor by reason of any statute governing guarantees or suretyship, including but not limited to Sections 2787 to 2855, inclusive of the California Civil Code, as such may be amended or recodified from time to time.

7.5 Guarantor (in its role as a guarantor under this Guaranty only) waives all rights and defenses that Guarantor may have because Borrower's Loan is secured by real property or personal including any homestead exemption or other exemptions under applicable law. This means, among other things:

(a) Bank, Bond Trustee or Issuer may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower.

(b) If Bank, Bond Trustee or Issuer forecloses on any real property collateral pledged by Borrower:

(i) The amount of the Loan may be reduced only by the net price for which the collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(ii) Bank, Bond Trustee or Issuer may collect from Guarantor even if Bank, Bond Trustee or Issuer, by foreclosing on the real property collateral, has destroyed any ability Guarantor may have to collect from Borrower.

This [Section 7.5](#) is an unconditional and irrevocable waiver of any rights and defenses Guarantor (in its role as a guarantor under this Guaranty only) may have because Borrower's Loan is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d, or 726 of the California Code of Civil Procedure, as such may be amended or recodified from time to time.

7.6 Guarantor (in its role as a guarantor under this Guaranty only) waives any right or defense it may have at law or in equity, including California Code of Civil Procedure Section 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

7.7 Guarantor (in its role as a guarantor under this Guaranty only) waives any right or defense it may have at law or in equity, which may provide, among other things: that a creditor must file a complaint for deficiency within a specified period of time after a nonjudicial foreclosure sale or judicial foreclosure sale, as applicable; that a fair market value hearing must be held; and that the amount of the deficiency judgment shall be limited to the amount by which the unpaid debt exceeds the fair market value of the security, but not more than the amount by which the unpaid debt exceeds the sale price of the security.

7.8 No provision or waiver in this Guaranty shall be construed as limiting the generality of any other provision or waiver contained in this Guaranty.

7.9 Guarantor agrees that the payment or performance of any act which tolls any statute of limitations applicable to the Loan Documents shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

8. Revival and Reinstatement. If all or any portion of the Loan Obligations are paid, the obligations of Guarantor hereunder shall continue and shall remain in full force and effect in the event that all or any part of such payment is avoided or recovered directly or indirectly from Bank, Bond Trustee or Issuer as a preference, fraudulent transfer or otherwise under the Bankruptcy Code or under any other Debtor Relief Law or other similar laws, regardless of (a) any notice of revocation given by Guarantor prior to such avoidance or recovery, or (b) full payment and performance of all of Loan Obligations. If Bank is required to pay, return, or restore to Borrower or any other person any amounts previously paid on any of the Loan Obligations because of any Insolvency Proceeding of Borrower, or any other reason, the obligations of Guarantor shall be reinstated and revived and the rights of Bank shall continue with regard to such amounts, all as though they had never been paid.

9. Information Regarding Borrower and the Property. Before signing this Guaranty, Guarantor investigated the financial condition and business operations of Borrower, the present and former condition, uses and ownership of the Property, and such other matters as Guarantor deemed appropriate to assure itself of Borrower's ability to discharge its obligations under the Loan Documents. Guarantor assumes full responsibility for that due diligence, as well as for keeping informed of all matters that may affect Borrower's ability to pay and perform its obligations to Bank. Bank has no duty to disclose to Guarantor any information which Bank may have or receive about Borrower's financial condition or business operations, the condition or uses of the Property, or any other circumstances bearing on Borrower's ability to perform.

10. Subordination. Any rights of Guarantor (including but not limited to any rights as subrogee of Bank or resulting from Guarantor's performance under this Guaranty), whether now existing or later arising, to receive payment on account of any indebtedness (including interest) owed to it by Borrower, any general partner of Borrower, or any subsequent owner of the Property, or to withdraw capital invested by it in Borrower, or to receive distributions from Borrower, shall at all times be subordinate as to lien and time of payment and in all other respects to the full and prior repayment to Bank of the Loan Obligations. Guarantor shall not be entitled to enforce or receive payment of any sums hereby subordinated until all the Loan Obligations have been paid and performed in full and any such sums received in violation of this Guaranty shall be received by Guarantor in trust for Bank. The foregoing notwithstanding, Guarantor is not prohibited from receiving (a) such reasonable management fees or reasonable salary from Borrower as Bank may find acceptable from time to time, and (b) distributions from Borrower in an amount equal to any income taxes imposed on Guarantor that are attributable to Borrower's income from the Property. Notwithstanding the foregoing, Guarantor is not prohibited from receiving reasonable management and developer fees as permitted under the Construction Disbursement Agreement.

11. Bankruptcy of Borrower. In any Insolvency Proceeding in which the filing of claims is required by law, Guarantor shall file all claims which Guarantor may have against Borrower relating to any indebtedness of Borrower to Guarantor and shall assign to Bank all rights of Guarantor thereunder. Bank or its nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such Insolvency Proceeding and to take any other action which a party filing a claim is entitled to take. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Bank the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to Bank all of Guarantor's rights to any such payments or distributions; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Bank receives cash by reason of any such payment or distribution. If Bank receives anything hereunder other than cash, the same shall be held as collateral for amounts due or to become due under this Guaranty. In the event that acceleration of the time for payment of the Loan is stayed under a Debtor Relief Law, Guarantor's obligations hereunder shall nonetheless be payable immediately upon demand of Bank provided a Triggering Event has occurred.

12. Financial and Other Information of Guarantor. Guarantor shall keep true and correct financial books and records, using generally accepted accounting principles consistently applied. Guarantor shall provide to Bank, promptly upon the request of Bank, such financial information as Bank may reasonably request concerning the financial condition of Guarantor.

13. Representations, Warranties, and Covenants of Guarantor. Guarantor hereby represents, warrants, and covenants that:

13.1 If not a natural person, Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization and is lawfully doing business in all jurisdictions in which it is conducting its business.

13.2 This Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor.

13.3 Guarantor will derive a material and substantial benefit, directly or indirectly, from the purchase of the Bonds by Bank to fund the Loan to Borrower and from the making of this Guaranty by Guarantor.

13.4 All financial statements were or shall be prepared in accordance with generally accepted accounting principles, or such other accounting principles and in compliance with all applicable government regulations, and do or shall fully and accurately present the condition (financial or otherwise) of Guarantor, including all contingent liabilities, as of their dates, and the results of Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of Guarantor furnished to Bank. No material adverse change has occurred in the financial condition of Guarantor, nor, except as previously disclosed in the City of San Francisco's Comprehensive Annual Financial Report for 2019, has Guarantor incurred any material liability, direct or indirect, fixed or contingent.

13.5 There are no litigation, claims, actions, proceedings or investigations pending against Guarantor, that, if determined adversely would materially affect Guarantor's ability to perform its obligations under this Guaranty, except for those previously disclosed in the City of San Francisco's Comprehensive Annual Financial Report for 2019. To the best of Guarantor's knowledge and belief, there has been no threat of any such claim, action, proceeding or investigation, except for those previously disclosed by Guarantor to Bank in writing.

13.6 Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or in default, or at risk of acceleration of indebtedness, under any agreement or restriction by which Guarantor is bound or affected. No provision or obligation of Guarantor contained in this Guaranty violates any applicable law, regulation or ordinance, or any order or ruling of any court or governmental agency. No consent, approval or authorization of or notice to any person or entity is required in connection with Guarantor's execution of and obligations under this Guaranty.

13.7 Intentionally Omitted.

13.8 After giving effect to this Guaranty, Guarantor is solvent.

13.9 Guarantor acknowledges that Bank has no duty at any time to investigate or inform Guarantor of the financial or business condition or affairs of Borrower or any change therein.

13.10 Guarantor acknowledges and agrees that Guarantor may be required to pay the Loan Obligations in full without assistance or support from Borrower or any other entity or person.

13.11 Guarantor has read and fully understands the provisions contained in the Note, the Loan Agreement, the Deed of Trust, and the other Loan Documents.

13.12 Intentionally Omitted.

13.13 Intentionally Omitted.

13.14 Intentionally Omitted.

Guarantor's representations, warranties and covenants are a material inducement to Bank to purchase the Bonds in order to make the Loan to Borrower, and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Loan Obligations.

14. Events of Default. Bank may declare Guarantor to be in default under this Guaranty upon the occurrence of any of the following events (each an "**Event of Default**"):

- 14.1** Guarantor fails to perform any of its obligations under this Guaranty; or
- 14.2** Guarantor attempts to revoke this Guaranty or this Guaranty becomes ineffective for any reason; or
- 14.3** Any representation or warranty made or given by Guarantor to Bank proves to be false or misleading in any material respect or ceases to be true; or
- 14.4** Guarantor becomes insolvent or the subject of any Insolvency Proceeding; provided, however, that an involuntary Insolvency Proceeding shall not be considered an Event of Default hereunder if it is either (a) consented to in writing by Bank, or (b) has been dismissed within ninety (90) days of the filing thereof; or
- 14.5** Intentionally omitted; or
- 14.6** Intentionally omitted; or
- 14.7** Intentionally omitted; or
- 14.8** A material adverse change occurs, or is reasonably likely to occur, in Guarantor's business condition (financial or otherwise), operations, properties or prospects, or ability to pay or perform under this Guaranty; or
- 14.9** Guarantor fails to provide financial statements to Bank as provided in **Section 13** above, provided, however that Guarantor shall have thirty (30) days in which to cure such default.

15. Independent Obligations. Guarantor's obligations under this Guaranty are independent of those of Borrower on the Loan or any other guarantor. Bank may bring a separate action, or commence a separate proceeding against Guarantor without first proceeding against Borrower, any other person (including any other guarantor) or any security that Bank may hold, and without pursuing any other remedy. Bank's rights under this Guaranty shall not be exhausted by any action by Bank until all of the Loan Obligations have been paid and performed in full and this Guaranty has been released pursuant to the terms of this Guaranty.

16. No Waiver; Consents; Cumulative Remedies. Each waiver by Bank shall be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from Bank's delay in exercising or failure to exercise any right or remedy against Borrower, Guarantor or any security. Consent by Bank to any act or omission by Borrower or Guarantor shall not be construed as a consent to any other or subsequent act or omission, or as a waiver of the requirement for Bank's consent to be obtained in any future or other instance. All remedies of Bank against Borrower and Guarantor are cumulative.

17. Survival. This Guaranty shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the exercise of any remedy by Bank, Bond Trustee or Issuer under the Deed of Trust or any of the other Loan Documents, including, without limitation, any foreclosure or deed in lieu thereof.

18. Heirs, Successors, and Assigns; Participations. The terms of this Guaranty shall bind and benefit the heirs, legal representatives, successors, and assigns of Bank and Guarantor and inures to the benefit of Bank and its successors, assigns, and indorsees; provided, however, that Guarantor may not assign this Guaranty, or assign or delegate any of its rights or obligations under this Guaranty, without the prior written consent of Bank. Bank, in its sole and absolute discretion, may sell or assign the Loan or participations or other interests in the Loan and this Guaranty, in whole or in part, all without notice to or the consent of Guarantor and without affecting Guarantor's obligations under this Guaranty. Also without notice to or the consent of Guarantor, Bank may disclose any and all information in its possession concerning Guarantor, this Guaranty and any security for this Guaranty to any actual or prospective

purchaser of any securities issued or to be issued by Bank, and to any actual or prospective purchaser or assignee of any participation or other interest in the Loan and this Guaranty.

19. Notices. Formal notices, demands, and communications shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by reputable overnight delivery service, return receipt requested, or delivered personally with a delivery receipt, to the principal office of the receiving party as follows:

Address for notices to Guarantor:

Mayor's Office of Housing and Community Development
of the City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attention: Director

And to:

Treasure Island Development Authority
One Avenue of the Palms, Suite 241
Treasure Island
San Francisco, CA 94130
Attn: Executive Director

Address for notices to Bank:

Silicon Valley Bank
Attention: Community Development Finance
505 Howard Street, 3rd Floor
San Francisco, CA 94105

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

20. Rules of Construction. In this Guaranty, the word "Borrower" includes both the named Borrower and any other person who at any time assumes or otherwise becomes primarily liable for all or any part of the obligations of the named Borrower on the Loan. The word "person" includes any individual, company, trust or other legal entity of any kind. If this Guaranty is executed by more than one person, the word "Guarantor" includes all such persons. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." When the context and construction so require, all words used in the singular shall be deemed to have been used in the plural and vice versa. No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Guaranty. All headings appearing in this Guaranty are for convenience only and shall be disregarded in construing this Guaranty.

21. Governing Law. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of California, without regard to the choice of law rules of that state, except to the extent that any of such laws may now or hereafter be preempted by Federal law. Guarantor and all persons and entities in any manner obligated to Bank under this Guaranty (a) consent to the jurisdiction of any Federal or State Court within the State of California, (b) submit to venue in such state, and (c) consent to service of process by any means authorized by Federal law or the law of such state. Without limiting the generality of the foregoing, Guarantor hereby waives and agrees not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) any Guarantor is not subject to the jurisdiction of the courts of the State of California or the United States District Court for such state; (ii) that such suit, action,

or proceeding is brought in an inconvenient forum; or (iii) that the venue of such suit, action, or proceeding is improper.

22. Costs and Expenses. Without limiting the generality of the obligation of Guarantor to pay the fees and expenses of Bank as provided in this Guaranty, if any lawsuit, reference, or arbitration is commenced which arises out of, or which relates to this Guaranty, the prevailing party shall be entitled to recover from each other party such sums as the court, referee, or arbitrator may adjudge to be reasonable attorneys' fees (including allocated costs for services of in-house counsel, to the extent not prohibited by applicable law) in the action or proceeding, in addition to costs and expenses otherwise allowed by law. From the time(s) incurred until paid in full to Bank, all sums shall bear interest at the Default Rate (as defined in the Note). For the avoidance of doubt, the Guarantor's obligation to pay one hundred percent (100%) of the amount described in this **Section 22** shall in no way be reduced, modified or affected by the limitations on Guarantor's liability under this Guaranty as set forth in **Section 1** hereof.

23. Consideration. Guarantor acknowledges that it expects to benefit from Bank's purchase of the Bonds and extension of the Loan to Borrower because of its relationship to Borrower, and that it is executing this Guaranty in consideration of that anticipated benefit.

24. Exchange of Information. Guarantor agrees that Bank may exchange financial information about the Guarantor with Bank's affiliates and other related entities.

25. Intentionally Omitted.

26. Enforceability. Guarantor acknowledges that Guarantor has had adequate opportunity to carefully read this Guaranty and to seek and receive legal advice from skilled legal counsel of Guarantor's choice in the area of financial transactions of the type contemplated herein prior to signing it. Guarantor hereby acknowledges that: (a) the obligations undertaken by Guarantor in this Guaranty are complex in nature, (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Bank's consideration for entering into this transaction, Bank has specifically bargained for the waiver and relinquishment by Guarantor of certain defenses set forth in this Guaranty. Given all of the above, Guarantor does hereby represent and confirm to Bank that Guarantor is fully informed regarding, and that Guarantor does thoroughly understand: (i) the nature of such possible defenses, (ii) the circumstances under which such defenses may arise, (iii) the benefits which such defenses might confer upon Guarantor, and (iv) the legal consequences to Guarantor of waiving such defenses. Guarantor acknowledges that Guarantor makes this Guaranty with the intent that this Guaranty and all of the informed waivers herein shall each and all be fully enforceable by Bank, and that Bank is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

27. Miscellaneous. This Guaranty may be executed in counterparts, and all counterparts shall constitute but one and the same document. The illegality or unenforceability of one or more provisions of this Guaranty shall not affect any other provision. Time is of the essence in the performance of this Guaranty by Guarantor. The liability of all persons who are in any manner obligated under this Guaranty shall be joint and several.

28. Integration; Modifications. This Guaranty (a) integrates all the terms and conditions mentioned in or incidental to this Guaranty, (b) supersedes all oral negotiations and prior writings with respect to its subject matter, and (c) is intended by Guarantor and Bank as the final expression of the agreement with respect to the terms and conditions set forth in this Guaranty and as the complete and exclusive statement of the terms agreed to by Guarantor and Bank. No representation, understanding, promise or condition shall be enforceable against any party hereto unless it is contained in this Guaranty. This Guaranty may not be modified except in a writing signed by both Bank and Guarantor. No course of prior dealing, usage of trade, parol or extrinsic evidence of any nature shall be used to supplement, modify or vary any of the terms hereof.

29. Joint and Several Liability. The liability of all persons who are in any manner obligated under this Guaranty shall be joint and several. If more than one person or party has executed this Guaranty as a Guarantor, each such person or party shall be jointly and severally liable.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Guaranty as of the date first above written.

"GUARANTOR"

THE CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, represented by the
Mayor, acting by and through the Mayor's Office
of Housing and Community Development

By: _____
Daniel Adams, Acting Director
Mayor's Office of Housing and
Community Development

APPROVED AS TO FORM:

DENNIS HERRERA
City Attorney

By: _____
Keith Nagayama,
Deputy City Attorney

TREASURE ISLAND DEVELOPMENT AUTHORITY,
a California public benefit corporation

By: _____
Bob Beck
Executive Director