

1 [Option Agreement Amendment for the Purchase and Sale of Real Property - Transbay Joint
2 Powers Authority - Consent to Conditions of Transbay Joint Power Authority's Bridge Loan -
3 \$171,000,000]

4 **Resolution authorizing the Director of Property to execute the First Amendment to**
5 **Option Agreement for the Purchase and Sale of Real Property between the City,**
6 **Transbay Joint Powers Authority, and Successor Agency to the Redevelopment**
7 **Agency of City and County of San Francisco; execute a consent to the conditions of**
8 **the Transbay Joint Powers Authority's Bridge Loan with a value of \$171,000,000; and**
9 **acknowledge the Subordination of the Option Agreement for the Purchase and Sale of**
10 **Real Property for Transbay Parcels F, O, O', and O'.**

11
12 WHEREAS, Any redevelopment plan adopted to finance, in whole or in part, the
13 demolition of the Transbay Terminal building and the construction of a new terminal, including
14 its associated vehicle ramps, shall ensure that at least 25 percent of all dwelling units
15 developed within the project area shall be available at affordable housing cost to, and
16 occupied by, persons and families whose incomes do not exceed 60 percent of the area
17 median income, and that at least an additional 10 percent of all dwelling units developed
18 within the project area shall be available at affordable housing cost to, and occupied by,
19 persons and families whose incomes do not exceed 120 percent of the area median income
20 (the "Transbay Affordable Housing Obligation"); and

21 WHEREAS, The City approved, by Ordinance No. 124-05 on June 21, 2005, and
22 Ordinance No. 99-06 on May 9, 2006, copies of which are on file with the Clerk of the Board
23 of Supervisors in File Nos. 050184 and 060347, and incorporated herein by reference, the
24 Redevelopment Plan (the "Plan") for the Transbay Redevelopment Project (the "Project"),
25 which explicitly incorporates the Transbay Affordable Housing Obligation; and

1 WHEREAS, The Plan provides for the redevelopment of the area generally bounded by
2 Mission, Main, Second, and Folsom Streets in downtown San Francisco, containing
3 approximately forty (40) acres of land (the "Project Area"); and

4 WHEREAS, To implement the Transbay Affordable Housing Obligation and other
5 objectives for the Project Area, the Plan provides that all real property sold, leased or
6 conveyed by the Redevelopment Agency of City and County of San Francisco ("Former
7 Agency") is subject to the provisions of the Plan and contracts, agreements and declarations
8 of restrictions of the Former Agency may contain restrictions, covenants, covenants running
9 with the land, rights of reverter, conditions subsequent, equitable servitudes or any other
10 provision necessary to carry out the Plan; and

11 WHEREAS, The Former Agency recorded the Transbay Redevelopment Project Area
12 Declaration of Restrictions, which incorporates such matters, against all property in the
13 Project Area (the "Declaration of Restrictions"); and

14 WHEREAS, Approximately ten (10) acres of land in the Project Area were owned by
15 the State of California ("State"), including the former Transbay Terminal building and its bus
16 access ramps (the "State-Owned Parcels"); and

17 WHEREAS, The State, acting by and through its Department of Transportation
18 ("Caltrans"), the City, and the Transbay Joint Powers Authority ("TJPA") entered into a
19 Cooperative Agreement on July 11, 2003, (the "Cooperative Agreement"), approved by this
20 Board on July 8, 2003, under Resolution No. 441-03, a copy of which is on file with the Clerk
21 of the Board of Supervisors in File No. 030997, and incorporated herein by reference; and

22 WHEREAS, Under the Cooperative Agreement, the State has or will transfer the State-
23 Owned Parcels to the City and the TJPA subject to certain terms and conditions, including the
24 use of the State-Owned Parcels for the construction, or to fund the construction, of the
25 Project; and

1 WHEREAS, Pursuant to the Cooperative Agreement, the State has a Power of
2 Termination with respect to any State-Owned Parcel transferred to the TJPA or to the City
3 (the "Power of Termination") that permits the State to re-take title to such State-Owned Parcel
4 under certain terms and conditions specified in the Cooperative Agreement; and

5 WHEREAS, The Cooperative Agreement obligates the State to release such Power of
6 Termination over a State-Owned Parcel if it is sold to a third party and the Gross Sales
7 Proceeds (as defined in the Cooperative Agreement) from such sale are deposited into a
8 Trust Account (as defined in the Cooperative Agreement) and used to pay Capital Costs (as
9 defined in the Cooperative Agreement); and

10 WHEREAS, Consistent with and also in furtherance of the Cooperative Agreement, the
11 Plan, and the Project, the City, TJPA, and the Former Agency, entered into an Option
12 Agreement for the Purchase and Sale of Real Property ("Option Agreement") on January 31,
13 2008, approved by this Board on May 9, 2006, under Ordinance No. 99-06, a copy of which is
14 on file with the Clerk of the Board of Supervisors in File No.060347, and incorporated herein
15 by reference; and

16 WHEREAS, The Option Agreement granted the Former Agency the option ("Option") to
17 take title to certain currently or formerly State-Owned parcels (the "Agency Transfer Parcels")
18 on the satisfaction of certain conditions, and if the Former Agency transferred an Agency
19 Transfer Parcel to a third party, the Former Agency was to place all Gross Sales Proceeds
20 resulting from such transfer into the Trust Account; and

21 WHEREAS, The City, TJPA, and the Former Agency entered into the Transbay
22 Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement
23 (the "Pledge Agreement"), dated January 31, 2008, approved by this Board on May 9, 2006,
24 under Ordinance No. 99-06, a copy of which is on file with the Clerk of the Board of
25 Supervisors in File No.060347, and incorporated herein by reference, pursuant to which the

1 parties provided for the irrevocable pledge of Net Tax Increment, as defined in the Pledge
2 Agreement, to TJPA for construction and design of the Transbay Terminal Project; and

3 WHEREAS, In 2012, the Former Agency was dissolved pursuant to State legislative
4 and case law and the Successor Agency to the Redevelopment Agency of City and County of
5 San Francisco ("Agency") was designated to receive the non-affordable housing assets of the
6 Former Agency and succeeded, by operation of law, to all of the Former Agency's rights, title
7 and interest in the Option Agreement; and

8 WHEREAS, Under the Option Agreement, the Agency holds an Option to acquire
9 Agency Transfer Parcel F (Block No. 3721, Lot No. 015A), Agency Transfer Parcel O (portion
10 of Block No. 3739, Lot No. 008), Agency Transfer Parcel O' (portion of Block No. 3739, Lot
11 No. 008), and Agency Transfer Parcel O" (portion of Block No. 3739, Lot No. 008) on the
12 terms and conditions of the Option Agreement; and

13 WHEREAS, Under the Project, the Agency plans to aggregate and prepare Agency
14 Transfer Parcel F for disposition and development as primarily office use, and aggregate and
15 prepare the northern third portion of Agency Transfer Parcel O, O', and O" commonly known
16 as "Redevelopment Block 4" for disposition and residential development that meets the
17 Transbay Affordable Housing Obligation with an applicable number of affordable units, but
18 these planned uses are subject to change; and

19 WHEREAS, The Option Agreement prevents the Agency from exercising the Option for
20 any Agency Transfer Parcel while it is needed by TJPA for the construction of the Transbay
21 Terminal Project; and

22 WHEREAS, TJPA is currently using Agency Transfer Parcel F for the construction of
23 new bus ramps and a train box, and Agency Transfer Parcel Parcels O, O', and O" for the
24 temporary terminal facility, and TJPA and the Agency currently expect those uses will
25 continue until late 2016 and late 2017; and

1 WHEREAS, In January 2010, TJPA entered into a \$171,000,000 loan under the
2 Transportation Infrastructure Finance and Innovation Act (the "TIFIA Loan") to fund a portion
3 of the Transbay Terminal Project costs, which was approved by this Board on November 24,
4 2009, under Resolution No. 470-09, a copy of which is on file with the Clerk of the Board of
5 Supervisors in File No. 091333, and incorporated herein by reference; and

6 WHEREAS, TJPA does not except to satisfy all of the disbursement conditions and
7 draw on the TIFIA Loan until late 2015, although the schedule is subject to change; and

8 WHEREAS, To obtain interim cash flow funding necessary to certify construction
9 contracts and make construction disbursements for the Transbay Terminal Project, pending
10 TJPA's satisfaction of the remaining disbursement conditions under the TIFIA Loan, TJPA
11 intends to close a bridge loan (the "Bridge Loan") in the amount of the TIFIA loan
12 (\$171,000,000) pursuant to a Credit Agreement in substantially the form on file with the Clerk
13 of the Board of Supervisors in File No. 141155 and incorporated herein by reference; and

14 WHEREAS, As conditions to funding the Bridge Loan under the Credit Agreement, the
15 Bridge Loan lenders require, among other things, the following to occur in order to protect and
16 create certain security interests for the Bridge Loan (the "Security Conditions"): (1) Caltrans
17 shall relinquish its Power of Termination with respect to Agency Transfer Parcel F and
18 Redevelopment Block 4 and any interest Caltrans has in the Gross Sales Proceeds of such
19 parcels (including any requirement that such proceeds be deposited in the Trust Account) and
20 any Gross Sales Proceeds generated from any portion of such parcels, in exchange for a
21 portion of the Bridge Loan proceeds being deposited in the Trust Account at the closing of the
22 Bridge Loan (the "Caltrans Release"); (2) TJPA shall pledge the Net Tax Increment generated
23 by the Agency Transfer Parcels; (3) TJPA shall execute a deed of trust, assignment of leases
24 and rents and security agreement in substantially the form on file with the Clerk of the Board
25 of Supervisors in File No. 141155 and incorporated herein by reference, creating a first priority

1 pledge of, security interest in and lien on all of TJPA's right, title and interest in and to Agency
2 Transfer Parcel F, as well as, among other things, the cash proceeds from the sale, lease or
3 other disposition of Parcel F (the "Deed of Trust"); (4) TJPA shall execute a recordable
4 negative covenant on Parcels O, O', and O" in substantially the form on file with the Clerk of
5 the Board of Supervisors in File No. 141155 and incorporated herein by reference, prohibiting
6 TJPA from selling or encumbering them before the Bridge Loan is repaid in full, unless TJPA
7 deposits a specified amount into a lockbox account created under the Credit Agreement (the
8 "Lockbox Account") as collateral for the Bridge Loan (the "Negative Pledge"); and (5) TJPA
9 and the Agency shall subordinate the Option Agreement and the Agency's interest in the
10 Option relative to Parcel F to the Deed of Trust, and the Option Agreement and the Agency's
11 interest in the Option relative to Parcels O, O', and O" to the Negative Pledge pursuant to the
12 Subordination of Option Agreement for the Purchase and Sale of Property in substantially the
13 forms on file with the Clerk of the Board of Supervisors in File No. 141155 and incorporated
14 herein by reference (the "Subordinations"); and

15 WHEREAS, The Security Conditions require an amendment to the Option Agreement
16 with respect to the Subordinations by and among City, TJPA, and the Agency in substantially
17 the form on file with the Clerk of the Board of Supervisors in File No. 141155 and incorporated
18 herein by reference (the "Option Agreement Amendment"), but City will not be a party to the
19 Credit Agreement, the Deed of Trust, the Negative Pledge, or the Subordinations, provided
20 that City is being asked to acknowledge the Subordinations and the Security Conditions; and

21 WHEREAS, If Agency wants to exercise its Option to Agency Transfer Parcel F or
22 Redevelopment Block 4 before the Bridge Loan is repaid in full, the Subordinations require
23 that the Agency sell such properties for no less than a minimum price (the "Lien Release
24 Price") established under the Credit Agreement and transfer the resulting Gross Sales
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1 Proceeds into the Lockbox Account, and the Deed of Trust or the Negative Pledge, as
2 applicable, will then be released; and

3 WHEREAS, TJPA and the Agency have determined that the Lien Release Price is
4 reasonably achievable and that nothing in the Credit Agreement, the Deed of Trust, the
5 Negative Pledge, and the Subordinations prevents the Agency from fulfilling the Transbay
6 Affordable Housing Obligation with respect to Agency Transfer Parcel F, Redevelopment
7 Block 4, or any other portion of Agency Transfer Parcels O, O', and O"; and

8 WHEREAS, Pursuant to the Credit Agreement and the Subordinations, the Deed of
9 Trust and the Negative Pledge will each be released when TJPA repays the Bridge Loan in
10 full, with any remaining funds in the Lockbox Account deposited in the Trust Account,
11 although if Redevelopment Block 4 becomes a separate legal parcel during the term of the
12 Bridge Loan, the Negative Pledge will be released as to Agency Transfer Parcels O, O', and
13 O" and replaced with a deed of trust on Redevelopment Block 4 in substantially the form of
14 the Deed of Trust; and

15 WHEREAS, The Bridge Loan has a four year term and may be prepaid by TJPA
16 without penalty or premium after the first anniversary of the closing of the Bridge Loan; and

17 WHEREAS, TJPA expects to satisfy the conditions precedent under the TIFIA Loan,
18 draw on the TIFIA Loan, and prepay in full the Bridge Loan in late 2015, although the
19 schedule is subject to change; and

20 WHEREAS, TJPA expects that the Agency's Subordinations would be released in late
21 2015, one to two years before the Agency would otherwise be eligible to exercise its Option to
22 acquire Agency Transfer Parcel F or Redevelopment Block 4, although the schedule is
23 subject to change; and

24 WHEREAS, In the event of a foreclosure sale or a sale pursuant to any power of sale
25 contained in or under the Deed of Trust on Agency Transfer Parcel F or any future deed of

1 trust on Redevelopment Block 4 required under the Credit Agreement, the purchaser or
2 purchasers and their successors and assigns, and the property, shall continue to be subject to
3 the Transbay Affordable Housing Obligation and all of the conditions, restrictions and
4 covenants provided in the Declaration of Restrictions, and the Agency retains the obligation
5 and authority to determine the infrastructure, affordable housing, and open space
6 requirements that apply to any development on all or any portion of Agency Transfer Parcel F
7 or Redevelopment Block 4; and

8 WHEREAS, Pursuant to the Credit Agreement and the Subordinations, the Bridge
9 Loan lenders expressly acknowledge that the terms and conditions of the Transbay Affordable
10 Housing Obligation apply to and pass with Agency Transfer Parcel F and Redevelopment
11 Block 4, and apply to and bind the successors in interest of any owner of all or any portion of
12 Agency Transfer Parcel F and Redevelopment Block 4; and that Agency Transfer Parcel F
13 and Redevelopment Block 4 shall be held, transferred, sold and conveyed, subject to the
14 Transbay Affordable Housing Obligation and the conditions, restrictions, reservations and
15 covenants set forth in the Declaration of Restrictions; and

16 WHEREAS, In order to permit TJPA to offer the Deed of Trust for Agency Transfer
17 Parcel F and the Negative Pledge for Agency Transfer Parcels O, O', and O", and a potential
18 deed of trust for Redevelopment Block 4, as security for the Bridge Loan, and authorize TJPA
19 and the Agency to subordinate to the Deed of Trust and the Negative Pledge, the Option
20 Agreement and the Agency's rights and privileges under the Option relative to Agency
21 Transfer Parcels F, O, O', and O", the City, TJPA, and the Agency desire to enter into the
22 Option Agreement Amendment, have City sign an acknowledgment and consent letter to the
23 terms and conditions of the Bridge Loan in substantially the form on file with the Clerk of the
24 Board of Supervisors in File No. 141155 and incorporated herein by reference (the "City
25 Consent Letter"), and acknowledge the Subordinations; and

1 WHEREAS, The Director of Property believes the Option Agreement Amendment and
2 the Bridge Loan is in the best interests of the taxing entities, including the City and TJPA, to
3 (1) facilitate timely completion of construction of Phase 1 of the Project, which is a public
4 benefit, will help to revitalize the Project Area and stimulate private investment, and is a
5 central part of the Project; (2) facilitate the Agency's timely implementation of the disposition
6 and development of Redevelopment Block 4 and Agency Transfer Parcel F under the Plan;
7 (3) facilitate the Agency's fulfillment of the Transbay Affordable Housing Obligation; and (4)
8 generate timely receipt of property tax revenues by the taxing entities; now, therefore, be it

9 RESOLVED, In accordance with the recommendations of the Director of Property, the
10 Board of Supervisors hereby approves, and authorizes the Director of Property to execute, the
11 Option Agreement Amendment and the City Consent Letter, and authorizes the Director of
12 Property to acknowledge the two Subordinations; and, be it

13 FURTHER RESOLVED, This Resolution does not bind the City to make any
14 expenditure, incur any indebtedness, or in any way obligate itself under TJPA's Bridge Loan
15 and related documents; and, be it

16 FURTHER RESOLVED, This approval by the City of the Bridge Loan is neither an
17 approval of the underlying credit issues of the Transbay Program nor an approval of the
18 financing structure of the Bridge Loan; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
20 Property to execute any additions, amendments or other modifications to the Option
21 Agreement Amendment, the City Consent Letter, and the Subordinations that the Director of
22 Property, in consultation with the Office of the City Attorney, determines are in the best
23 interests of the City, do not materially increase the obligations or liabilities of the City or

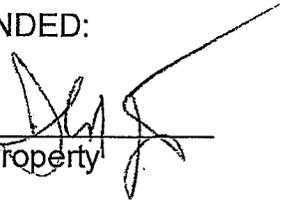
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1 materially decrease the benefits to the City, and are in compliance with all applicable laws,
2 including the City's Charter:

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RECOMMENDED:



Director of Property

LEGISLATIVE DIGEST

[Approval of First Amendment to Option Agreement for the Purchase and Sale of Real Property - Transbay Joint Powers Authority - Consent to Conditions of Transbay Joint Power Authority's Bridge Loan - \$171,000,000]

Resolution authorizing the Director of Property to execute the First Amendment to Option Agreement for the Purchase and Sale of Real Property between the City, Transbay Joint Powers Authority, and Successor Agency to the Redevelopment Agency of City and County of San Francisco; execute a consent to the conditions of the Transbay Joint Powers Authority's Bridge Loan with a value of \$171,000,000; and acknowledge the Subordination of the Option Agreement for the Purchase and Sale of Real Property for Transbay Parcels F, O, O', and O''.

Existing Law

The Redevelopment Plan for the Transbay Redevelopment Project (the "Plan") applies to the redevelopment of the area (the "Project Area") generally bounded by Mission, Main, Second, and Folsom Streets in downtown San Francisco, and the construction and funding of a new Transbay Terminal and Caltrain downtown extension (the "Project"). Under the Plan, at least 25 percent of all dwelling units developed in the Project Area must be affordable housing for persons and families whose incomes do not exceed 60 percent of the area median income, with an additional 10 percent of all dwelling units developed in the Project Area to be affordable housing for persons and families whose incomes do not exceed 120 percent of the area median income (the "Transbay Affordable Housing Obligation").

When the Plan was adopted, the State of California ("State") owned approximately ten (10) acres of land in the Project Area, including the former Transbay Terminal building and its bus access ramps (the "State-Owned Parcels"). Under a Cooperative Agreement between the State, the City, and the Transbay Joint Powers Authority ("TJPA") entered into on July 11, 2003 (the "Cooperative Agreement"), the State has or will transfer the State-Owned Parcels to the City or to the TJPA for the construction, or to fund the construction, of the Project. The State retains a Power of Termination for any transferred State-Owned Parcel (the "Power of Termination") that permits the State to re-take title to such State-Owned Parcel if certain Cooperative Agreement conditions are not met. The Cooperative Agreement requires the State to release its Power of Termination over a State-Owned Parcel if it is sold to a third party for no less than fair market value, and the Gross Sales Proceeds (as defined in the Cooperative Agreement) from that sale are deposited into a Trust Account (as defined in the Cooperative Agreement) dedicated to fund certain Project construction costs.

To further the objectives of the Cooperative Agreement, the Plan, and the Project, the City, TJPA, and the former Redevelopment Agency of the City and County of San Francisco ("Former Agency") entered into an Option Agreement for the Purchase and Sale of Real

Property ("Option Agreement") on January 31, 2008, granting the Former Agency an option ("Option") to acquire specific State-Owned parcels (the "Agency Transfer Parcels"). If the Former Agency transfers an Agency Transfer Parcel to a third party for development, the Option Agreement requires that transfer to be for no less than fair market value, and that all resulting Gross Sales Proceeds be placed in the Trust Account. The City, TJPA, and the Former Agency also executed a Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement (the "Pledge Agreement"), dated January 31, 2008, which irrevocably pledged Net Tax Increment (as defined in the Pledge Agreement) to TJPA to fund Project construction and design costs.

The Former Agency dissolved in 2012, and the Successor Agency to the Redevelopment Agency of City and County of San Francisco ("Agency") now holds the Former Agency's rights, title and interest in the Option Agreement and the Pledge Agreement. The Agency Transfer Parcels include the property commonly known as Agency Transfer Parcel F, which is currently used by TJPA for bus ramp and train box construction purposes, and Agency Transfer Parcels O, O', and O", which are currently used by TJPA for a temporary bus terminal. The Agency cannot exercise its Option for those Agency Transfer Parcels until they are no longer needed for Project construction purposes.

TJPA and the Agency currently expect TJPA's use of Agency Transfer Parcel F, and Agency Transfer Parcels O, O', and O", to continue until late 2016 and late 2017, respectively. Once that occurs, the Agency plans to acquire and transfer Agency Transfer Parcel F to a third party for primarily office use, to acquire and transfer the northern third portion of Agency Transfer Parcels O, O', and O" commonly known as "Redevelopment Block 4" to a third party for primarily residential use, and to use the remainder of Agency Transfer Parcels O, O', and O" for a park, affordable housing developments, and public rights of way.

Amendments to Current Law

The TJPA has a \$171,000,000 loan under the Transportation Infrastructure Finance and Innovation Act (the "TIFIA Loan") to partially fund Project costs, but it does not currently expect to be able to draw on the TIFIA Loan until late 2015. To obtain cash flow funding needed for Project construction during the interim, TJPA intends to obtain a \$171,000,000 bridge loan (the "Bridge Loan") under a Credit Agreement with Goldman Sachs Bank USA, as syndication agent, administrative agent, collateral agent and as sole lead arranger, and other lenders.

The Credit Agreement requires the following actions to protect and create certain Bridge Loan security interests (the "Security Conditions"): (1) ending the State's Power of Termination on Agency Transfer Parcel F and Redevelopment Block 4, and Caltrans' interest in the sales proceeds of such parcels, in exchange for the deposit of certain Bridge Loan proceeds into the Trust Account at the closing of the Bridge Loan; (2) TJPA's pledge of the Net Tax Increment; (3) TJPA's execution and delivery of a deed of trust, assignment of leases and rents and security agreement against Agency Transfer Parcel F (the "Parcel F Deed of

Trust"); (4) TJPA's execution and delivery of a recordable negative covenant against Agency Transfer Parcels O, O', and O", which would prohibit TJPA from selling or encumbering them during the Bridge Loan term unless TJPA deposits a specified amount into a lockbox account (the "Lockbox Account") created under the Credit Agreement (the "Negative Pledge"); and (5) the subordination of the Option Agreement and the Agency's Option to the Parcel F Deed of Trust, and to the Negative Pledge as to Agency Transfer Parcels O, O', and O", pursuant to Subordinations of Option Agreement for the Purchase and Sale of Property (the "Subordinations").

If the Bridge Loan is not prepaid within eighteen months of its closing, the Credit Agreement requires the TJPA endeavor to cause Redevelopment Block 4 to be a separate legal parcel and to execute and deliver a deed of trust against Redevelopment Block 4 in substantially the form of the Parcel F Deed of Trust (a "Block 4 Deed of Trust"). Meeting the Security Conditions will require an amendment to the Option Agreement, which must be signed by the City, TJPA, and the Agency. It will also require that City acknowledge, but not be a party to, the Subordination, and to expressly consent to the Security Conditions.

Background Information

The Bridge Loan will subordinate the Option Agreement and Agency's Option to acquire Agency Parcels F, O, O', and O". Until the Bridge Loan is repaid, there will be a Parcel F Deed of Trust encumbering Agency Parcel F and a Negative Pledge encumbering Agency Parcels O, O', and O", which Negative Pledge may be replaced with a Block 4 Deed of Trust encumbering on Redevelopment Block 4 if the Bridge Loan is not prepaid within eighteen months. The Bridge Loan has a four year term, but may be prepaid by TJPA after the first anniversary of the closing of the Bridge Loan. TJPA expects to repay the Bridge Loan with TIFIA Loan proceeds in late 2015, although the schedule is subject to change.

TJPA and the Agency currently expect that TJPA will need to use Agency Parcel F through late 2016 for Project construction purposes. If the Bridge Loan is still unpaid after that time, the Subordination allows the Agency to exercise its Option for Agency Parcel F if it is immediately sold to a third party for no less than the Lien Release Price, as defined in Credit Agreement, with the resulting Gross Sales Proceeds to be placed into the Lockbox Account during the Bridge Loan term. Any funds remaining in the Lockbox Account after the Bridge Loan is repaid will be placed in the Trust Account.

TJPA and the Agency currently expect that TJPA will need Agency Parcels O, O', and O" for Project construction purposes through late 2017. If the Bridge Loan is still unpaid after that time, the Subordination allows the Agency to exercise its Option for Agency Parcels O, O', and O" if they are first subdivided into separate legal parcels. If the Option is being exercised for Redevelopment Block 4, there must be an immediate third party sale that generates Gross Sales Proceeds no less than the specified Lien Release Price, which must be placed into the Lockbox Account during the Bridge Loan term. Any funds remaining in the Lockbox Account after the Bridge Loan is repaid will be placed in the Trust Account. Any

Gross Sales Proceeds resulting from a transfer the remaining portions of Parcels O, O', and O" would be placed in the Trust Account at the time of transfer.

The Agency determined that the Lien Release Price for Agency Parcel F and Redevelopment Block 4 is reasonably achievable, even after taking into consideration the Plan development restrictions, environmental contamination, legally required affordable housing, and other conditions that reasonably affect their fair market value. TJPA and the Agency have also determined that nothing in the Credit Agreement, the Parcel F Deed of Trust, the Negative Pledge, the Subordinations, or any Block 4 Deed of Trust prevents the Agency from fulfilling the Transbay Affordable Housing Obligation with respect to Agency Transfer Parcel F, Redevelopment Block 4, or any other portion of Agency Transfer Parcels O, O', and O".

If there is a default under the Credit Agreement, and a resulting foreclosure under the Parcel F Deed of Trust or any Block 4 Deed of Trust, the purchaser or purchasers and their successors and assigns, and the property, will continue to be subject to the Transbay Affordable Housing Obligation, and the Agency will retain the obligation and authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on all or any portion of Agency Transfer Parcel F or Redevelopment Block 4.

TJPA, the Agency, and the Director of Property believe that the Option Agreement Amendment and the Bridge Loan are in the best interests of the taxing entities, including the City and TJPA, to (1) facilitate timely completion of construction of Phase 1 of the Project, which is a public benefit, will help to revitalize the Project Area and stimulate private investment, and is a central part of the Project; (2) facilitate the Agency's timely implementation of the disposition and development of Redevelopment Block 4 and Agency Transfer Parcel F under the Plan; (3) facilitate the Agency's fulfillment of the Transbay Affordable Housing Obligation; and (4) generate timely receipt of property tax revenues by the taxing entities.

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| <p>Item 8 File 14-1155</p> | <p>Department: Real Estate Division Office of Community Investment and Infrastructure (OCII)</p> |
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Executive Summary

Legislative Objectives

- The proposed resolution would: (1) authorize the First Amendment to the Option Agreement for the Purchase and Sale of Real Property between the City, the Transbay Joint Powers Authority (TJPA), and the Office of Community Investment and Infrastructure (OCII); (2) execute a consent to the conditions of the Transbay Joint Powers Authority's Bridge Loan; and (3) acknowledge the Subordination of the Option Agreement for the Purchase and Sale of Real Property for Transbay Parcels F, O, O', and O".

Key Points

- In January 2010, TJPA entered into \$171,000,000 loan under the Transportation Infrastructure Finance and Innovation Act (the TIFIA Loan) to fund a portion of the Transit Center Project costs. According to TJPA, the disbursement conditions of the TIFIA Loan include, among other things: (1) the requirement that TJPA receive gross land sales proceeds of \$429,000,000 from the State-owned parcels (or allocation of alternative funding acceptable to TIFIA); and (2) evidence that the Transit Center is fully funded.
- The Transbay Joint Powers Authority has received \$222,000,000 in gross land sales proceeds to date, which is \$207,000,000 or 48 percent less than the \$429,000,000 required to disburse the TIFIA loan. Therefore, the TIFIA loan has not yet been disbursed and TJPA does not have access to the expected \$171,000,000 in loan proceeds. TJPA expects to sell additional Transbay parcels by late September 2015, resulting in sufficient funds to disburse the TIFIA loan.
- TJPA has obtained a Bridge Loan from Goldman Sachs, through a competitive process, which will allow TJPA to continue construction on the Project while it moves to fulfill the disbursement requirements of the TIFIA Loan. Once the TIFIA Loan is disbursed it will be used to pay down the Bridge Loan. TJPA expects to close the Bridge Loan between December 10, 2014 and January 27, 2015. TJPA expects to sell additional properties and set up the Community Facilities District that will allow TJPA to meet the conditions of the TIFIA in September/October 2015. Finally, TJPA expects to pay down the Bridge Loan in December 2015 – January 2016, after it has secured the TIFIA Loan and, to avoid a pre-payment penalty, no sooner than 12 months after closing the Bridge Loan
- Four Transbay parcels are required by the lender, Goldman Sachs, to be pledged as security for the Bridge Loan, which TJPA and OCII would otherwise sell to fund the project.
- The First Amendment to the Option Agreement, which is the subject of the proposed legislation, would subordinate OCII's option to acquire parcels F, O, O', and O" in order for these parcels to be pledged as security for the proposed \$171 million Bridge Loan. TJPA and OCII would be allowed to sell parcel F if parcel F is sold at fair market value for no less than the parcel F lien release price established in the Credit Agreement between TJPA and Goldman Sachs, and TJPA deposits the parcel F gross sales proceeds into a lockbox account as collateral for the Bridge Loan.

- Also, currently TJPA is using parcels O, O', and O'' for temporary facilities during the Transit Center construction. TJPA intends to sell parcels O, O', and O'' when these parcels are no longer needed for temporary facilities during construction but faces restrictions on sale of these parcels under the security conditions of the Bridge Loan. TJPA and OCII can sell these parcels if they are sold release price established in the Credit Agreement, and the gross sales proceeds are placed into a lockbox account as collateral for the Bridge Loan
- Regardless of the repayment status of the Bridge Loan, development of all four parcels would still be subject to the operative affordable housing requirements. Parcel F is subject to a minimum 15 percent onsite affordable requirement. The Transbay Redevelopment Project Area as a whole has a 35 percent affordable housing requirement.

Fiscal Impact

- Of the \$171,000,000 loan, \$133,973,000 would fund the Transit Center project, \$32,360,000 would be placed in a capitalized interest reserve, and \$4,667,000 would pay transaction fees. The loan would be repaid by proceeds from the TIFIA loan once it is disbursed.
- The cost of financing the Bridge Loan would otherwise have been used to fund Project expenses. That cost is expected to be a maximum of \$37,027,000 for four years of financing, the maximum term for the Bridge Loan. However, the risks of not acquiring interim financing through the Bridge Loan include: (1) suboptimal pricing on Transit Center Project contractors for soft/hard costs of construction; (2) suboptimal pricing on the sale of parcels, the funds of which will be used to fund the Transit Center Project; (3) delays in the Transit Center Project, which is scheduled to be substantially complete in late 2017.

Policy Consideration

- The proposed legislation does not bind the City to make any expenditure, incur any indebtedness, or in any way obligate itself under TJPA's Bridge Loan nor approve the financial structure of the Bridge Loan and the underlying credit issues of the Transbay Program.
- Approval of the proposed legislation would facilitate TJPA's obtaining the proposed Bridge Loan by allowing OCII to subordinate its option to purchase parcels F, O, O' and O'' in order to be pledged as security for the Bridge Loan. The Budget and Legislative Analyst recommends approval of the proposed legislation because (a) TJPA has represented that the Bridge Loan is necessary to continue construction of the Transit Center, and (b) the risk to the project of not selling these parcels on schedule is minimal.¹

Recommendation

- Approve the proposed resolution.

¹ TJPA expects to repay the Bridge Loan prior to 2016, which is before the dates by which OCII would exercise its options to purchase these parcels. Should the Bridge Loan still be outstanding by 2016, OCII and TJPA have developed a plan that would allow for the sale of these parcels on schedule and meet the terms of the Bridge Loan.

MANDATE STATEMENT

California Government Code Section 6586.5 requires that any joint powers authority seeking debt financing for construction, acquisition or financing of a public capital improvement project located within the geographic boundaries of one or more local agencies of the joint powers authority must obtain approval from the legislative entity of that local agency. Under the Code, the City must approve the proposed Transbay Joint Powers Authority (TJPA) loan and make a finding that it will be of significant public benefit.

City Charter 9.118 requires any sale or other transfer of real property owned by the City and County of San Francisco be subject to Board of Supervisors approval. Pursuant to Charter 9.118, the Board approved Ordinance 99-06 (File 06-0347) approving the Option Agreement between the TJPA, the former San Francisco Redevelopment Agency (now the Office of Community Investment and Infrastructure), and the City and County of San Francisco, which granted an option to acquire certain City property, without granting the Director of Property authority to make any modifications to that agreement. Changes to the Option Agreement therefore require approval of the Board of Supervisors.

Under Ordinance No, 215-12, the Board of Supervisors, acting in its capacity as the legislative body of the Successor Agency to the former Redevelopment Agency of the City and County of San Francisco, retained the authority to approve any material changes in the obligation the Successor Agency (also known as the Office of Community Investment and Infrastructure) has to provide affordable housing.

BACKGROUND

Transbay Redevelopment Project Overview

The Board of Supervisors approved the *Transbay Redevelopment Plan* on June 21, 2005 (File 05-0184). This provided for the redevelopment of the 40-acre area (the Redevelopment Project Area) generally bounded by Mission, Main, Second, and Folsom Streets in downtown San Francisco. The goals of the project are to (1) revitalize the Redevelopment Project Area, which was subject to blight, (2) provide new and additional retail, office, and housing units, (3) upgrade the Transbay Terminal, and (4) provide a framework of development controls and design guidelines to ensure that private development within the Redevelopment Project Area is consistent with the City's Redevelopment Plan. A particular feature of this project is that it includes a requirement that 35 percent of newly built housing units be affordable, comprising (1) 25 percent for persons and families whose incomes do not exceed 60 percent of the area median income, and (2) 10 percent for persons and families whose incomes do not exceed 120 percent of area median income.

The *Transbay Redevelopment Plan* was developed by the San Francisco Redevelopment Agency. That entity, along with all 400 redevelopment agencies in California, was dissolved in February 1, 2012 by Order of the California Supreme Court.² In response, the California Legislature passed and the Governor adopted Assembly Bill (AB) 1484, a bill modifying the redevelopment

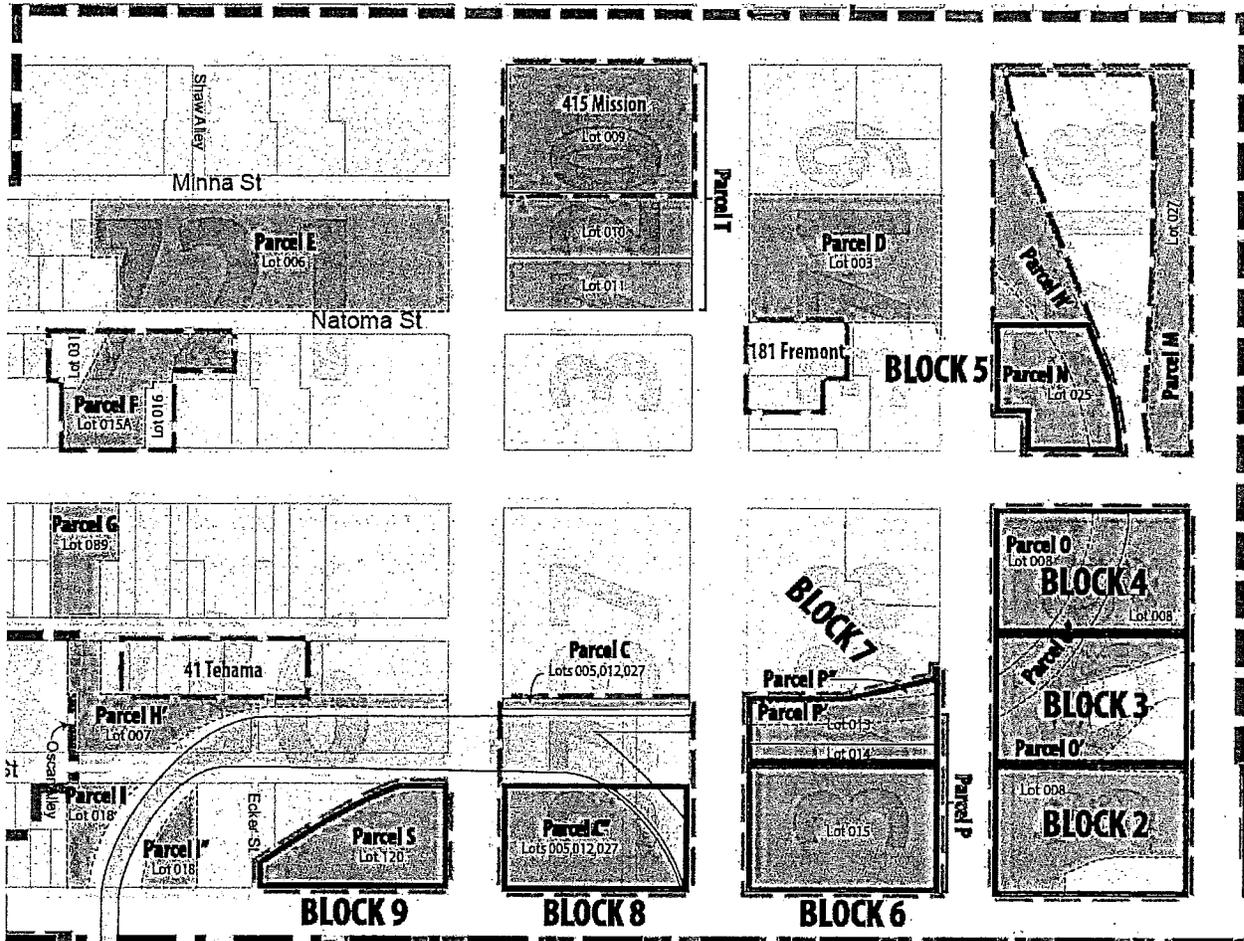
² California Redevelopment Association *et al.* v. Ana Matosantos, 53 Cal. 4th 231 (2011).

dissolution bill, AB 26, which was largely upheld by the California Supreme Court. As a result of these legislative changes, the San Francisco Redevelopment Agency became the Successor Agency to the San Francisco Redevelopment Agency, which is now known as the Office of Community Investment and Infrastructure (OCII). OCII is obligated to complete the implementation of the major development projects, including the Transbay Redevelopment Project, pending at the time of the dissolution of the redevelopment agencies. OCII manages the implementation of the *Transbay Redevelopment Plan*, including the enforcement of development controls and the affordable housing requirement, and the acquisition, marketing, transfer, and management of parcels within the Redevelopment Project Area. A separate entity, the Transbay Joint Powers Authority (TJPA) has primary jurisdiction over the financing, design, development, construction, and operation of the Transbay Transit Center Project.

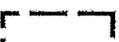
The Parcels

Exhibit 1 below shows a portion of the Redevelopment Project Area, focusing on the parcels that are relevant for the proposed legislation. In accordance with the *Transbay Redevelopment Plan*, OCII plans to prepare parcel F (plus two adjacent properties) for commercial development as an office space with a 750-foot office tower, with potential for up to 85 residential units (15% affordable). On the portion of parcels O, O', and O'' that make up Block 4, OCII anticipates a residential development tower with approximately 450 units, 33 percent of which (or 148 units) would be affordable housing, plus an additional 100 units of affordable housing in the adjacent building. Parcel F is located on Howard Street between Second and First Streets. Parcels O, O', and O'' make up a portion of the block between Beale and Main Streets and Howard and Folsom Streets. Parcels O, O', and O'' also include portions of Block 3 (programmed to be a park) and Block 2 (programmed to be a 100% affordable housing development). Parcel F is subject to a minimum 15% onsite affordable requirement per the Transbay Redevelopment Plan and the Planning Code. Parcels O, O', and O'' are part of the Transbay Redevelopment Project Area, which as a whole has a 35 percent affordable housing requirement per AB 812 and the Transbay Redevelopment Plan.

Exhibit 1: The Transbay Redevelopment Project Area



Transbay Project Area

-  Redevelopment Plan Area
-  Transit Center District Plan Area
-  Coop Parcels
-  Redevelopment Block
-  Property within the CFD Boundary Line
-  Assessor's Block Number

3735

0 250 500
Scale in feet

October 2014

Source: TJPA

The Cooperative Agreement

On July 8, 2003, the Board of Supervisors approved a *Cooperative Agreement* between the TJPA, the California Department of Transportation (Caltrans), and the City and County of San Francisco (File 03-0997). The *Cooperative Agreement* authorizes the transfer of certain State-owned parcels within the Redevelopment Project Area, at no cost, from Caltrans to the City and the TJPA for use in construction of the Transit Center Project or to sell in order to fund Transit Center Project construction costs. According to the *Cooperative Agreement*, the State retains the power to reverse the parcel transfer, unless the parcels are sold to a third party and the funds from the sale are dedicated to pay for Transit Center Project capital costs, or until the TJPA timely completes construction of the Transit Center Project.

The Option Agreement

On May 9, 2006, the Board of Supervisors approved the *Tax Increment Allocation and Sales Proceeds Pledge Agreement (the Pledge Agreement)*, described below, and the *Option Agreement for the Purchase and Sale of Real Property (the Option Agreement)* between the TJPA, the former San Francisco Redevelopment Agency (now OCII), and the City and County of San Francisco (File 06-0347). The *Option Agreement* gives OCII the right to purchase from the City and the TJPA (the Option), at no cost, those State-owned parcels in the Redevelopment Project Area that are not required for the Transit Center Project, and which are transferred from Caltrans to the City or to the TJPA, in accordance with the *Cooperative Agreement*. After exercising the right to acquire, OCII would sell these parcels to private developers or enter into a long-term ground lease with nonprofit developers, for development that is consistent with the *Transbay Redevelopment Plan*. The State will remove its power of termination when the parcels are sold for fair market value and the funds are deposited into a trust account dedicated to pay for Transit Center Project capital costs. Finally, under the *Pledge Agreement*, all gross sales proceeds and net tax increment revenue (net of tax increment needed for affordable housing and pass-throughs) generated by the State-owned parcels have been pledged to the TJPA.

TJPA is currently using parcel F for the construction of new bus ramps and a train box and parcels O, O', and O'' for the temporary terminal facilities and expects these uses to continue until late 2016 and late 2017, respectively. Thus, OCII may not currently exercise the Option to acquire these parcels.

Tax Increment Revenue

On May 9, 2006, the Board of Supervisors approved *Tax Increment Allocation and Sales Proceeds Pledge Agreement (the Pledge Agreement)* and the *Option Agreement for the Purchase and Sale of Real Property*, described above (File 06-0347). The *Pledge Agreement* pledged the tax increment revenue from the State-owned parcels in the Redevelopment Project Area to TJPA for 45 years. Tax increment financing is a project financing strategy, whereby the redevelopment agency (1) issues debt (tax allocation bonds), subject to Board of Supervisors approval, and uses future incremental ad valorem tax revenues (tax increment), primarily property tax revenues, to repay such debt. In other words, the increases in property tax revenue within a redevelopment project area are used to finance the redevelopment project.

TIFIA loan

In January 2010, TJPA entered into \$171,000,000 loan under the Federal Highway Administration Transportation Infrastructure Finance and Innovation Act (the TIFIA Loan) to fund a portion of the Transit Center Project costs, which was approved by the Board of Supervisors on November 24, 2009 (File No. 09-1333).

According to Ms. Sara Gigliotti, Chief Financial Officer for the TJPA, the disbursement conditions of the TIFIA Loan include, among other things: (1) the requirement that TJPA receive gross land sales proceeds of \$429,000,000 from the State-owned parcels (or allocation of alternative funding acceptable to TIFIA); and (2) evidence that the Transit Center is fully funded.

The Transbay Joint Powers Authority has received \$222,000,000 in gross land sales proceeds to date, which is \$207,000,000 or 48 percent less than the \$429,000,000 required to disburse the TIFIA loan. Therefore, the TIFIA loan has not yet been disbursed and TJPA does not have access to the expected \$171,000,000 in loan proceeds. As a result of the downturn in the US economy, and the real estate market in particular, from late 2007 to mid-2009, TJPA and OCII agreed to defer certain land sales until the market improved. Now that the market has improved, OCII has released Blocks 6, 7, 8, and 9 for disposition and development. Block 5 is currently available for development.

According to Ms. Tiffany Bohee, Executive Director of OCII, all developers in Blocks 5, 8, and 9 are in compliance with the terms and conditions of their respective exclusive negotiations agreements with OCII and OCII fully expects to close and transfer the properties in 2015.

According to Ms. Gigliotti, TJPA has received \$222,000,000 in gross sale proceeds from State-owned parcel T and Block 6, shown in Table 1 below. As stated above, under the 2008 *Option Agreement*, OCII has an option to acquire certain former State-owned Parcels and is charged with preparing and selling those parcels and providing the gross sales proceeds to TJPA. Table 1 below shows the expected revenue of \$510,130,000 from the sale of State-owned parcels in 2015, which exceeds the \$429,000,000 condition for disbursement in late 2015.

Table 1: Expected Revenue to TJPA from Sales of State-owned Parcels in 2015

| Area | Expected Revenue | Expected Timing |
|--|----------------------|-----------------|
| Parcel T and Block 6 | \$222,000,000 | Received |
| Block 9 | 43,630,000 | February 2015 |
| Block 5 | 172,500,000 | September 2015 |
| Subtotal Actual and Expected Future Revenues | \$438,130,000 | |
| Block 8 | 72,000,000 | October 2015 |
| Total Actual and Expected Future Revenues | \$510,130,000 | |

Source: TJPA

TJPA and TIFIA executed a first amendment to the TIFIA Loan in June 2014 which recognizes the formation of the Transbay Mello-Roos Community Facilities District³ and its corresponding authorization to issue bonds as evidence of full funding for Phase 1, even before the bonds themselves are sold. The City and County of San Francisco has completed two of the three legislative actions required to form the Community Facilities District (including Files 14-0644, 14-0645, 14-0814, 14-0815, 14-0816, and 14-0836). The Board of Supervisors has called a special landowner election related to formation of the Community Facilities District in late December 2014; TJPA expects the Board of Supervisors to consider the final authorization in January 2015.

TJPA intends to repay the TIFIA Loan with: (1) net tax increment funds generated by certain State-owned parcels in the Transbay Redevelopment Area; (2) future contributions from Alameda-Contra Costa Transit District ("AC Transit") related to use of the new Transit Center; and (3) income derived from certain permitted investments of (1) and (2). The current schedule calls for TIFIA loan repayment to begin by February 2020 after substantial completion of Phase 1 of the Project.

According to Ms. Sally Oerth, Deputy Director of OCII, the Transit Center Project is in the construction phase. Foundation work consists of the buttress, shoring and excavation trade package, which is 97 percent complete, and the below grade structural concrete substructure trade package, which is 77 percent complete. Above-grade structural work currently in the construction phase includes the structural steel trade package, which is 35 percent complete, and the structural concrete superstructure, which is 2 percent complete. Utility relocation is substantially complete, and the bus ramps are 4 percent complete.⁴

Table 2 below shows the total project funding of \$1.9 billion for Phase 1 of the Transit Center Project by funding source.

³ The State Legislature enacted the Mello-Roos Community Facilities Act, in 1982, as amended, which authorizes local governments to establish Community Facilities Districts to fund public works and services.

⁴ All percentages as of September 30, 2014.

Table 2: Total Transit Center Project Funding (Phase 1)

| Sources | Phase 1 Amount (\$ Millions) |
|---|------------------------------|
| Land Sales | \$510,200,000 |
| ARRA (American Recovery and Reinvestment Act) High Speed Rail | 400,000,000 |
| TIFIA Loan | 171,000,000 |
| AB 1171 ^a | 150,000,000 |
| Regional Measure 2 ^b | 143,000,000 |
| Regional Measure 1 ^b | 54,400,000 |
| San Francisco Prop. K Sales Tax | 139,000,000 |
| Federal Grants (FTA/FRA/FEMA) ^c | 65,100,000 |
| AC Transit Contribution | 39,000,000 |
| Transit Center District Plan (Park) ^d | 28,500,000 |
| State Regional Transportation Improvement Program (RTIP) | 10,200,000 |
| Miscellaneous Local | 8,700,000 |
| One Bay Area Transit Grant | 6,000,000 |
| San Mateo Sales Tax | 4,500,000 |
| Transit Center District Plan (Phase 1) ^d | 169,800,000 |
| Total | \$1,899,400,000 |

Source: TJPA

^a AB 1171 was adopted by the California legislature to fund the cost of seismic retrofit of Bay Area toll bridges.

^b Regional Measures 1 and 2 set tolls on Bay Area bridges to pay for transportation projects.

^c Federal Transportation Administration, Federal Railroad Administration, and Federal Emergency Management Agency

^d The Transit Center District Plan funds public improvements through the Community Facilities District, development impact fees and other fees.

DETAILS OF THE PROPOSED LEGISLATION

The proposed resolution would: (1) authorize the First Amendment to the Option Agreement for the Purchase and Sale of Real Property between the City, the Transbay Joint Powers Authority, and the Office of Community Investment and Infrastructure, as the Successor Agency to the San Francisco Redevelopment Agency; (2) execute a consent to the conditions of the Transbay Joint Powers Authority's Bridge Loan; and (3) acknowledge the Subordination of the Option Agreement for the Purchase and Sale of Real Property for Transbay Parcels F, O, O', and O".

Bridge Loan

As noted above, TJPA secured a TIFIA loan in the amount of \$171,000,000 which cannot be disbursed until TJPA receives gross property sales proceeds of at least \$429 million. Because TIFIA does not expect to receive gross property sales proceeds until September 2015, as shown in Table 1 above, the TIFIA loan is not expected to be disbursed until late 2015 at the earliest. Therefore, TJPA is securing a Bridge Loan to enter into construction contracts for the various

components of the Transit Center construction work. Because of the competitive construction environment, TJPA believes that delays in construction contracting will result in construction cost increases. TJPA further believes the Bridge Loan would allow TJPA to time the sale of the former State-owned parcels with the current recovery of the real estate market, maximizing the value of the parcels.

According to Ms. Gigliotti, TJPA conducted a competitive procurement process for interim bridge financing, releasing a Request for Proposals on February 28, 2014. Nine proposals were received in April from various banks and investment banking firms. Ultimately a selection committee with representatives from TJPA; Sperry Capital, TJPA's financial consultant; Nixon Peabody, TJPA's financial counsel; and the City & County of San Francisco Office of Public Finance, ranked a proposal from Goldman Sachs for a direct loan as the highest proposal. TJPA and Goldman Sachs have been working since April 2014 to negotiate the Credit Agreement and related documents.

TJPA expects to close the Bridge Loan between December 10, 2014 and January 27, 2015.

TJPA intends, and is required by the terms of the Bridge Loan, to repay the Bridge Financing in full with proceeds of the TIFIA Loan. As noted above, these conditions are expected to be satisfied in late 2015.

Bridge Loan Uses

Table 3 below shows the expected uses of the \$171 million Bridge Loan funds at close. An estimated \$133,973,000 or 78.3 percent of the Bridge Loan is expected to certify and pay for construction contracts, and to a lesser extent pay for certain soft costs, described in more detail below. An estimated \$32,360,000 or 18.9 percent of the Bridge Loan will go towards interest expense and interest rate hedging, described in more detail below. Finally, transaction fees are estimated to comprise \$4,667,000 or 2.7 percent of the nominal amount of the Bridge Loan.

According to Ms. Oerth, without the Bridge Loan, it would be difficult for TJPA to keep construction moving forward on the planned schedule for substantial completion in late 2017. The Bridge Loan will allow TJPA to certify and pay for construction work planned for the period. Without the Bridge Loan (or some other source of funds), TJPA would likely focus its available resources on critical trade work such as the train box and structural steel; TJPA may be required to cease work under most other trade packages; and it may be difficult to keep even critical packages moving forward until the conditions for TIFIA disbursement are met.

Table 3: Estimated Uses of Bridge Loan Funds⁵

| Use of Funds | Amount |
|-----------------------------------|----------------------|
| Proceeds to TJPA | \$133,973,000 |
| Capitalized Interest/Hedging Fees | \$32,360,000 |
| Transaction Fees | \$4,667,000 |
| Total | \$171,000,000 |

Source: TJPA

TJPA will not receive enough revenue from net tax increments during the term of the Bridge Loan to pay the Bridge Loan's financing costs. As shown in Table 3, proceeds from the Bridge Loan will be used to fund the capitalized interest account and to pay the one-time interest rate hedging cost at financial close. This capitalized interest account will be used to pay interest each quarter to the lenders during the term of the Bridge Loan. Once the TJPA repays the Bridge Loan in full, any balance in the capitalized interest account will be returned to TJPA and any remaining portion of the interest rate hedging agreement may be sold to a third party.

TJPA expects to use the Bridge Loan to certify construction contracts, either continuing work already underway, or certifying notices to proceed for contracts to be awarded. Ultimate use will depend on the progress of trade subcontractors in the field and actual amounts and dates of new trade subcontract awards. TJPA anticipates the following uses for the Bridge Loan's estimated \$133,973,000 proceeds:

- Below Grade Concrete (continuation of work)
- Structural Steel (continuation of work)
- Glass Curtain Walls/Skylights (award of design/build subcontract)
- Logistics (continuation of work)
- Bus Ramps (continuation of work)
- Miscellaneous Metals/Metal Stairs (continuation of work)
- Framing/Drywall (continuation of work)
- Fireproofing (continuation of work)
- Inspection costs
- Subguard costs
- Reimbursable Contractor Expenses
- Construction Management Oversight consultant fees

Bridge Loan Lending Terms

The Bridge Financing in the proposed agreement between TJPA and Goldman Sachs will take the form of a direct loan in the amount of \$171,000,000. The Bridge Loan will have a 4-year term, with one disbursement on the closing date, with the option to pre-pay the loan without penalty 12 months after the closing date. The Bridge Loan has a variable interest rate, based upon the 3-month adjusted London Interbank Offered Rate (LIBOR), plus a 2.25 percent which

⁵ These are estimates only; indicative costs and estimates are as of September and October 2014; actual costs dependent upon market and finalized at financial close of Bridge Loan.

steps up 50 basis points (0.5 percent) each year that the loan is outstanding. Table 4 below summarizes these interest rates over the life of the Bridge Loan.

Table 4: Bridge Loan Interest Rate

| Period | Applicable Margin |
|---|-------------------|
| From and including the Closing Date to but excluding the first anniversary thereof: | 2.25% |
| From and including the first anniversary of the Closing Date to but excluding the second anniversary of the Closing Date: | 2.75% |
| From and including the second anniversary of the Closing Date to but excluding the third anniversary of the Closing Date: | 3.25% |
| From and after the third anniversary of the Closing Date: | 3.75% |

Source: TJPA

Goldman Sachs is requiring that TJPA enter into an interest rate hedging agreement for the full notional amount of the Bridge Loan principal, \$171,000,000, so that the maximum amount of capitalized interest needed over the four-year term of the Bridge Loan can be determined and deposited into the capitalized interest account at financial close and used to fund interest expense each quarter until the loan is repaid. Once the TJPA repays the Bridge Loan in full, any balance remaining in the capitalized interest account will be returned to TJPA and any remaining portion of the interest rate hedging agreement may be sold to a third party

- **Under the proposed Bridge Loan between the City and Goldman Sachs, Goldman Sachs would require parcels F, O, O' and O'' to be pledged as security to the loan. Approval of the First Amendment to the Option Agreement would subordinate OCII's right to purchase Transbay Parcels F, O, O' and O'' from TJPA in order for these parcels to be pledged as security for the Bridge Loan.**

Under the *Cooperative Agreement* between the California Department of Transportation, the TJPA, and the City, Caltrans may transfer certain State-owned property in the Redevelopment Project Area, at no cost, to the City and the TJPA for use in construction of the Transit Center Project or to sell in order to fund Transit Center Project construction costs. According to the *Cooperative Agreement*, the State retains the power to reverse the parcel transfer, unless the parcels are sold to a third party and the funds from the sale are dedicated to pay for Transit Center Project capital costs, or until the TJPA timely completes construction of the Transit Center Project.

Under the *Option Agreement* between the TJPA, the former San Francisco Redevelopment Agency (now OCII), and the City, OCII has the right to purchase from the City and the TJPA, at no cost, those State-owned parcels in the Redevelopment Project Area that are not required for the Transit Center Project. TJPA currently owns Parcels F, O, O', and O'', subject to OCII's right to purchase them from TJPA.

Under the proposed Bridge Loan between the City and Goldman Sachs, Goldman Sachs would require parcels F, O, O' and O'' to be pledged as security to the loan. In particular, in addition to the pledged net tax increment from the State-owned parcels in the Redevelopment Project Area, the following is also required:

1. TJPA pledges its interest in parcel F by offering a deed of trust as security to the Bridge Loan; lenders release the deed of trust if parcel F is sold at fair market value for no less than the parcel F lien release price established in the Credit Agreement between TJPA and Goldman Sachs, and TJPA deposits the parcel F gross sales proceeds into a lockbox account as collateral for the Bridge Loan.
2. TJPA enters into a negative covenant that prohibits it from selling or encumbering parcels O, O', and O'' until the Bridge Loan is repaid in full or they are subdivided into Blocks 2, 3, and 4, Block 4 is sold at fair market value for no less than the Block 4 lien release price established in the Credit Agreement, and TJPA deposits the Block 4 gross sales proceeds into a lockbox account as collateral for the Bridge Loan.
3. OCII subordinates the Option Agreement and OCII's interest in parcels F, O, O', and O'' until the Bridge Loan is repaid in full. OCII would retain the right to exercise its Option as to Parcel F and Block 4 even while the Bridge Financing is outstanding so long as they are sold at fair market value for no less than the lien release price established for them under the Credit Agreement with Goldman Sachs and deposited into a lockbox account as collateral until the Bridge Loan is repaid in full. (Further, OCII would retain the right to exercise its option as to the remainder of parcels O, O', and O'' (known as Blocks 2 and 3) without obtaining a minimum amount of gross sales proceeds or placing them in the lockbox account.)

OCII's subordination of the Option Agreement and OCII's interests requires the City, TJPA, and OCII to amend the existing Option Agreement. Approval of the Amendment to the Option Agreement is the legislation that is before the Board of Supervisors.

- **Goldman Sachs requires the State (Caltrans) to relinquish its right to cancel its transfer of parcels F and Redevelopment Block 4 and also any interest in the sales proceeds generated from the parcels, as provided by the Cooperative Agreement.**

According to the October 10, 2014 memorandum from the OCII Executive Director to the OCII Commissioners, Caltrans will release its power of termination over parcel F and Block 4 upon TJPA's deposit of the proceeds of the Bridge Loan into a trust account set up for land sales proceeds to pay for capital costs associated with construction of the Transit Center Project, less amounts necessary to reserve for capitalized interest, hedging costs, required expense reserves and transaction fees with respect to the Bridge Financing and up to \$9.9 million to pay for construction-related soft costs for the Project.

According to Ms. Gigliotti, there is no allocation or seniority ranking among the various portions of the security requirements in the Bridge Loan. Should TJPA default on the Bridge Loan, Goldman Sachs can declare the full amount of the loan immediately due and payable and exercise its remedies against any or all of the collateral simultaneously or in whatever order it chooses. Once all obligations owed to the lender are satisfied, Goldman Sachs has no further interest in the remaining collateral.

Ms. Gigliotti notes that the likelihood of a payment default by TJPA is remote as the only payments due during the term of the loan are interest, and the full amount of the interest is being set aside from loan proceeds at the time the loan is made.

When TJPA draws on the TIFIA Loan and repays the Bridge Loan, the deed of trust on parcel F and the agreement not to encumber parcels O, O', and O", will be released.

Risks of the Bridge Loan Security Conditions

As stated above, Goldman Sachs requires TJPA to offer a deed of trust on parcel F and to agree not to encumber parcels O, O', and O" to secure the Bridge Loan. Further, Caltrans must relinquish its right to cancel the transfer of the State-owned parcels. TJPA is currently using parcel F for the construction of new bus ramps and a train box and parcels O, O', and O" for the temporary terminal facilities and expects these uses to continue until late 2016 and late 2017, respectively. Thus, OCII may not currently exercise the Option to acquire these parcels from TJPA until late 2016 (parcel F) or late 2017 (parcels O, O', and O"). After that time, TJPA and OCII plan to sell the parcels for disposition and development consistent with the Transbay Redevelopment Project, with the gross sales proceeds and net tax increment pledged to the Transit Center Project.

According to Ms. Gigliotti, if the Bridge Loan is outstanding 18 months after closing date of the Bridge Loan, TJPA will endeavor to subdivide Parcels O, O', and O" into Redevelopment Blocks 2, 3, and 4, and record a deed of trust on Block 4 (which contains portions of parcels O, O', & O") in favor of Goldman Sachs to replace the agreement not to encumber. If the Bridge Loan has not been repaid three years after the closing, TJPA covenants to commence and diligently pursue the process for issuing one or more series of bonds or other indebtedness secured by net tax increment in an aggregate amount at least sufficient to repay the Bridge Loan in full, at which time the deed of trust and agreement not to encumber would be released. Thus, TJPA anticipates repaying the Bridge Financing under the terms and timeframes specified in the loan.

- **Approval of the First Amendment to the Option Agreement does not change the City's ability to require that 35 percent of housing in the Redevelopment Project Area be affordable.**

Regardless of the repayment status of the Bridge Loan, development of all four parcels is controlled by the *Transbay Redevelopment Plan* and under the Subordinations, OCII and the City have the ability to require affordable housing of Parcels O, O', and O" sufficient to meet the 35 percent affordable housing obligation in the Redevelopment Project Area as a whole. Since the City's Planning Department has jurisdiction over parcel F development, any residential component at parcel F would be subject to City's standard in-fill 15 percent affordable housing requirement. OCII and City retain the obligation and authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on parcels F, O, O', and O".⁶

⁶ OCII has development authority over properties it owns and properties developed in Zone 1, which includes parcels O, O', O", and O", while City's Planning has the development authority over private developments in Zone 2, which includes Parcel F. If a private party obtains Parcel F through the deed of trust, rather than a sale through OCII, future development would be handled by the City's Planning Department.

Furthermore, under the *Pledge Agreement*, the tax increment revenue generated from the parcels would remain allocated to TJPA.

The proposed legislation would make the amendments necessary to the *Option Agreement* so that the security conditions of the Bridge Loan can be fulfilled. In particular, the proposed legislation would authorize the Director of Property to (1) execute, the Option Agreement Amendment and the City Consent Letter, (2) to acknowledge the subordinations on parcels F, O, O', and O" and (3) authorize the Director of Real Estate to make further modifications to the *Option Agreement* in the future, without Board approval, should the Director of Real Estate and City Attorney determine the modifications are in the best interests of the City and do not materially increase the obligations or liabilities of the City, or decrease the benefits to the City, and are in compliance with all applicable laws, including the City's Charter. According to the TJPA, these non-material modifications could include providing more precision as to the procedure for OCII to exercise its option and refining legal descriptions.

Fiscal Impact

The proposed legislation does not bind the City to make any expenditure, incur any indebtedness, or in any way obligate itself under TJPA's Bridge Loan nor approve the financial structure of the Bridge Loan and the underlying credit issues of the Transit Center Project. There would be no impact on the City's receipt of tax increment revenue.

Since the financing cost of the Bridge Loan is expected to be funded entirely from the Bridge Loan itself, the full \$171,000,000 of the TIFIA loan will not be used for construction as originally anticipated. TJPA expects to meet the conditions of the TIFIA disbursement in late 2015, however the timing of the disbursement remains uncertain and dependent on the sale of the Blocks 9, 5, and 8 and successfully forming a Mello-Roos Community Facilities District.

Should TJPA not meet the TIFIA disbursement requirements for the entire term of the Bridge Loan, TJPA will spend a maximum of \$37,027,000 on interest expense and capitalization, hedging fees, and transaction fees, as shown in Table 3 above. Depending upon actual interest rates and hedging costs at close, TJPA estimates it can absorb the transaction fees, hedging costs, and interest expense for just over one year within its existing project budget. Should the Bridge Loan be outstanding for more than one year, TJPA would need to identify savings or cost-cutting measures within its budget or seek a budget increase and identify funding for such an increase. Potential sources for a budget increase include a net tax increment financing, use of additional CFD funds towards Phase 1, or use of land sale proceeds otherwise planned for Phase 2 of the Transit Center Project, the Downtown Extension. To the extent that revenue and funding sources are not used for Phase 1, they may be applied towards Phase 2, the Downtown Extension.

SUMMARY

In order to move forward with Phase I of the Transbay Transit Center Project, TJPA requires access to funds to certify construction contracts. TJPA previously secured a \$171 million TIFIA loan, but must generate at least \$429 million in proceeds from the sale of Transbay parcels to disburse the loan. To date, TJPA has generated only \$222 million of the required \$429 million in parcel sale proceeds but anticipates an additional \$216.1 million in parcel sale proceeds by September 2015.

TJPA has obtained a Bridge Loan commitment from Goldman Sachs, through a competitive process, which will allow TJPA to continue construction on the Project while it moves to fulfill the disbursement requirements of the TIFIA Loan. Once the TIFIA Loan is disbursed it will be used to pay down the Bridge Loan. TJPA expects to close the Bridge Loan between December 10, 2014 and January 27, 2015. TJPA expects to sell additional properties and set up the Community Facilities District that will allow TJPA to meet the conditions of the TIFIA in September/October 2015. Finally, TJPA expects to pay down the Bridge Loan in December 2015 – January 2016, after it has secured the TIFIA Loan and, to avoid a pre-payment penalty, no sooner than 12 months after closing the Bridge Loan.

Four Transbay parcels are required by the lender, Goldman Sachs, to be pledged as security for the Bridge Loan, which TJPA and OCII would otherwise sell to fund the Project. The lender, Goldman Sachs, is requiring the following to secure the Bridge Loan:

1. The State relinquish its right to cancel its transfer of parcels F, O, O', and O'' and also any interest in the sales proceeds generated from the parcels.
2. TJPA pledges the net tax increment revenue generated by parcels F, O, O', and O'', as well as by other former State-owned parcels in the Transbay Redevelopment Project Area.
3. TJPA pledge its interest in parcel F by offering a deed of trust.
4. TJPA enters into a negative covenant that prohibits it from selling or encumbering parcels O, O', and O'' until the Bridge Loan is repaid in full or the northern portion of parcels O, O', and O'' known as "Block 4" is sold for no less than a specified lien release price, with the Block 4 gross sales proceeds deposited in a specified amount into a lockbox account as collateral for the Bridge Loan.
5. TJPA and OCII subordinate the Option agreement and OCII's interest in parcels F, O, O', and O''. OCII would retain the right to exercise its option even while the Bridge Financing is outstanding so long as a minimum amount of proceeds from the sale of the related real estate collateral, specified in the agreement with Goldman Sachs, is deposited into a lockbox account as collateral until the Bridge Loan is repaid in full.

The First Amendment to the Option Agreement, which is the subject of the proposed legislation, would subordinate OCII's option to acquire parcels F, O, O', and O'' in order for these parcels to be pledged as security for the proposed \$171 million Bridge Loan. TJPA and OCII would be allowed to sell parcel F if parcel F is sold at fair market value for no less than the

parcel F lien release price established in the Credit Agreement between TJPA and Goldman Sachs, and the parcel F gross sales proceeds are deposited into a lockbox account as collateral for the Bridge Loan.

Also, currently TJPA is using parcels O, O', and O'' for temporary facilities during the Transit Center construction. TJPA intends to sell parcels O, O', and O'' when these parcels are no longer needed for temporary facilities, but faces restrictions on sale of these parcels under the security conditions of the Bridge Loan. TJPA and OCII can sell these parcels if Block 4 is sold at fair market value for no less than the Block 4 lien release price established in the Credit Agreement, and the Block 4 gross sales proceeds are placed into a lockbox account as collateral for the Bridge Loan.⁷

The cost of financing the Bridge Loan would otherwise have been used to fund Project expenses. That cost is expected to be a maximum of \$37,027,000 for four years of financing, which is the maximum term for the Bridge Loan. However, the risks of not acquiring interim financing through the Bridge Loan include:

- Suboptimal pricing on Transit Center Project contractors for soft/hard costs of construction.
- Suboptimal pricing on the sale of parcels, the funds of which will be used to fund the Transit Center Project.
- Delays in the Transit Center Project, which is scheduled to be substantially complete in late 2017.

Regardless of the repayment status of the Bridge Loan, development of all four parcels is controlled by the *Transbay Redevelopment Plan* and under the Subordinations, OCII and the City have the ability to require affordable housing of Parcels O, O', and O'' sufficient to meet the 35 percent affordable housing obligation in the Redevelopment Project Area as a whole. Any housing development on Parcel F is subject to a minimum 15 percent onsite affordable requirement, if the development contains any housing units, per the *Transbay Redevelopment Plan* and the *Planning Code*. OCII still retains the ability to require the affordable housing needed on Parcels O, O', and O'' are part of the *Transbay Redevelopment Project Area*, which as a whole has a to meet the overall 35 percent affordable housing requirement for the *Transbay Redevelopment Project Area* per AB 812 and the *Transbay Redevelopment Plan*.

The proposed legislation does not bind the City to make any expenditure, incur any indebtedness, or in any way obligate itself under TJPA's Bridge Loan nor approve the financial structure of the Bridge Loan and the underlying credit issues of the *Transbay Program*.

Under the *Pledge Agreement*, the tax increment revenue generated from the parcels would remain allocated to TJPA. TJPA will pledge this revenue to Goldman Sachs as security for the Bridge Loan.

Approval of the proposed legislation would facilitate TJPA's obtaining the proposed Bridge Loan by allowing OCII to subordinate its option to purchase parcels F, O, O' and O'' in order to be

⁷ As shown in the Exhibit, parcels O, O', and O'' are partially located in Block 4.

pledged as security for the Bridge Loan. The Budget and Legislative Analyst recommends approval of the proposed legislation because (a) TJPA has represented that the Bridge Loan is necessary to continue construction of the Transit Center, and (b) the risk to the project of not selling these parcels on schedule is minimal.⁸

RECOMMENDATION

Approve the proposed legislation.

⁸ TJPA expects to repay the Bridge Loan prior to 2016, which is before the dates by which OCII would exercise its options to purchase these parcels. Should the Bridge Loan still be outstanding by 2016, OCII and TJPA have developed a plan that would allow for the sale of these parcels on schedule and meet the terms of the Bridge Loan.

[TJPA letterhead]

[date]

John Updike, Director
Real Estate Division
General Services Agency
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

Re: Transbay Transit Center Program (the "Transbay Project")
Goldman Sachs Bridge Loan

Dear Mr. Updike:

I am writing to request the agreement and consent of the City and County of San Francisco (the "City") to the proposal further set forth in this letter. We request such agreement and consent because the City is a party to that certain Cooperative Agreement dated July 11, 2003 (the "Cooperative Agreement") between the State of California, acting by and through its Department of Transportation ("Caltrans"), the Transbay Joint Powers Authority ("TJPA") and the City.

In connection with and pursuant to the Cooperative Agreement, Caltrans transferred certain State-owned parcels of real property (the "Transferred Parcels") to the City and TJPA. The TJPA and City are to use the Transferred Parcels for construction of the Transbay Project or for disposition and development by third parties whereby the Gross Sales Proceeds (as defined in the Cooperative Agreement) will be deposited into a Trust Account (as defined in the Cooperative Agreement) and used for Capital Costs (as defined in the Cooperative Agreement). When Caltrans conveyed the Transferred Parcels, it retained a right to terminate the transfer of all or part of the Transferred Parcels and re-take title thereto upon the failure of certain conditions (collectively, the "Power of Termination").

As you may be aware, TJPA is currently seeking to close a bridge loan in the amount of \$171.0 million (the "Loan") arranged by Goldman Sachs Bank USA ("Goldman"). As conditions to closing the Loan, Goldman requires, among other things, the following to occur in order to protect and create certain security interests for the Loan:

- 1) Caltrans shall relinquish its Power of Termination with respect to Transferred Parcel F and the components of Transferred Parcels O, O', and O" that are planned for the parcel known as "Block 4" under the Redevelopment Plan for the Transbay Redevelopment Project Area, and any interest Caltrans has in the Gross Sales Proceeds of such Transferred Parcels (including any requirement that such Gross Sales Proceeds be deposited in the Trust Account) and any gross lease revenues generated from any portion of such Transferred Parcels. Except for the amounts necessary to pay for the capitalized interest, hedging costs, required expense reserves and transaction fees with respect to the Loan and up to \$9.9 million to pay for construction related soft costs for the Transbay

Terminal Project (as defined in the Cooperative Agreement), all Loan proceeds will be deposited in the Trust Account at the closing of the Loan.

- 2) TJPA shall pledge the net tax increment generated by the Transferred Parcels, as security for the Loan.
- 3) TJPA will execute (a) as security for the Loan, a deed of trust on Transferred Parcel F (which deed of trust will be released and reconveyed when the Loan is repaid in full), and (b) a recordable negative covenant (the Agreement Not to Encumber of Transfer Property) for Transferred Parcels O, O', and O'', prohibiting TJPA from selling or encumbering Parcel F and Block 4 before the Loan is repaid in full, except under limited exceptions, unless TJPA deposits (or causes to be deposited) the Gross Sales Proceeds from the sale in an amount that equals or is greater than a Lien Release Price into a "lockbox" as collateral for the Loan until the Loan is repaid in full, all pursuant to a form of deed of trust and form of recordable negative covenant acceptable to City.

This proposal does not affect the City's rights or obligations under the Cooperative Agreement, because (i) the Transferred Parcels at issue have been transferred to TJPA, (ii) the City is not a party to the Loan documents, and (iii) the City does not have any obligations under any of the Loan documents. Nonetheless, because the foregoing arrangements are not strictly what was contemplated under the Cooperative Agreement in certain respects, TJPA wanted to notify you of the proposal and obtain your agreement and consent to the foregoing. Please evidence such agreement and consent by executing this letter below on or before the financial close of the Loan

Very truly yours,

[TJPA]

cc: Carol Wong, Deputy City Attorney

Agreed and consented to this _____
day of _____, 2014.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

Name: John Updike

Title Director of Property

MEMORANDUM

TO: Office of Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: Conditionally Authorizing the Executive Director to execute a First Amendment to the Transbay Option Agreement for the Purchase and Sale of Real Property and a Subordination Agreement, and to take related actions to facilitate a loan agreement between the Transbay Joint Powers Authority and Goldman Sachs Bank USA that funds the Transbay Terminal construction, subject to the approval of the Board of Supervisors of the City and County of San Francisco, the Oversight Board of the City and County of San Francisco and the California Department of Finance; Transbay Redevelopment Project Area

EXECUTIVE SUMMARY

In 2005, the City approved the Redevelopment Plan (the "Redevelopment Plan") for the Transbay Redevelopment Project (the "Transbay Project"). The Transbay Project provides for the redevelopment, rehabilitation, and revitalization of the area generally bounded by Mission, Main, Second, and Folsom Streets in downtown San Francisco, and containing approximately forty (40) acres of land (the "Project Area") in the City's financial district, including the new Transbay Transit Center ("TTC") and 10 acres of publicly owned property most of which was formerly owned by the State. The Transbay Joint Powers Authority ("TJPA") is responsible for planning, constructing and eventually operating the new TTC. Two of the primary goals of the Redevelopment Plan for the Project Area are (i) funding (from sales proceeds, non-housing tax increment, and other sources) the construction of the new, multi-modal TTC on the site of the former terminal and construct the DTX; and (ii) developing a new, transit-oriented neighborhood on approximately 10 acres of publicly owned property, most of which was formerly owned by the State, including more than 3,400 new residential units of which 1,200 units will be affordable and 3.0 million square feet of new commercial space as well as new parks, plazas, streetscapes, and related improvements.

In 2008, the Redevelopment Agency of the City and County of San Francisco ("Former Agency") entered into an Option Agreement for the Purchase and Sale of Real Property with the City and County of San Francisco ("City") and the TJPA (the "Option Agreement") whereby the City and TJPA granted to the Former Agency the exclusive and irrevocable option to purchase certain former State-owned parcels for disposition and development by third parties. As a condition of granting the option, the Former Agency pledged to provide TJPA the gross sales proceeds from the parcels for deposit into the trust account at closing of the purchase-sale, and the non-housing net tax increment generated by the parcels over time. The Option Agreement also required the Former Agency to perform all of its obligations under the Transbay Redevelopment Project Implementation Agreement (2006), which required, among other things, completion of public infrastructure and affordable housing obligations.

In January 2010, TJPA entered into a \$171.0 million loan under the Transportation Infrastructure Finance and Innovation Act (the "TIFIA Loan") to fund a portion of the costs. The TJPA has not yet satisfied all of the disbursement conditions under the TIFIA Loan. As a result, TJPA cannot currently requisition proceeds under the TIFIA Loan. TJPA expects to satisfy all of the disbursement conditions and draw on the TIFIA Loan in late 2015, although the schedule is subject to change. TJPA intends to repay the TIFIA Loan with: 1) net tax increment that is not committed for affordable housing and that is generated by certain State-owned parcels in the Project Area; 2) future contributions from Alameda-Contra Costa Transit District ("AC Transit") related to use of the new TTC; and 3) income derived from certain permitted investments of 1) and 2) (together "Pledged Revenues").

To meet certain funding requirements in contracts and cash flow requirements in accordance with its current construction schedule for Phase 1 of the TTC in Fiscal Year 2015 and 2016, the TJPA must secure interim financing (the "Bridge Financing"). Phase 1 of the TTC includes construction of the new five-story multi-modal transit center. TJPA conducted a competitive procurement process and has been working with Goldman Sachs to negotiate a Credit Agreement and related documents to secure a direct loan to cover the immediate funding needs of the TJPA. The Bridge Financing will take the form of a direct loan in the amount of \$171 million. The Bridge Financing will have a 4-year term, with lump sum repayment in full at maturity, and prepayment, in part or in full, at the option of TJPA at any point during the term that is at least one year after closing of the Bridge Financing. TJPA intends and is required by the terms of the Bridge Financing to repay the Bridge Financing in full with proceeds of the TIFIA Loan.

In addition to the security of Pledged Revenues and because the net tax increment portion of the Pledged Revenues is not yet mature, Goldman Sachs requires additional security as further protection in the unlikely event that TJPA is unable to draw down on the TIFIA Loan to repay the Bridge Financing in full within the four year term. This additional security includes: 1) a deed of trust on Parcel F (a site proposed for primarily commercial office development) that is expected to be reconveyed when the Bridge Financing is redeemed, unless the parcel is sold prior to that point in which case the proceeds of such sale would be deposited into a lockbox as collateral until the Bridge Financing is repaid in full; and 2) a recordable negative covenant on Parcels O, O', and O'' (three parcels that will be subdivided into three developable rectangular blocks: Block 4, a mixed-income residential development; Block 3 a public open space; and Block 2 an affordable residential development), specifying if Block 4 portion of the parcels is sold before the Bridge Financing is redeemed, TJPA will deposit the proceeds from the sale into the lockbox as collateral until the Bridge Financing is repaid in full. The map included as **Attachment 1** shows the location of the real estate collateral. This additional security requires an amendment to the Option Agreement and a Subordination Agreement related to Parcel F and Parcels O, O', and O'' while the Bridge Financing is outstanding.

Under Redevelopment Dissolution Law, the Option Agreement is an "enforceable obligation" that the Office of Community Investment and Infrastructure, as the Successor Agency to the Former Agency ("OCII") has assumed and is required to implement. Any amendment to the Option Agreement requires the review and approval of the Oversight Board and the California Department of Finance to determine if the modification is "in the best interests of the taxing entities." i.e. the City, School District, Community College, and BART. Cal. Health & Safety

Code § 34181 (f). In addition, the Board of Supervisors, acting as the legislative body for the Successor Agency, must approve the amendment to the Option Agreement because it retained the authority to review material changes to OCII's obligations to provide affordable housing, Ordinance No. 215-12 (Oct. 4, 2012).

Under the proposed Option Agreement Amendment, OCII would retain the right to exercise its option even while the Bridge Financing is outstanding so long as the lien release amount is deposited into a lockbox as collateral until the loan is repaid in full. Authorizing the subordinations requires an amendment to the Option Agreement, which is included as **Attachment 2**. The subordinations will be released when the Bridge Loan is repaid. The subordination will specify that any party (or its successor) that acquires Block 4 through any Bridge Loan deed of trust is subject to the Block 4 affordable housing requirement required by OCII to meet the overall affordable housing percentage mandated for the Transbay Redevelopment Plan Area.

Staff recommends conditionally authorizing the Executive Director to execute a First Amendment to the Option Agreement for the Purchase and Sale of Real Property to subordinate its interest in Transbay Parcel F and Block 4 (portions of Parcels O, O', and O''), subject to the approval of the Board of Supervisors of the City and County of San Francisco, the Oversight Board of the City and County of San Francisco and the California Department of Finance.

BACKGROUND

In 2005, the City approved, by Ordinance No. 124-05, the Redevelopment Plan for the Transbay Redevelopment Project. The Redevelopment Project provides for the redevelopment, rehabilitation, and revitalization of the area generally bounded by Mission, Main, Second, and Folsom Streets in downtown San Francisco, and containing approximately forty (40) acres of land in the City's financial district, including the new Transbay Transit Center and 10 acres of publicly owned property most of which was formerly owned by the State. The TJPA is responsible for planning, constructing and eventually operating the new TTC. Two of the primary goals of the Redevelopment Plan for the Project Area are (i) funding (from sales proceeds, tax increment, and other sources) the construction of the new, multi-modal TTC on the site of the former terminal and construct the DTX; and (ii) developing a new, transit-oriented neighborhood on approximately 10 acres of publicly owned property, most of which was formerly owned by the State, including more than 3,400 new residential units of which 1,200 units will be affordable and 3.0 million square feet of new commercial space as well as new parks, plazas, streetscapes, and related improvements.

Transbay Enforceable Obligations and Ancillary Agreements

The State, acting by and through its Department of Transportation ("Caltrans"), the City, and the TJPA entered into that certain Cooperative Agreement, dated as of July 11, 2003 (the "Cooperative Agreement"), pursuant to which the State has or will transfer the State-Owned Parcels to the City and the TJPA subject to certain terms and conditions. Consistent with and in furtherance of the Cooperative Agreement, the Redevelopment Plan, and the Redevelopment Project, the City, TJPA, and the former Redevelopment Agency of the City and County of San Francisco ("Former Agency") entered into that certain Transbay Development Project Tax

Increment and Sales Pledge Agreement (the "Pledge Agreement"), dated as of January 31, 2008, pursuant to which the parties provided for the irrevocable pledge of certain non-housing tax increment generated from the former State-owned parcels, as defined in the Pledge Agreement, to TJPA for construction and design of the Transbay Terminal Project. Also in furtherance of the Redevelopment Plan and Redevelopment Project, the TJPA and the Former Agency entered into that certain Implementation Agreement, dated as of January 20, 2005 (the "Implementation Agreement"), which requires, among other things, the Former Agency to prepare and sell the Agency Transfer Parcels to third parties, provide the TJPA with the Gross Sales Proceeds to help pay for the cost of constructing the Transbay Terminal Project, and execute all activities related to the implementation of the Redevelopment Plan, including the Transbay Affordable Housing Obligation.

On January 31, 2008, the City, TJPA, and the Former Agency entered into the Option Agreement for the Purchase and Sale of Real Property ("Option Agreement"). The Option Agreement implemented the Former Agency's obligations under various agreements and state law related to the development and funding of the Transbay Terminal Project, public infrastructure and affordable housing; it also granted the Former Agency the option to take title to certain currently or formerly State-owned parcels (the "Agency Transfer Parcels"), subject to certain limitations.

Under Assembly Bill No. 812 (Chapter 99, Statutes of 2003, codified at California Public Resources Code section 5027.1) ("AB 812"), any redevelopment plan adopted to finance, in whole or in part, the demolition of the Transbay Terminal building and the construction of a new terminal, including its associated vehicle ramps, shall ensure that at least 35 percent of all dwelling units developed within the project area shall be available at an affordable housing cost to low- and moderate-income households. Specifically, 25 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 60 percent of the area median income, and 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 (the "Transbay Affordable Housing Obligation"). The Redevelopment Plan provided for the financing of the Transbay Terminal Project and thus triggered the Transbay Affordable Housing Obligation, which is explicitly incorporated into Section 4.9.2 of the Redevelopment Plan and into binding agreements.

The Redevelopment Plan established, under California Health and Safety Code section 33333, the land use controls for the Project Area, required development to conform to those land use controls, and divided the Project Area into two land use zones: Zone One and Zone Two. The Redevelopment Plan required the Former Agency to exercise land use authority in Zone One and authorized it to delegate to the San Francisco Planning Department (the "Planning Department") the land use controls of the San Francisco Planning Code (the "Planning Code"), as amended from time to time, in Zone Two.

To implement the Transbay Affordable Housing Obligation and other objectives for the Project Area, the Redevelopment Plan provides, among other things, that "[s]ubject to the terms of owner participation agreements [with the Agency], owners shall be required to provide for infrastructure, affordable housing and open space in conjunction with the development of improvements in the Project Area" (Section 4.2.5); "all real property sold, leased or conveyed by the Agency, as well as all property subject to owner participation agreements, is subject to the provisions of [the

Redevelopment Plan]” (Section 4.7.3); and “[l]eases, deeds, contracts, agreements and declarations of restrictions of the Agency may contain restrictions, covenants, covenants running with the land, rights of reverter, conditions subsequent, equitable servitudes or any other provision necessary to carry out [the Redevelopment Plan]” (Section 4.7.3). The Former Agency recorded the Transbay Redevelopment Project Area Declaration of Restrictions against all property in the Project Area (the “Declaration of Restrictions”).

TJPA demolished the former Transbay Terminal and ramps, and is constructing a modern publicly-owned multimodal terminal on the same site. The TTC is a public benefit and a central part of the Transbay Project. The TTC will help to revitalize the Project Area and stimulate private investment by serving as a center of transit, retail, entertainment, and community facilities for the new transit oriented neighborhood. TJPA’s demolition of the former Transbay Terminal building and ramps has provided additional vacant land for development consistent with the Redevelopment Plan and Transbay Project.

Dissolution

On February 1, 2012, the Former Agency was dissolved pursuant to Assembly Bill No. IX 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) (“AB 26”) and the California Supreme Court’s decision in *California Redevelopment Association v. Matosantos*, 53 Cal. 4th 231 (2011). On June 27, 2012, AB 26 was amended in part by Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) (“AB 1484”). (AB 26 and AB 1484 are codified in sections 33500 et seq. of the California Health and Safety Code, which sections, as amended from time to time, are referred to as the “Redevelopment Dissolution Law.”).

Under Redevelopment Dissolution Law, the Office of Community Investment and Infrastructure (“OCII”) was designated as the successor agency to receive the non-affordable housing assets of the Former Agency, and OCII succeeded, by operation of law, to the Former Agency’s rights, title and interest in the Option Agreement, without the necessity for any assignment or other action on the part of any party. On October 2, 2012, the City’s Board of Supervisors adopted Ordinance 215-12 (File No. 120898) acknowledging that the OCII is a separate legal entity, creating a commission for OCII (the “Commission”) as a policy body of OCII and delegating to the Commission the authority to act in place of the former San Francisco Redevelopment Agency Commission to implement certain projects, but retaining authority to approve material changes in the affordable housing obligations of OCII. As required by Redevelopment Dissolution Law, the City also established the oversight board of OCII (the “Oversight Board”).

On April 15, 2013, the California Department of Finance (“DOF”) determined finally and conclusively that the Pledge Agreement, the Implementation Agreement, and the Transbay Affordable Housing Obligation are enforceable obligations under Redevelopment Dissolution Law and will not be subject to further DOF review except to determine if future OCII expenditures are consistent with those obligations. Letter, S. Szalay, DOF Local Government Consultant, to T. Bohee, OCII Executive Director (April 15, 2012[sic]) (the “Transbay Final and Conclusive Enforceable Obligations”).

California Health and Safety Code Section 34177 provides that OCII, as a successor agency, is required to (1) perform obligations required pursuant to any enforceable obligation, and (2) continue to oversee development of properties until the contracted work has been completed.

The Option Agreement is an obligation that existed prior to June 28, 2011. Under the Option Agreement, Section 2.1, OCII holds an exclusive and irrevocable option to purchase (the "Option") the Agency Transfer Parcels, including, among others, Parcel F (Block 3721, Lot 015A) ("Parcel F") and Parcel O (portion of Block 3739, Lot 008), Parcel O' (portion of Block 3739, Lot 008), and Parcel O'' (portion of Block 3739, Lot 008) (together the northern about one-third of Parcels O, O' and O'' are referred to as "Block 4"), San Francisco, CA, on the terms and conditions of the Option Agreement. One of the conditions of the Option Agreement prohibits OCII from selling an Agency Transfer Parcel to a third party unless the sales price is equal to or greater than the Baseline Valuation for that Agency Transfer Parcel. Baseline Valuation is the minimum price for an Agency Transfer Parcel and is determined by an appraisal that includes consideration of Redevelopment Plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably affect the fair market value (the "Baseline Valuation").

Parcel F and Block 4

The planned uses of Parcel F and Block 4 by third parties must comply with the Development Controls and Design Guidelines for the Transbay Redevelopment Project (the "Development Controls"), which govern private projects in Zone One and require, among other things, the parcelization and assembly of land into blocks and lots that are suitable for development. Under the Redevelopment Project, OCII plans to aggregate and prepare Parcel F for disposition and development as primarily office use, and aggregate and prepare Block 4 for disposition and development as residential use, but these planned uses are subject to change. The current projections of housing units that will be built in the Project Area, assuming Block 4's projected capacity of 550 units, indicate that up to 45 percent of the units on Block 4 (or 248 units), will need to be affordable units to comply with the Transbay Affordable Housing Obligation.

Under the Option Agreement, Section 4.1(a), OCII may first exercise the Option only after the certain conditions have been satisfied, including, relative to Parcels F, O, O', and O'', only after such parcels are not being used by TJPA for actual construction or demolition of bus ramps and siting of the temporary terminal facility, which are part of the TTC project. TJPA is currently using Parcel F for actual construction of the new bus ramps and train box, and Parcels O, O', and O'' for the temporary terminal facility. TJPA currently expects its use of Parcel F and Parcels O, O', and O'' for these purposes will end in late 2016 and late 2017, respectively, although the schedule is subject to change. Thus, TJPA and OCII do not expect that the conditions precedent to OCII's ability to exercise its rights under the Option Agreement will be satisfied until late 2016 and late 2017. OCII's ability to complete its work relative to Parcel F and Block 4 are facilitated by TJPA's timely completion of construction of Phase 1 of the TTC project. The property tax revenues that are expected to flow to the taxing entities upon completion of development of Parcel F and Block 4, as well as the other Agency Transfer Parcels, will be facilitated by TJPA's timely completion of construction of the TTC project.

Bridge Loan

In January 2010, TJPA entered into a \$171.0 million TIFIA Loan to fund a portion of the Transbay Project costs. As of the effective date of this First Amendment, TJPA has not yet satisfied all of the disbursement conditions under the TIFIA Loan. As a result, TJPA cannot

currently requisition proceeds under the TIFIA Loan. The disbursement conditions of the TIFIA Loan include among other things: the requirement that TJPA receive gross land sales proceeds of \$429 million from the State-owned parcels (or allocation of alternative funding acceptable to TIFIA); and evidence that the Project is fully funded. TJPA expects to meet the condition regarding gross land sales proceeds during FY 2016 (late calendar year 2015), following the sale of Transbay Blocks 5, 8, and 9. A key component of meeting the full Project funding condition is bond proceeds associated with the Mello-Roos Community Facilities District ("CFD") currently being formed. The TIFIA Loan recognizes the formation of the CFD and its corresponding authorization to issue bonds as evidence of full funding for Phase 1, even before the bonds themselves are sold. The City anticipates the CFD to be formed in January 2015 after the Board of Supervisors takes its final action.

To obtain interim cash flow funding necessary to certify construction contracts and make construction disbursements for the Transbay Project, pending TJPA's satisfaction of the remaining disbursement conditions under the TIFIA Loan, TJPA intends to close a bridge loan in the amount of up to \$171.0 million (the "Bridge Loan") arranged by Goldman Sachs Bank USA ("Goldman") pursuant to that certain Credit Agreement, among TJPA, as borrower, the lenders party thereto (the "Lenders"), and Goldman, as administrative agent and collateral agent for the Lenders (as amended, restated, supplemented, extended or otherwise modified from time to time and as refinanced, refunded or replaced from time to time, the "Credit Agreement").

As a condition to funding the Bridge Loan under the Credit Agreement, the Lenders require, among other things, the following actions to occur in order to protect and create certain security interests for the Bridge Loan:

1. Amendment to Option Agreement.

Under the Option Agreement and related documents, OCII, as the successor to the Redevelopment Agency, has an option to acquire from the TJPA or the City certain property previously owned by Caltrans, including Parcel F and Parcels O, O', and O". OCII is charged with preparing and selling the properties to third parties, depositing the gross sales proceeds into a trust account (which proceeds are dedicated to help paying for the cost of constructing the TTC project), and executing all activities related to the implementation of the Redevelopment Plan, including the Transbay Affordable Housing Obligation. The Option Agreement recognizes that the gross sales proceeds for the former state-owned parcels are based on consideration of Transbay Redevelopment plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably affect the fair market value. The preservation of this approach to valuation of Parcel O, O', and O"/Block 4, in particular, is important to ensure that OCII is able to fulfill its Transbay Affordable Housing Obligation.

The First Amendment to the Option Agreement expressly permits OCII to subordinate its option and TJPA to offer a first priority interest in Parcel F and Parcels O, O', and O" to the lenders during the term of the Bridge Loan. Further, the Amendment expressly permits OCII to exercise its option as to Parcel F and Block 4 while the Bridge Loan is outstanding provided that, among other things, the gross sales proceeds from OCII's sale of Parcel F or Block 4 are equal to or greater than a lien release price and the proceeds are deposited into a lockbox to secure repayment of the Bridge Loan.

The First Amendment expressly recognizes that in the event of a foreclosure or other sale of Parcel F or Block 4, the purchaser and the property shall continue to be subject to all of the conditions, restrictions and covenants provided in OCII's final and conclusive enforceable obligations and OCII retains the obligation and authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on the properties.

Because the Option Agreement is one of the master enforceable obligation documents for the Transbay Project, any amendment is subject to the review and approval of the Oversight Board and DOF under Redevelopment Dissolution Law. In addition, because the First Amendment is changing terms related to Block 4, which includes a significant amount of affordable housing, the Board of Supervisors, acting as the Successor Agency, must review and approve the First Amendment since it is a material change to an affordable housing obligation, pursuant to the City Ordinance 215-12. Since the City is also a party to the Option Agreement, the Board of Supervisors will also be approving the First Amendment on behalf of the City.

The Oversight Board will be required to make findings that amendments to enforceable obligations are in the best interests of the taxing entities. Due to the importance of the TTC project to the City and the other taxing entities, staff believes the First Amendment to the Option Agreement is in the taxing entities' best interest as it facilitates the timely completion of construction of Phase 1 of the TTC project, which is a significant public benefit that will help to revitalize the Project Area and stimulate private investment, and is a central part of the Transbay Project.

2. Subordinations of OCII's options in Parcel F and Parcels O, O', and O''

OCII will subordinate its option to acquire Parcel F, and Parcels O, O', and O'' to the Bridge Loan. OCII will retain the right to exercise its option for Parcel F or Block 4 while the Bridge Loan is outstanding provided that, among other things, the gross sales proceeds from OCII's sale of those properties are equal to or greater than a lien release price and the proceeds are deposited into a lockbox to secure repayment of the Bridge Loan. It is anticipated that Parcel F would be offered for sale first since the Temporary Terminal will occupy Block 4 for several years. Should Parcel F be sold for an amount greater than the lien release price, then the lien release price for Block 4 would be commensurately reduced. OCII will still be able to exercise its option to acquire for Block 2 or Block 3 during the Bridge Loan term without paying a lien release price as long as Parcels O, O', and O'' have been subdivided into Blocks 2, 3 and 4. The subordination will specify that any party (or its successor) that acquires Block 4 through any Bridge Loan deed of trust is subject to the Block 4 affordable housing requirement required by OCII to meet the overall affordable housing percentage mandated for the Transbay Redevelopment Plan Area. The subordinations will be released when the Bridge Loan is repaid.

3. Deed of Trust for Parcel F.

The TJPA will mortgage its interest in Parcel F in favor of the Bridge Loan lenders. The TJPA will reserve the subgrade portion of the property that will be occupied by the train box and associated infrastructure from the conveyance. The deed will be reconveyed when the Bridge Loan is repaid.

4. Agreement Not to Encumber for Parcels O, O', and O''

The TJPA will agree not to sell or encumber Parcels O, O', and O'' while the Bridge Loan is outstanding unless, among other things, the gross sales proceeds from any sale of Block 4 are equal to or greater than a lien release price, and the proceeds from any portion of Parcels O, O', and O'' are deposited into a lockbox to secure repayment of the Bridge Loan. If the Bridge Loan is still outstanding 18 months after closing the Bridge Loan, the TJPA will take measures to subdivide the property and convert the agreement not to encumber against Parcels O, O', and O'' into a deed of trust on just Block 4. OCII will retain the right to subdivide Parcels O, O', and O'' into Block 2, 3, and 4, and exercise its option to acquire the Block 2 and 3 without meeting any lien release price. The agreement will be released when the Bridge Loan is repaid or a deed of trust is recorded against Block 4. Blocks 2 or 3 can be acquired by OCII during term of loan for any price and that gross sales proceeds (if any) from Blocks 2 or 3 must be deposited into Lockbox Account as security for loan repayment.

5. Caltrans' Release of its Power of Termination.

The Cooperative Agreement between the State, the City, and the TJPA provides the terms under which the State agreed to transfer State-owned parcels to the City and the TJPA for construction of the Transbay Project and redevelopment of the Transbay Project Area. The State retained a power of termination over the transferred State-owned parcels, which permits the State to retake the parcels if certain conditions are not achieved, primarily relating to timing for completion of the project and the improper transfer of any gross sales proceeds generated from the State-owned parcels. The State is required to release its power of termination over a parcel upon completion of the new Transit Center or deposit of certain funds into the trust account, which funds are dedicated to paying capital costs for the project.

Caltrans will release its power of termination over Parcel F and Block 4 upon the TJPA's deposit of the proceeds of the Bridge Loan into the trust account, less amounts necessary to reserve for capitalized interest, hedging costs, and transaction fees with respect to the Bridge Loan and up to \$9.9 million to pay for construction management related soft costs for the Transbay Project. As a party to the Cooperative Agreement, the City will need to consent to Caltrans' early release of its power of termination.

Bridge Loan Repayment

The Bridge Loan has a four year term and may be prepaid by TJPA without penalty or premium after the first anniversary of the Bridge Loan. TJPA expects to draw on the TIFIA Loan, and prepay in full the Bridge Loan in late 2015, although the schedule is subject to change. In order to achieve that outcome, the CFD must have been formed and the TJPA will need to achieve the \$429 million gross sales proceeds threshold. Upon the full repayment of the Bridge Loan, the Deed of Trust and the Negative Pledge will each be released when TJPA Pursuant to the Credit Agreement and the Subordinations. Thus, TJPA expects that OCII's Subordinations would be released in late 2015, one to two years before OCII would otherwise be eligible to exercise its Option to acquire Parcels F, O, O', and O'', although the schedule is subject to change.

In the event that OCII is eligible to exercise its Option to acquire Parcel F or Parcels O, O', and O'' before the TJPA repays the Bridge Loan in full, the Credit Agreement, the Deed of Trust, the Negative Pledge, and the Subordinations expressly acknowledge the requirement for OCII to fulfill the Transbay Affordable Housing Obligation and authorize OCII to exercise the Option relative to Parcel F or Parcels O, O', and O'', as the case may be, in accordance with the Option Agreement, and require the release of the Deed of Trust or the Negative Pledge, as applicable, provided that (1) TJPA is not in default under the Credit Agreement or the other Bridge Loan documents, (2) the Gross Sales Proceeds from the OCII's sale of Parcel F or Parcels O, O', and O'', as the case may be, to a third party are equal to or greater than a lien release price that includes consideration of Redevelopment Plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably affect the fair market value, (3) those Gross Sales Proceeds are deposited into the Lockbox Account, and (4) certain other conditions are satisfied.

In the event of a foreclosure sale or a sale pursuant to any power of sale contained in or under any mortgage, deed of trust, or other encumbrance upon Parcel F and Parcels O, O', and O'', the purchaser or purchasers and their successors and assigns, and the property, shall continue to be subject to all of the conditions, restrictions and covenants provided in the Transbay Final and Conclusive Enforceable Obligations and Declaration of Restrictions, and OCII retains the obligation and authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on Parcel F and Parcels O, O', and O''. Pursuant to the Credit Agreement, the Deed of Trust, the Negative Pledge, and the Subordinations, the Lenders expressly acknowledge that the terms and conditions of the Transbay Final and Conclusive Enforceable Obligations, including the Transbay Affordable Housing Obligation, apply to and pass with Parcel F, and Parcels O, O', and O'', and apply to and bind the successors in interest of any owner of Parcel F and Parcels O, O', and O''; and that Parcels F, and Parcels O, O', and O'' shall be held, transferred, sold and conveyed, subject to the conditions, restrictions, reservations and covenants set forth in the Transbay Final and Conclusive Enforceable Obligations and Declaration of Restrictions.

In order to (1) permit TJPA to offer the Real Estate Collateral as security for the Bridge Loan, and (2) authorize TJPA and OCII to subordinate to the Deed of Trust and the Negative Pledge the Option Agreement and OCII's rights and privileges under the Option relative to the Real Estate Collateral, all for the purpose of facilitating timely completion of construction of Phase 1 of the Transbay Project, and the significant public and tax benefits that derive therefrom under the Redevelopment Project, the City, TJPA, and OCII wish to enter into this First Amendment.

Recommendation

This First Amendment will: (1) facilitate timely completion of construction of Phase 1 of the TTC project, which is a public benefit, will help to revitalize the Project Area and stimulate private investment, and is a central part of the Transbay Project, (2) preserve OCII's authority to implement the disposition and development of Block 4 and Parcel F, (3) provide assurances that OCII will be able to fulfill the Transbay Affordable Housing Obligation, and (4) generate timely receipt of property tax revenues by the taxing entities.

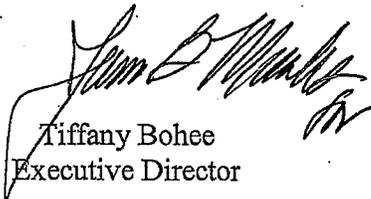
NEXT STEPS

In late November, the Board of Supervisors will consider the transaction on behalf of the City as a party to the Option Agreement and also acting as the Successor Agency with regard to the material change to the affordable housing terms on Block 4. In early December, the Oversight Board will consider the transaction. The matter will then be immediately referred to the Department of Finance, which will have five business days to determine if it will review the Oversight Board action or not. If DOF elects to review the matter, they may take up to 60 days to complete their review. The TJPA expects to close the Bridge Loan financing soon after final DOF approval.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Authorizing the Executive Director to approve the First Amendment to the Option Agreement is an administrative activity that is not a "project" as defined by California Environmental Quality Act ("CEQA") Guidelines Section 15378(b)(5). This action will not independently result in a physical change in the environment and is not subject to environmental review under CEQA.

(Originated by Courtney Pash, Acting Project Manager)



Tiffany Bohee
Executive Director

Attachment 1: Map

Attachment 2: First Amendment to the Option Agreement

Attachment 3: Subordination of Option Agreement for Parcel F

Attachment 4: Subordination of Option Agreement for Parcel O

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 91-2014

CONDITIONALLY AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A FIRST AMENDMENT TO THE TRANSBAY OPTION AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY AND A SUBORDINATION AGREEMENT, AND TO TAKE RELATED ACTIONS TO FACILITATE A LOAN AGREEMENT BETWEEN THE TRANSBAY JOINT POWERS AUTHORITY AND GOLDMAN SACHS BANK USA THAT FUNDS THE TRANSBAY TERMINAL CONSTRUCTION, SUBJECT TO THE APPROVAL OF THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, THE OVERSIGHT BOARD OF THE CITY AND COUNTY OF SAN FRANCISCO AND THE CALIFORNIA DEPARTMENT OF FINANCE; TRANSBAY REDEVELOPMENT PROJECT AREA

WHEREAS, The City, TIPA, and the former Redevelopment Agency of the City and County of San Francisco ("**Former Agency**"), the Agency's predecessor in interest, entered into the Option Agreement for the Purchase and Sale of Real Property ("**Option Agreement**") dated as of January 31, 2008. The Option Agreement implemented the Former Agency's obligations under various agreements and state law related to the development and funding of the Transbay Terminal Project, public infrastructure and affordable housing; it also granted the Former Agency the option to take title to certain currently or formerly State-owned parcels (the "**Agency Transfer Parcels**"), subject to certain limitations; and,

WHEREAS, Under Assembly Bill No. 812 (Chapter 99, Statutes of 2003, codified at California Public Resources Code Section 5027.1) ("**AB 812**"), any redevelopment plan adopted to finance, in whole or in part, the demolition of the Transbay Terminal building and the construction of a new terminal, including its associated vehicle ramps, shall ensure that at least 25 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 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 (the "**Transbay Affordable Housing Obligation**"); and,

WHEREAS, The City approved, by Ordinance No. 124-05 and Ordinance No. 99-06, the Redevelopment Plan (the "**Redevelopment Plan**") for the Transbay Redevelopment Project (the "**Redevelopment Project**"). The Redevelopment Plan provides for the redevelopment, rehabilitation, and revitalization of the area generally bounded by Mission, Main, Second, and

Folsom Streets in downtown San Francisco, and containing approximately forty (40) acres of land (the "Project Area"). The Redevelopment Plan also provides for the financing of the Transbay Terminal Project and thus triggered the Transbay Affordable Housing Obligation, which is explicitly incorporated into Section 4.9.2 of the Redevelopment Plan and into binding agreements; and,

WHEREAS, To implement the Transbay Affordable Housing Obligation and other objectives for the Project Area, the Redevelopment Plan provides, among other things, that "[s]ubject to the terms of owner participation agreements [with the Agency], owners shall be required to provide for infrastructure, affordable housing and open space in conjunction with the development of improvements in the Project Area" (Section 4.2.5); "all real property sold, leased or conveyed by the Agency, as well as all property subject to owner participation agreements, is subject to the provisions of [the Redevelopment Plan]" (Section 4.7.3); and "[l]eases, deeds, contracts, agreements and declarations of restrictions of the Agency may contain restrictions, covenants, covenants running with the land, rights of reverter, conditions subsequent, equitable servitudes or any other provision necessary to carry out [the Redevelopment Plan]" (Section 4.7.3). The Agency recorded the Transbay Redevelopment Project Area Declaration of Restrictions, which incorporates such matters, against all property in the Project Area (the "Declaration of Restrictions"); and,

WHEREAS, Approximately ten (10) acres of land in Zone One of the Project Area were publicly owned land, including the former Transbay Terminal building and its bus access ramps (the "State-Owned Parcels"). The former Transbay Terminal building and ramps were in a blighted physical condition. Because these structures occupied several acres of land centrally located in the Project Area, they had a primary impact on physical and economic blighting conditions in the Project Area. The State, acting by and through its Department of Transportation ("Caltrans"), the City, and the TJPA entered into that certain Cooperative Agreement, dated as of July 11, 2003 (the "Cooperative Agreement"), pursuant to which the State has or will transfer the State-Owned Parcels to the City and the TJPA subject to certain terms and conditions, including the use of the State-Owned Parcels for the construction, or to fund the construction, of the Transbay Terminal Project (as defined in the Cooperative Agreement); and,

WHEREAS, Pursuant to the Cooperative Agreement, the State has a Power of Termination with respect to any State-Owned Parcel transferred to the TJPA or to the City (the "Power of Termination") that permits the State to re-take title to such State-Owned Parcel under certain terms and conditions specified in the Cooperative Agreement. The Cooperative Agreement obligates the State to release such Power of Termination over a State-Owned Parcel, however, if it is sold to a third party and the Gross Sales Proceeds (as defined in the Cooperative Agreement) from such sale are deposited in the Trust Account (as defined in the Cooperative Agreement) and used to pay

the Capital Costs (as defined in the Cooperative Agreement) as required under the Cooperative Agreement; and,

WHEREAS, Consistent with and in furtherance of the Cooperative Agreement, the Redevelopment Plan, and the Redevelopment Project, the City, TJPA, and the Former Agency entered into that certain Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement (the "Pledge Agreement"), dated as of January 31, 2008, pursuant to which the parties provided for the irrevocable pledge of Net Tax Increment, as defined in the Pledge Agreement, to TJPA for construction and design of the Transbay Terminal Project. Also in furtherance of the Cooperative Agreement, the Redevelopment Plan and Redevelopment Project, the TJPA and the Former Agency entered into that certain Transbay Redevelopment Project Implementation Agreement, dated as of January 20, 2005 (the "Implementation Agreement"), which requires, among other things, the Former Agency to prepare and sell the Agency Transfer Parcels to third parties, deposit the Gross Sales Proceeds in the Trust Account, to help pay for the cost of constructing the Transbay Terminal Project, and execute all activities related to the implementation of the Redevelopment Plan, including the Transbay Affordable Housing Obligation; and,

WHEREAS, TJPA demolished the former Transbay Terminal and ramps, and is constructing the Transbay Terminal Project, which is a public benefit and a central part of the Redevelopment Project. The Transbay Terminal Project will help to revitalize the Project Area and stimulate private investment by serving as a center of transit, retail, entertainment, and community facilities for the new transit oriented neighborhood. TJPA's demolition of the former Transbay Terminal building and ramps has provided additional vacant land for development consistent with the Redevelopment Plan and Redevelopment Project; and,

WHEREAS, On February 1, 2012, the Former Agency was dissolved pursuant to Assembly Bill No. IX 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) ("AB 26") and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, 53 Cal. 4th 231 (2011). On June 27, 2012, AB 26 was amended in part by Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) ("AB 1484"). (AB 26 and AB 1484 are codified in sections 33500 et seq. of the California Health and Safety Code, which sections, as amended from time to time, are referred to as the "Redevelopment Dissolution Law."); and,

WHEREAS, Under Redevelopment Dissolution Law, the Agency was designated as the successor agency to receive certain assets of the Former Agency, and the Agency succeeded, by operation of law, to the Former Agency's rights, title and interest in the Option Agreement, without the necessity for any assignment or other action on the part of any party. On October 2, 2012, the City's Board of Supervisors adopted Ordinance 215-12 (File No. 120898) acknowledging that the Agency is a separate legal entity, creating a commission for the Agency (the "Commission") as a policy body of the

Agency and delegating to the Commission the authority to act in place of the former San Francisco Redevelopment Agency Commission to implement certain projects, but retaining authority to approve material changes in the affordable housing obligations of the Agency. As required by Redevelopment Dissolution Law, the City also established the oversight board of the Agency (the "Oversight Board"); and,

WHEREAS, On April 15, 2013, the California Department of Finance ("DOF") determined finally and conclusively that the Pledge Agreement, the Implementation Agreement, and the Transbay Affordable Housing Obligation are enforceable obligations under Redevelopment Dissolution Law and will not be subject to further DOF review except to determine if future Agency expenditures are consistent with those obligations. Letter, S. Szalay, DOF Local Government Consultant, to T. Bohee, Agency Executive Director (April 15, 2012[sic]) (the "Transbay Final and Conclusive Enforceable Obligations"); and,

WHEREAS, California Health and Safety Code Section 34177 provides that the Agency, as a successor agency, is required to (1) perform obligations required pursuant to any enforceable obligation, and (2) continue to oversee development of properties until the contracted work has been completed; and,

WHEREAS, The Option Agreement is an "enforceable obligation" under Redevelopment Dissolution Law because it is a legally binding contract that existed prior to June 28, 2011, the date on which AB 26 became effective. Under the Option Agreement, Section 2.1, the Agency holds an exclusive and irrevocable option to purchase (the "Option") the Agency Transfer Parcels, including, among others, Parcel F (Block 3721, Lot 015A), and Parcel O (portion of Block 3739, Lot 008), Parcel O' (portion of Block 3739, Lot 008), and Parcel O" (portion of Block 3739, Lot 008) (together the northern about one-third of Parcels O, O' and O" and generally depicted on Exhibit 4 to the Redevelopment Plan are referred to as "Redevelopment Block 4"), in San Francisco, CA, on the terms and conditions of the Option Agreement. One of the conditions of the Option Agreement prohibits the Agency from selling an Agency Transfer Parcel to a third party unless the sales price is equal to or greater than the Baseline Valuation, as defined in the Option Agreement, for that Agency Transfer Parcel. Baseline Valuation is the minimum price that Agency can accept for the sale of an Agency Transfer Parcel and is determined by an appraisal that includes consideration of Redevelopment Plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably affect the fair market value. Under the current projections of housing units that will be built in the Project Area, assuming Redevelopment Block 4's projected capacity of 550 units, up to 45 percent of the units on Redevelopment Block 4 (or 248 units), will need to be affordable units to comply with the Transbay Affordable Housing Obligation, and the affordable units for any residential project located within

Parcel F will be subject to the affordable housing requirements specified in the Planning Code; and,

WHEREAS, The planned uses of Parcel F and Redevelopment Block 4 by third parties must comply with the Development Controls and Design Guidelines for the Transbay Redevelopment Project set forth in the Redevelopment Plan (the "Development Controls"), which govern private projects in Zone One and require, among other things, the parcelization and assembly of land into blocks and lots that are suitable for development. Under the Redevelopment Project, the Agency plans to aggregate and prepare Parcel F for disposition and development as primarily office use, and aggregate and prepare Redevelopment Block 4 for disposition and development as residential use, but these planned uses are subject to change; and,

WHEREAS, Under the Option Agreement, Section 4.1(a), the Agency may first exercise the Option only after certain conditions have been satisfied, including, relative to Parcel F and Redevelopment Block 4, only after such parcels are not being used by TJPA for actual construction or demolition of ramps and siting of the temporary terminal facility, which are part of the Transbay Terminal Project. TJPA is currently using Parcel F for actual construction of the new bus ramps and train box, and Parcels O, O', and O" for the temporary terminal facility. TJPA currently expects its use of Parcel F and Parcels O, O', and O" for these purposes will end in late 2016 and late 2017, respectively, although the schedule is subject to change. Thus, TJPA and the Agency do not expect that the conditions precedent to the Agency's ability to exercise its rights under the Option Agreement for Parcel F or Redevelopment Block 4 will be satisfied until late 2016 and late 2017. The Agency's ability to complete its work under the Redevelopment Project relative to Parcel F and Redevelopment Block 4 and wind down its affairs under the Redevelopment Project are facilitated by TJPA's timely completion of construction of Phase 1 of the Transbay Terminal Project. The property tax revenues that are expected to flow to the taxing entities upon completion of development of Parcel F and Redevelopment Block 4, as well as the other Agency Transfer Parcels, will be facilitated by TJPA's timely completion of construction of the Transbay Terminal Project; and,

WHEREAS, In January 2010, TJPA entered into a \$171.0 million loan under the Transportation Infrastructure Finance and Innovation Act (the "TIFIA Loan") to fund a portion of the Transbay Terminal Project costs. As of the effective date of this First Amendment, TJPA has not yet satisfied all of the disbursement conditions under the TIFIA Loan. As a result, TJPA cannot currently requisition proceeds under the TIFIA Loan. TJPA expects to satisfy all of the disbursement conditions and draw on the TIFIA Loan in late 2015, although the schedule is subject to change; and,

WHEREAS, To obtain interim cash flow funding necessary to certify construction contracts and make construction disbursements for the Transbay Terminal Project, pending TJPA's satisfaction of the remaining disbursement conditions under the TIFIA Loan, TJPA intends to close a bridge loan in the

amount of \$171.0 million (the "Bridge Loan") arranged by Goldman Sachs Bank USA ("Goldman") pursuant to that certain Credit Agreement, among TJPA, as borrower, the lenders party thereto (the "Lenders"), and Goldman, as administrative agent and collateral agent for the Lenders (as amended, restated, supplemented, extended or otherwise modified from time to time and as refinanced, refunded or replaced from time to time, the "Credit Agreement"); and,

WHEREAS, As a condition to funding the Bridge Loan under the Credit Agreement, the Lenders require, among other things, the following to occur in order to protect and create certain security interests for the Bridge Loan: (1) Caltrans shall relinquish its Power of Termination with respect to Parcel F and Redevelopment Block 4, and any interest Caltrans has in the Gross Sales Proceeds of such parcels (including any requirement that such Gross Sales Proceeds be deposited in the Trust Account) and any gross lease revenues generated from any portion of such parcels, in exchange for a portion of the proceeds of the Bridge Loan being deposited in the Trust Account at the closing of the Bridge Loan (the "Caltrans Release"), (2) TJPA shall execute a deed of trust, assignment of leases and rents and security agreement, creating a first priority pledge of, security interest in and lien on all of TJPA's right, title and interest in and to Parcel F, as well as, among other things, the cash proceeds from the sale, lease or other disposition of Parcel F, subject to TJPA's reservation for certain train box components on Parcel F (the "Deed of Trust"), (3) TJPA shall execute a recordable negative covenant on Parcels O, O', and O", prohibiting TJPA from selling or encumbering Redevelopment Block 4 before the Bridge Loan is repaid in full, unless TJPA deposits a specified amount into a "lockbox" account (the "Lockbox Account") as collateral for the Bridge Loan (the "Negative Pledge"); and (4) TJPA and the Agency shall subordinate the Option Agreement and the Agency's interest in the Option relative to Parcel F to the Deed of Trust, and the Option Agreement and the Agency's interest in the Option relative to Parcels O, O', and O" to the Negative Pledge (the "Subordinations"); and,

WHEREAS, The Credit Agreement establishes the Lien Release Price for Parcel F and Redevelopment Block 4. TJPA and the Agency have determined that the Lien Release Price is reasonably achievable, after taking into consideration the Redevelopment Plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably affect the fair market value; the Lien Release Price is not subject to change; and,

WHEREAS, Nothing in the Credit Agreement, the Deed of Trust, the Negative Pledge, and the Subordinations prevents the Agency from fulfilling its obligations under the Transbay Final and Conclusive Enforceable Obligations with respect to Parcel F, Redevelopment Block 4, or any other portion of Parcels O, O', and O"; and,

WHEREAS, The Bridge Loan has a four year term and may be prepaid by TJPA without penalty or premium after the first anniversary of the closing of the Bridge Loan. TJPA expects to satisfy the conditions precedent under the TIFIA Loan, draw on the TIFIA Loan, and prepay in full the Bridge Loan in late 2015, although the schedule is subject to change. Pursuant to the Credit Agreement and the Subordinations, the Deed of Trust and the Negative Pledge will each be released when TJPA repays the Bridge Loan in full. Thus, TJPA expects that the Agency's Subordinations would be released in late 2015, one to two years before the Agency would otherwise be eligible to exercise its Option to acquire Parcel F or Redevelopment Block 4, although the schedule is subject to change; and,

WHEREAS, In the event that the Agency is eligible to exercise its Option to acquire Parcel F or Redevelopment Block 4 before the TJPA repays the Bridge Loan in full, the Credit Agreement, the Deed of Trust, the Negative Pledge, and the Subordinations expressly acknowledge the requirement for the Agency to fulfill the Transbay Affordable Housing Obligation and authorize the Agency to exercise the Option relative to Parcel F or Redevelopment Block 4, as the case may be, in accordance with the Option Agreement, and require the release of the Deed of Trust or the Negative Pledge, as applicable, provided that (1) TJPA is not in default under the Credit Agreement or the other Bridge Loan documents; (2) the Gross Sales Proceeds from the Agency's sale of Parcel F or Redevelopment Block 4, as the case may be, to a third party are equal to or greater than the Lien Release Price, (3) those Gross Sales Proceeds are deposited into the Lockbox Account up to the amount needed to repay the Bridge Loan in full, and (4) certain other conditions set forth in the Subordinations are satisfied; and,

WHEREAS, In the event of a foreclosure sale or a sale pursuant to any power of sale contained in or under any mortgage, deed of trust, or other encumbrance upon all or any portion of Parcel F or Redevelopment Block 4, the purchaser or purchasers and their successors and assigns, and the property, shall continue to be subject to all of the conditions, restrictions and covenants provided in the Transbay Final and Conclusive Enforceable Obligations and Declaration of Restrictions, and the Agency retains the obligation and authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on all or any portion of Parcel F or Redevelopment Block 4. Pursuant to the Credit Agreement, the Deed of Trust, the Negative Pledge, and the Subordinations, the Lenders expressly acknowledge that the terms and conditions of the Transbay Final and Conclusive Enforceable Obligations, including the Transbay Affordable Housing Obligation, apply to and pass with Parcel F and Redevelopment Block 4, and apply to and bind the successors in interest of any owner of all or any portion of Parcel F and Redevelopment Block 4; and that Parcel F and Redevelopment Block 4 shall be held, transferred, sold and conveyed, subject to the conditions, restrictions, reservations and covenants set forth in the Transbay Final and Conclusive Enforceable Obligations and Declaration of Restrictions; and,

WHEREAS, In order to (1) permit TJPA to offer the Deed of Trust for Parcel F and the Negative Pledge for Parcels O, O', and O'' as security for the Bridge Loan, and (2) authorize TJPA and the Agency to subordinate to the Deed of Trust and the Negative Pledge the Option Agreement and the Agency's rights and privileges under the Option relative to Parcel F and Parcels O, O', and O'', all for the purpose of facilitating timely completion of construction of Phase 1 of the Transbay Terminal Project, and the significant public and tax benefits that derive therefrom under the Redevelopment Project, the City, TJPA, and the Agency wish to enter into this First Amendment; and,

WHEREAS, This First Amendment is in the best interests of the taxing entities, including the City and TJPA. This First Amendment will: (1) facilitate timely completion of construction of Phase 1 of the Transbay Terminal Project, which is a public benefit, will help to revitalize the Project Area and stimulate private investment, and is a central part of the Redevelopment Project, (2) facilitate the Agency's timely implementation of the disposition and development of Redevelopment Block 4 and Parcel F under the Redevelopment Project, (3) facilitate the Agency's fulfillment of the Transbay Affordable Housing Obligation, and (4) generate timely receipt of property tax revenues by the taxing entities. This First Amendment will significantly aid the winding down of the affairs of the Agency; and,

WHEREAS, Authorizing the First Amendment to the Option Agreement, a Subordination Agreement, and other actions related to the Bridge Loan is an administrative activity that is not a "project" as defined by the California Environmental Quality Act ("CEQA") Guidelines Section 15378 (b) (5) because it will not result in direct or indirect physical changes in the environment. Now, therefore, be it

RESOLVED, That this Commission hereby conditionally authorizes the Executive Director to execute a First Amendment to the Transbay Option Agreement and a Subordination Agreement, substantially in the form of the documents accompanying this Resolution, and to take related actions to facilitate a loan agreement between the Transbay Joint Powers Authority and Goldman Sachs Bank USA that funds construction of the Transbay Terminal Project, subject to the approval of the Board of Supervisors of the City and County of San Francisco, the Oversight Board of the City and County of San Francisco and the California Department of Finance.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of November 4, 2014.

Commission Secretary

**FIRST AMENDMENT TO OPTION AGREEMENT
FOR THE PURCHASE AND SALE OF REAL PROPERTY**

This FIRST AMENDMENT TO OPTION AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY (this “**First Amendment**”), dated as of _____, 2014, is entered into by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “**City**”), TRANSBAY JOINT POWERS AUTHORITY, a joint powers agency created under California Government Code Sections 6500 *et seq.* (the “**TJPA**”), and SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic (the “**Agency**”), with reference to the following facts and circumstances:

RECITALS

A. The City, TJPA, and the former Redevelopment Agency of the City and County of San Francisco (“**Former Agency**”), the Agency’s predecessor in interest, entered into the Option Agreement for the Purchase and Sale of Real Property (“**Option Agreement**”) dated as of January 31, 2008. The Option Agreement implemented the Former Agency’s obligations under various agreements and state law related to the development and funding of the Transbay Terminal Project, public infrastructure and affordable housing; it also granted the Former Agency the option to take title to certain currently or formerly State-owned parcels (the “**Agency Transfer Parcels**”), subject to certain limitations.

B. Under Assembly Bill No. 812 (Chapter 99, Statutes of 2003, codified at California Public Resources Code Section 5027.1) (“**AB 812**”), any redevelopment plan adopted to finance, in whole or in part, the demolition of the Transbay Terminal building and the construction of a new terminal, including its associated vehicle ramps, shall ensure that at least 25 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 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 (the “**Transbay Affordable Housing Obligation**”).

C. The City approved, by Ordinance No. 124-05 and Ordinance No. 99-06, the Redevelopment Plan for the Transbay Redevelopment Project (the “**Redevelopment Plan**”) for the Transbay Redevelopment Project (the “**Redevelopment Project**”). The Redevelopment Plan provides for the redevelopment, rehabilitation, and revitalization of the area generally bounded by Mission, Main, Second, and Folsom Streets in downtown San Francisco, and containing approximately forty (40) acres of land (the “**Project Area**”). The Redevelopment Plan also provides for the financing of the Transbay Terminal Project and thus triggered the Transbay Affordable Housing Obligation, which is explicitly incorporated into Section 4.9.2 of the Redevelopment Plan and into binding agreements.

D. The Redevelopment Plan established, under California Health and Safety Code Section 33333, the land use controls for the Project Area, required development to conform to

those land use controls, and divided the Project Area into two land use zones: Zone One and Zone Two. The Redevelopment Plan required the Former Agency to exercise land use authority in Zone One and authorized it to delegate to the San Francisco Planning Department (the “**Planning Department**”) the land use controls of the San Francisco Planning Code (the “**Planning Code**”), as amended from time to time, in Zone Two.

E. To implement the Transbay Affordable Housing Obligation and other objectives for the Project Area, the Redevelopment Plan provides, among other things, that “[s]ubject to the terms of owner participation agreements [with the Agency], owners shall be required to provide for infrastructure, affordable housing and open space in conjunction with the development of improvements in the Project Area” (Section 4.2.5); “all real property sold, leased or conveyed by the Agency, as well as all property subject to owner participation agreements, is subject to the provisions of [the Redevelopment Plan]” (Section 4.7.3); and “[l]eases, deeds, contracts, agreements and declarations of restrictions of the Agency may contain restrictions, covenants, covenants running with the land, rights of reverter, conditions subsequent, equitable servitudes or any other provision necessary to carry out [the Redevelopment Plan]” (Section 4.7.3). The Agency recorded the Transbay Redevelopment Project Area Declaration of Restrictions, which incorporates such matters, against all property in the Project Area (the “**Declaration of Restrictions**”).

F. Approximately ten (10) acres of land in Zone One of the Project Area were publicly owned land, including the former Transbay Terminal building and its bus access ramps (the “**State-Owned Parcels**”). The former Transbay Terminal building and ramps were in a blighted physical condition. Because these structures occupied several acres of land centrally located in the Project Area, they had a primary impact on physical and economic blighting conditions in the Project Area. The State, acting by and through its Department of Transportation (“**Caltrans**”), the City, and the TJPA entered into that certain Cooperative Agreement, dated as of July 11, 2003 (the “**Cooperative Agreement**”), pursuant to which the State has or will transfer the State-Owned Parcels to the City and the TJPA subject to certain terms and conditions, including the use of the State-Owned Parcels for the construction, or to fund the construction, of the Transbay Terminal Project (as defined in the Cooperative Agreement).

G. Pursuant to the Cooperative Agreement, the State has a Power of Termination with respect to any State-Owned Parcel transferred to the TJPA or to the City (the “**Power of Termination**”) that permits the State to re-take title to such State-Owned Parcel under certain terms and conditions specified in the Cooperative Agreement. The Cooperative Agreement obligates the State to release such Power of Termination over a State-Owned Parcel, however, if it is sold to a third party and the Gross Sales Proceeds (as defined in the Cooperative Agreement) from such sale are deposited in the Trust Account (as defined in the Cooperative Agreement) and used to pay the Capital Costs (as defined in the Cooperative Agreement) as required under the Cooperative Agreement.

H. Consistent with and in furtherance of the Cooperative Agreement, the Redevelopment Plan, and the Redevelopment Project, the City, TJPA, and the Former Agency entered into that certain Transbay Redevelopment Project Tax Increment Allocation and Sales

Proceeds Pledge Agreement (the “**Pledge Agreement**”), dated as of January 31, 2008, pursuant to which the parties provided for the irrevocable pledge of Net Tax Increment, as defined in the Pledge Agreement, to TJPA for construction and design of the Transbay Terminal Project. Also in furtherance of the Cooperative Agreement, the Redevelopment Plan and Redevelopment Project, the TJPA and the Former Agency entered into that certain Transbay Redevelopment Project Implementation Agreement, dated as of January 20, 2005 (the “**Implementation Agreement**”), which requires, among other things, the Former Agency to prepare and sell the Agency Transfer Parcels to third parties, deposit the Gross Sales Proceeds in the Trust Account, to help pay for the cost of constructing the Transbay Terminal Project, and execute all activities related to the implementation of the Redevelopment Plan, including the Transbay Affordable Housing Obligation.

I. TJPA demolished the former Transbay Terminal and ramps, and is constructing the Transbay Terminal Project, which is a public benefit and a central part of the Redevelopment Project. The Transbay Terminal Project will help to revitalize the Project Area and stimulate private investment by serving as a center of transit, retail, entertainment, and community facilities for the new transit oriented neighborhood. TJPA’s demolition of the former Transbay Terminal building and ramps has provided additional vacant land for development consistent with the Redevelopment Plan and Redevelopment Project.

J. On February 1, 2012, the Former Agency was dissolved pursuant to Assembly Bill No. IX 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) (“**AB 26**”) and the California Supreme Court’s decision in *California Redevelopment Association v. Matosantos*, 53 Cal. 4th 231 (2011). On June 27, 2012, AB 26 was amended in part by Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) (“**AB 1484**”). (AB 26 and AB 1484 are codified in sections 33500 et seq. of the California Health and Safety Code, which sections, as amended from time to time, are referred to as the “**Redevelopment Dissolution Law**.”)

K. Under Redevelopment Dissolution Law, the Agency was designated as the successor agency to receive the non-affordable housing assets of the Former Agency, and the Agency succeeded, by operation of law, to the Former Agency’s rights, title and interest in the Option Agreement, without the necessity for any assignment or other action on the part of any party. On October 2, 2012, the City’s Board of Supervisors adopted Ordinance 215-12 (File No. 120898) acknowledging that the Agency is a separate legal entity, creating a commission for the Agency (the “**Commission**”) as a policy body of the Agency and delegating to the Commission the authority to act in place of the former San Francisco Redevelopment Agency Commission to implement certain projects, but retaining authority to approve material changes in the affordable housing obligations of the Agency. As required by Redevelopment Dissolution Law, the City also established the oversight board of the Agency (the “**Oversight Board**”).

L. On April 15, 2013, the California Department of Finance (“**DOF**”) determined finally and conclusively that the Pledge Agreement, the Implementation Agreement, and the Transbay Affordable Housing Obligation are enforceable obligations under Redevelopment Dissolution Law and will not be subject to further DOF review except to determine if future Agency expenditures are consistent with those obligations. Letter, S. Szalay, DOF Local

Government Consultant, to T. Bohee, Agency Executive Director (April 15, 2012[sic]) (the “**Transbay Final and Conclusive Enforceable Obligations**”).

M. California Health and Safety Code Section 34177 provides that the Agency, as a successor agency, is required to (1) perform obligations required pursuant to any enforceable obligation, and (2) continue to oversee development of properties until the contracted work has been completed.

N. The Option Agreement is also an enforceable obligation that existed prior to June 28, 2011. Under the Option Agreement, Section 2.1, the Agency holds an exclusive and irrevocable option to purchase (the “**Option**”) the Agency Transfer Parcels, including, among others, Parcel F (Block 3721, Lot 015A), and Parcel O (portion of Block 3739, Lot 008), Parcel O’ (portion of Block 3739, Lot 008), and Parcel O” (portion of Block 3739, Lot 008) (together the northern about one-third of Parcels O, O’ and O” and generally depicted as “**Block 4**” on Exhibit 4 to the Redevelopment Plan are referred to as “**Redevelopment Block 4**”), in San Francisco, CA, on the terms and conditions of the Option Agreement. One of the conditions of the Option Agreement prohibits the Agency from selling an Agency Transfer Parcel to a third party unless the sales price is equal to or greater than the Baseline Valuation, as defined in the Option Agreement, for that Agency Transfer Parcel. Baseline Valuation is the minimum price that Agency can accept for the sale of an Agency Transfer Parcel and is determined by an appraisal that includes consideration of Redevelopment Plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably affect the fair market value. Under the current projections of housing units that will be built in the Project Area, assuming Redevelopment Block 4’s projected capacity of 550 units, up to 45 percent of the units on Redevelopment Block 4 (or 248 units), will need to be affordable units to comply with the Transbay Affordable Housing Obligation, and the affordable units for any residential project located within Parcel F will be subject to the affordable housing requirements specified in the Planning Code.

O. The planned uses of Parcel F and Redevelopment Block 4 by third parties must comply with the Development Controls and Design Guidelines for the Transbay Redevelopment Project set forth in the Redevelopment Plan (the “**Development Controls**”), which govern private projects in Zone One and require, among other things, the parcelization and assembly of land into blocks and lots that are suitable for development. Under the Redevelopment Project, the Agency plans to aggregate and prepare Parcel F for disposition and development as primarily office use, and aggregate and prepare Redevelopment Block 4 for disposition and development as residential use, but these planned uses are subject to change.

P. Under the Option Agreement, Section 4.1(a), the Agency may first exercise the Option only after certain conditions have been satisfied, including, relative to Parcel F and Redevelopment Block 4, only after such parcels are not being used by TJPA for actual construction or demolition of ramps and siting of the temporary terminal facility, which are part of the Transbay Terminal Project. TJPA is currently using Parcel F for actual construction of the new bus ramps and train box, and Parcels O, O’, and O” for the temporary terminal facility. TJPA currently expects its use of Parcel F and Parcels O, O’, and O” for these purposes will end in late 2016 and late 2017, respectively, although the schedule is subject to change. Thus, TJPA

and the Agency do not expect that the conditions precedent to the Agency's ability to exercise its rights under the Option Agreement for Parcel F or Redevelopment Block 4 will be satisfied until late 2016 and late 2017. The Agency's ability to complete its work under the Redevelopment Project relative to Parcel F and Redevelopment Block 4 and wind down its affairs under the Redevelopment Project are facilitated by TJPA's timely completion of construction of Phase 1 of the Transbay Terminal Project. The property tax revenues that are expected to flow to the taxing entities upon completion of development of Parcel F and Redevelopment Block 4, as well as the other Agency Transfer Parcels, will be facilitated by TJPA's timely completion of construction of the Transbay Terminal Project.

Q. In January 2010, TJPA entered into a \$171.0 million loan under the Transportation Infrastructure Finance and Innovation Act (the "**TIFIA Loan**") to fund a portion of the Transbay Terminal Project costs. As of the effective date of this First Amendment, TJPA has not yet satisfied all of the disbursement conditions under the TIFIA Loan. As a result, TJPA cannot currently requisition proceeds under the TIFIA Loan. TJPA expects to satisfy all of the disbursement conditions and draw on the TIFIA Loan in late 2015, although the schedule is subject to change.

R. To obtain interim cash flow funding necessary to certify construction contracts and make construction disbursements for the Transbay Terminal Project, pending TJPA's satisfaction of the remaining disbursement conditions under the TIFIA Loan, TJPA intends to close a bridge loan in the amount of \$171.0 million (the "**Bridge Loan**") arranged by Goldman Sachs Bank USA ("**Goldman**") pursuant to that certain Credit Agreement, to be dated as of _____, 2014, among TJPA, as borrower, the lenders party thereto (the "**Lenders**"), and Goldman, as administrative agent and collateral agent for the Lenders (as amended, restated, supplemented, extended or otherwise modified from time to time and as refinanced, refunded or replaced from time to time, the "**Credit Agreement**").

S. As a condition to funding the Bridge Loan under the Credit Agreement, the Lenders require, among other things, the following to occur in order to protect and create certain security interests for the Bridge Loan: (1) Caltrans shall relinquish its Power of Termination with respect to Parcel F and Redevelopment Block 4, and any interest Caltrans has in the Gross Sales Proceeds of such parcels (including any requirement that such Gross Sales Proceeds be deposited in the Trust Account) and any gross lease revenues generated from any portion of such parcels, in exchange for a portion of the proceeds of the Bridge Loan being deposited in the Trust Account at the closing of the Bridge Loan (the "**Caltrans Release**"), (2) TJPA shall execute a deed of trust, assignment of leases and rents and security agreement, creating a first priority pledge of, security interest in and lien on all of TJPA's right, title and interest in and to Parcel F, as well as, among other things, the cash proceeds from the sale, lease or other disposition of Parcel F, subject to TJPA's reservation for certain train box components on Parcel F¹ (the "**Deed of Trust**"), (3) TJPA shall execute a recordable negative covenant on Parcels O, O', and O'', prohibiting TJPA from selling or encumbering Redevelopment Block 4 before the Bridge Loan is repaid in full, unless TJPA deposits a specified amount into a "lockbox" account (the "**Lockbox Account**") as collateral for the Bridge Loan (the "**Negative Pledge**"); and (4) TJPA

¹ Subject to on-going discussion about reservation for trainbox and related infrastructure.

and the Agency shall subordinate the Option Agreement and the Agency's interest in the Option relative to Parcel F to the Deed of Trust, and the Option Agreement and the Agency's interest in the Option relative to Parcels O, O', and O'' to the Negative Pledge (the "**Subordinations**"). The Credit Agreement establishes a minimum price (the "**Lien Release Price**") for each of Parcel F and Redevelopment Block 4 that must be achieved in order for a sale of Parcel F or Redevelopment Block 4 to be permitted under the Credit Agreement and the Deed of Trust (in the case of Parcel F) or the Negative Pledge (in the case of Redevelopment Block 4). TJPA and the Agency have determined that the Lien Release Price is reasonably achievable, after taking into consideration the Redevelopment Plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably affect the fair market value; the Lien Release Price is not subject to change. Nothing in the Credit Agreement, the Deed of Trust, the Negative Pledge, and the Subordinations prevents the Agency from fulfilling its obligations under the Transbay Final and Conclusive Enforceable Obligations with respect to Parcel F, Redevelopment Block 4, or any other portion of Parcels O, O', and O''.

T. The Bridge Loan has a four year term and may be prepaid by TJPA without penalty or premium after the first anniversary of the closing of the Bridge Loan. TJPA expects to satisfy the conditions precedent under the TIFIA Loan, draw on the TIFIA Loan, and prepay in full the Bridge Loan in late 2015, although the schedule is subject to change. Pursuant to the Credit Agreement and the Subordinations, the Deed of Trust and the Negative Pledge will each be released when TJPA repays the Bridge Loan in full. Thus, TJPA expects that the Agency's Subordinations would be released in late 2015, one to two years before the Agency would otherwise be eligible to exercise its Option to acquire Parcel F or Redevelopment Block 4, although the schedule is subject to change.

U. In the event that the Agency is eligible to exercise its Option to acquire Parcel F or Redevelopment Block 4 before the TJPA repays the Bridge Loan in full, the Credit Agreement, the Deed of Trust, the Negative Pledge, and the Subordinations expressly acknowledge the requirement for the Agency to fulfill the Transbay Affordable Housing Obligation and authorize the Agency to exercise the Option relative to Parcel F or Redevelopment Block 4, as the case may be, in accordance with the Option Agreement, and require the release of the Deed of Trust or the Negative Pledge, as applicable, provided that (1) TJPA is not in default under the Credit Agreement or the other Bridge Loan documents, (2) the Gross Sales Proceeds from the Agency's sale of Parcel F or Redevelopment Block 4, as the case may be, to a third party are equal to or greater than the Lien Release Price for Parcel F or Redevelopment Block 4, as applicable, (3) those Gross Sales Proceeds are deposited into the Lockbox Account; provided, however, that if the collective Gross Sales Proceeds for Parcel F and Redevelopment Block 4 exceeds the Lien Release Price for Parcel F and Redevelopment Block 4, the excess amount shall be deposited in the Trust Account, and (4) certain other conditions set forth in the Subordinations are satisfied.

V. In the event of a foreclosure sale or a sale pursuant to any power of sale contained in or under any mortgage, deed of trust, or other encumbrance upon all or any portion of Parcel F or Redevelopment Block 4, the purchaser or purchasers and their successors and assigns, and the property, shall continue to be subject to all of the conditions, restrictions and covenants provided in the Transbay Final and Conclusive Enforceable Obligations and Declaration of Restrictions,

and the Agency retains the obligation and authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on all or any portion of Parcel F or Redevelopment Block 4. Pursuant to the Credit Agreement, the Deed of Trust, the Negative Pledge, and the Subordinations, the Lenders expressly acknowledge that the terms and conditions of the Transbay Final and Conclusive Enforceable Obligations, including the Transbay Affordable Housing Obligation, apply to and pass with Parcel F and Redevelopment Block 4, and apply to and bind the successors in interest of any owner of all or any portion of Parcel F and Redevelopment Block 4; and that Parcel F and Redevelopment Block 4 shall be held, transferred, sold and conveyed, subject to the conditions, restrictions, reservations and covenants set forth in the Transbay Final and Conclusive Enforceable Obligations and Declaration of Restrictions.

W. In order to (1) permit TJPA to offer the Deed of Trust for Parcel F and the Negative Pledge for Parcels O, O', and O'' as security for the Bridge Loan, and (2) authorize TJPA and the Agency to subordinate to the Deed of Trust and the Negative Pledge the Option Agreement and the Agency's rights and privileges under the Option relative to Parcel F and Parcels O, O', and O'', all for the purpose of facilitating timely completion of construction of Phase 1 of the Transbay Terminal Project, and the significant public and tax benefits that derive therefrom under the Redevelopment Project, the City, TJPA, and the Agency wish to enter into this First Amendment.

X. This First Amendment is in the best interests of the taxing entities, including the City and TJPA. This First Amendment will: (1) facilitate timely completion of construction of Phase 1 of the Transbay Terminal Project, which is a public benefit, will help to revitalize the Project Area and stimulate private investment, and is a central part of the Redevelopment Project, (2) facilitate the Agency's timely implementation of the disposition and development of Redevelopment Block 4 and Parcel F under the Redevelopment Project, (3) facilitate the Agency's fulfillment of the Transbay Affordable Housing Obligation, and (4) generate timely receipt of property tax revenues by the taxing entities. This First Amendment will significantly aid the winding down of the affairs of the Agency.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. Agency Transfer Parcels Subject to First Amendment. The following Agency Transfer Parcels are subject to the provisions of this First Amendment: Parcel F, Parcel O, Parcel O', and Parcel O'', as such parcels are more particularly shown in the map attached to the Option Agreement as Exhibit A-1 thereto.

2. Cooperative Agreement and Transbay Final and Conclusive Enforceable Obligations. The intent of this First Amendment is in furtherance of the Cooperative Agreement, as may have been modified by Caltrans under the Caltrans Release, and of the Transbay Final and Conclusive Enforceable Obligations.

3. Exercise of Option.

(a) The terms, conditions, and requirements for the exercise of the Option for Parcel F and Parcel O, Parcel O', and Parcel O'' shall be supplemented by, subject to and modified by, as necessary, the terms, conditions, and requirements in the final form of the following documents to be recorded in the Official Records of the City and County of San Francisco against Parcel F and Parcel O, Parcel O', and Parcel O'': the Deed of Trust, the substantial form of which is attached hereto as Exhibit _____ and which shall encumber Parcel F and will encumber Redevelopment Block 4 if the Negative Pledge is released as to Parcel O, Parcel O', and Parcel O'' pursuant to the terms of the Negative Pledge; the Negative Pledge, the substantial form of which is attached hereto as Exhibit _____ and which shall encumber Parcels O, O', and O''; and the Subordinations, the substantial forms of which are attached hereto as Exhibits _____ and _____, one which shall encumber Parcel F and one of which shall encumber Parcels O, O', and O''; provided, however, that nothing in the Deed of Trust, the Negative Pledge and the Subordinations shall be construed as preventing the Agency from fulfilling its Transbay Final and Conclusive Enforceable Obligations with respect to Parcel F, Redevelopment Block 4, and any other portion of Parcels O, O', and O''.

(b) After a Caltrans Release has been recorded as to Parcel F and Redevelopment Block 4, the requirements of Articles 5 and 6 of the Option Agreement relating to the State's review and approval of the Gross Sales Proceeds and Baseline Valuation for Parcel F and Redevelopment Block 4 shall no longer apply. If Agency exercises the Option as to Parcel F or Redevelopment Block 4, or to any portion thereof, while the Subordination affecting such parcel or portion is in effect, Agency shall obtain the fair market value appraisal described in Section 6.1 of the Option Agreement and follow the requirements for the deposit of Gross Sales Proceeds with respect to such parcel or portion in compliance with the Subordination that affects such parcel or portion. If the collective Gross Sales Proceeds for Parcel F and Redevelopment Block 4 exceeds \$171,000,000, such excess amount shall be deposited in the Trust Account one (1) business day after repayment of the Bridge Loan in full.

(c) If Agency exercises the Option as to Parcel F or Redevelopment Block 4, or to any portion thereof, after the termination of the Subordination affecting such parcel or portion and sells such parcel or portion to a third party, Agency shall obtain the fair market value appraisal described in Section 6.1 of the Option Agreement, and deposit the Gross Sales Proceeds from such sale in the Trust Account on the closing of such sale.

(d) The City's Board of Supervisors will review and approve transfers of such parcels from the Agency to third parties prior to the final transfer of such parcel consistent with the review and approval process provided in California Health and Safety Code Section 33433.

4. Consent to Encumbrances; Consent to Subordinations. Notwithstanding anything to the contrary under the Option Agreement (including without limitation Section 12.2 thereof) or otherwise, if the Bridge Loan is made pursuant to the terms and conditions of the Credit Agreement and all of the Bridge Loan proceeds are deposited in the Trust Account, less any amounts necessary to reserve for capitalized interest, hedging costs, required expense reserves and transaction fees with respect to the Bridge Loan and up to \$9.9 million to pay for

construction related soft costs for the Transbay Terminal Project, then: (a) the Agency and the City hereby consent to, and agree that TJPA and Goldman shall be permitted to record, the Deed of Trust, in substantially the form attached hereto as Exhibit _____, against Parcel F; (b) the Agency and the City hereby consent to, and agree that TJPA and Goldman shall be permitted to record, the Negative Pledge, in substantially the form attached hereto as Exhibit _____, against Parcels O, O', and O"; and (c) the Agency and the City hereby consent to, and agree that TJPA and the Agency shall be permitted to record, the Subordinations, in substantially the form attached hereto as Exhibits _____ and _____, against Parcel F and Parcels O, O', and O", respectively.

5. Miscellaneous.

(a) Incorporation. This First Amendment constitutes a part of the Option Agreement and each reference to the Option Agreement shall be deemed to include a reference to the Option Agreement as amended by this First Amendment.

(b) Ratification. To the extent of any inconsistency between this First Amendment and the Option Agreement, the provisions contained in this First Amendment shall control. Except as expressly amended by this First Amendment, all terms, covenants, conditions, and provisions of the Option Agreement shall remain in full force and effect.

(c) Other Definitions. All capitalized terms used but not defined herein shall have the meanings assigned thereto in the Option Agreement.

(d) Successors and Assigns. This First Amendment shall be binding upon and inure to the benefit of the successors and assigns of the parties, subject to the limitations set forth in the Option Agreement.

(e) Counterparts. This First Amendment may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same document, binding on all parties hereto notwithstanding that each of the parties hereto may have signed different counterparts. Delivery of this First Amendment may be effectuated by hand delivery, mail, overnight courier services, or electronic communication (including by PDF sent by electronic mail, facsimile, or similar means of electronic communication). Any electronic signatures shall have the same legal effect as manual signatures.

(f) Governing Law; Venue. This First Amendment shall be governed by and construed in accordance with the laws of the State of California and the City's Charter. The parties hereto agree that all actions or proceedings arising directly or indirectly under this First Amendment shall be litigated in courts located with the County of San Francisco, State of California.

(g) Integration. This First Amendment contains the entire agreement between the parties hereto with respect to the subject matter of this First Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this First Amendment. No prior drafts of this First Amendment

or changes from those drafts to the executed version of this First Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party hereto or any other persons, and no court or other body shall consider those drafts in interpreting this First Amendment.

(h) Further Assurances. The parties shall execute and deliver all documents, amendments, agreements, and instruments reasonably necessary or reasonably required in furtherance of this First Amendment, including documents and agreements attached to this First Amendment or incorporated herein by reference, and other documents reasonably related to the foregoing.

(i) Effective Date. This First Amendment shall become effective on the latest to occur of (the "First Amendment Effective Date") (i) the date that it is duly executed and delivered by the parties hereto, (ii) the effective date of the last resolution required to be adopted by the legislative body of the parties hereto authorizing that party to enter this First Amendment, (iii) the effective date of a resolution adopted by the Oversight Board approving this First Amendment, or (iv) the date of closing of the Bridge Loan.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have each caused this First Amendment to be duly executed on its behalf as of the First Amendment Effective Date.

AGENCY:

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic

Authorized by Agency Resolution No. adopted _____, 2014

Oversight Board Resolution No. adopted _____, 2014

By: _____
Name: Tiffany Bohee
Title: Executive Director

APPROVED AS TO FORM:

By: _____
James B Morales
General Counsel

TJPA:

TRANSBAY JOINT POWERS AUTHORITY, a Joint Powers Agency

Authorized by TJPA Resolution No. adopted _____, 2014

By: _____
Name: Maria Ayerdi-Kaplan
Title: Executive Director

APPROVED AS TO FORM:

By: _____
Deborah Miller
Shute, Mihaly & Weinberger

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation

By: _____

Name: John Updike

Title Director of Property

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____

Deputy City Attorney

OCII DRAFT 10-31-14

EXHIBIT
DEED OF TRUST

EXHIBIT _____
NEGATIVE PLEDGE

EXHIBIT _____
SUBORDINATION
(Deed of Trust)

EXHIBIT _____
SUBORDINATION
(Negative Pledge)

621625.21

OCII DRAFT 10-31-14 PARCEL F

NOTE: THIS DRAFT OF THE SUBORDINATION OF OPTION AGREEMENT HAS NOT BEEN PREPARED IN RECORDABLE FORM, BUT THE SUBORDINATION (OR A MEMORANDUM THEREOF) WILL NEED TO BE RECORDED IN THE REAL PROPERTY RECORDS.

SUBORDINATION OF OPTION AGREEMENT
FOR THE PURCHASE AND SALE OF REAL PROPERTY

THIS SUBORDINATION OF OPTION AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY (this "**Subordination**") is made as of the ____ day of _____, 2014, by and among the TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created pursuant to an agreement among the City and County of San Francisco, the Alameda-Contra Costa Transit District and the Peninsula Corridor Joint Powers Board (Caltrain) and under the California Joint Exercise of Powers Act, codified at California Government Code Sections 6500 *et seq.* ("**Borrower**"), GOLDMAN SACHS BANK USA, as collateral agent on behalf the Secured Parties (as defined in the below-described Credit Agreement) (together with its successor and assigns in such capacity, "**Collateral Agent**"), and the CITY AND COUNTY OF SAN FRANCISCO OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE, serving as the successor agency to the Redevelopment Agency of the City and County of San Francisco, a public body corporate and politic of the State, established pursuant to the Community Redevelopment Law of the State of California (Health and Safety Code Sections 33000 *et seq.*) ("**Agency**").

RECITALS:

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

B. Borrower's Obligations (as defined in the Credit Agreement), including without limitation the repayment of certain loans made by Lenders under the Term Facility ("**Loans**"), are secured by, among other things, a Deed of Trust, Assignment of Leases and Rents and Security Agreement, dated as of the date hereof (the "**Instrument**"), which grants Collateral Agent, for the benefit of Secured Parties, a first lien on the property encumbered thereby and that is more particularly described on Exhibit A hereto (the "**Property**"). The Credit Agreement, the Instrument, this Subordination and all other Credit Documents (as defined in the Credit Agreement) are referred to collectively herein as the "**Documents**."

C. Pursuant to that certain Collateral Agency Agreement, dated as of the date hereof (as amended, restated, supplemented, or otherwise modified from time to time, the "**Facility Collateral Agency Agreement**"), among Borrower, Collateral Agent and [_____], in its capacity as depository and collateral agent thereunder (together with its successors and assigns in such capacity, "**Facility Collateral Agent**"), Facility Collateral Agent has established the Lockbox Account (as defined therein) and has agreed to receive into, hold in, and disburse from the Lockbox Account certain funds that secure the Obligations, including Gross Sales Proceeds (as referenced in the below-described Option Agreement) from the disposition of the Property.

D. Pursuant to certain affordable housing requirements (the "**Transbay Affordable Housing Obligation**"), as described in Section 5027.1 of the California Public Resources Code, the Redevelopment Plan for the Transbay Redevelopment Project Area approved by Ordinance No. 124-05, adopted by the Board of Supervisors of the City and County of San Francisco ("**City**") on June 21, 2005 and Ordinance No. 99-06 adopted by the Board of Supervisors of the City on May 9, 2006 (the "**Redevelopment Plan**"), and that certain Transbay Redevelopment Project Implementation Agreement, dated as of January 20, 2005 (the "**Implementation Agreement**"), between the Borrower and the former Redevelopment Agency of the City and County of San Francisco ("**Former Agency**"), Agency's predecessor in interest, and finally and conclusively determined by the California Department of Finance to be an enforceable obligation under Redevelopment Dissolution Law, Part 1.85 (commencing with Section 34170) of the California Health and Safety Code (the "**Redevelopment Dissolution Law**"), the Project Area (as defined in the Redevelopment Plan) must be developed with a sufficient number of units of affordable housing necessary to achieve the Transbay Affordable Housing Obligation. Nothing in this Subordination shall affect this Transbay Affordable Housing Obligation with respect to the Property.

E. Pursuant to that certain Option Agreement for the Purchase and Sale of Real Property, dated as of January 31, 2008 (the "**Original Option Agreement**"), by and among the City (the "**City**"), Borrower and Former Agency, Agency holds an option to purchase the Property (the "**Option**"). Pursuant to that certain First Amendment to Option Agreement, by and among Agency, Borrower, and City, dated as of [] (the "**Option Agreement Amendment**"; the Original Option Agreement, as amended by the Option Agreement Amendment, is referred to herein as the "**Option Agreement**"), the Agency and the City consented to this Subordination and related matters.

F. Lenders require as a condition to extending credit to Borrower under the Term Facility that Borrower and Agency subordinate the Option Agreement and Agency's interest in the Option relative to the Property to the Instrument as set forth below.

AGREEMENT:

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

1. Subordination of Option Agreement and Option. The Option Agreement, the Option and all rights and privileges of Agency thereunder relative to the Property are hereby and shall at all times continue to be subject and unconditionally subordinate in all respects to the lien and payment and satisfaction of the Instrument, the Credit Agreement and the other Documents and any Obligations arising thereunder and to any renewals, extensions, modifications, assignments, replacements, or consolidations thereof and the rights, privileges, and powers of Collateral Agent and Secured Parties thereunder; provided, however, that nothing in this Subordination shall be construed as preventing Agency from complying with or enforcing the Transbay Affordable Housing Obligation with respect to the Property. For the avoidance of doubt, pursuant to this Subordination, Agency is not subordinating any of its right and privileges under the Option Agreement, the Option, or otherwise relative to any real property other than the Property.

2. Termination. At such time as the Obligations are paid in full, this Subordination and all of Collateral Agent's right, title and interest hereunder and the Instrument shall terminate ("**Termination**"). On or as soon as practicable following the date of Termination, Collateral Agent shall provide a document in form reasonably acceptable to each of Collateral Agent, Borrower and Agency to release the Property from this Subordination and the Instrument, which document Borrower and/or Agency may record in the Official Records of the City and County of San Francisco.

3. Estoppel. Agency represents and warrants that (a) the Option Agreement is in full force and effect and, except as amended by the Option Agreement Amendment, has not been modified, amended or assigned, (b) neither Agency nor Borrower is in default under any of the terms, covenants or provisions of the Option Agreement, and Agency knows of no event which, but for the passage of time or the giving of notice or both, would constitute an event of default under the Option Agreement, (c) neither Agency nor Borrower has commenced any action or given or received any notice for the purpose of terminating the Option Agreement, (d) any and all sums due and payable to Agency under the Option Agreement, if any, have been paid in full, (e) Agency has the full legal right, power and authority to enter into this Subordination and to carry out and consummate all transactions contemplated hereby, (f) the execution, delivery and performance by Agency of this Subordination and the consummation by Agency of the transactions contemplated hereby (i) have been duly authorized by all necessary action on the part of Agency and (ii) 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 as have been made, obtained, given or taken prior to the date of this Subordination, and (g) this Subordination has been duly executed and delivered by Agency and constitutes the legally valid and binding obligation of Agency, enforceable against Agency 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 government entities in the State of California.

4. Covenants of Borrower and Agency. Borrower and Agency each hereby covenant with Collateral Agent that during the term of this Subordination, except as set forth in Section 6 of this Subordination: (a) they shall not transfer or assign any right, title or interest or responsibility or liability under the Option Agreement with respect to the Property to any other person or entity without prior written notification to Collateral Agent and the prior written consent of Collateral Agent, which consent may be withheld by Collateral Agent in Collateral Agent's sole discretion; (b) without the prior consent of the Requisite Lenders (as defined in the Credit Agreement; such consent not to be unreasonably withheld), they shall not terminate or amend any terms or provisions of the Option Agreement with respect to the Property except as could not reasonably be expected to materially adversely affect the interests of the Lenders; and (c) they shall, in the manner provided for in this Subordination, give notice to Collateral Agent of any notice that either party receives with respect to the Option Agreement with respect to the Property.

5. Receipt of Payments and Fees. Collateral Agent, Borrower and Agency hereby agree that during the term of this Subordination, Borrower shall not be entitled to receive any fee, commission or other amount payable to Borrower by Agency under the Option Agreement for the Property, and that such amounts shall instead be paid directly to Facility Collateral Agent. Without limiting the foregoing, and notwithstanding anything to the contrary in the Option Agreement, the Cooperative Agreement (as defined in the Option Agreement) or the Implementation Agreement, if Agency is permitted under Section 6 of this Subordination to exercise the Option under the Option Agreement for the Property, or a portion thereof, then Agency and Borrower shall deliver (or cause to be delivered) to Facility Collateral Agent any and all Gross Sales Proceeds realized from the disposition of the Property, or portion thereof, and any and all other amounts due and payable to Agency or Borrower (including any amounts required to be deposited into the Trust Account (as defined in the Option Agreement)) under the Option Agreement for exercising the Option for the Property, or a portion thereof, and from any disposition by Borrower or Agency of the Property, or a portion thereof. Any amounts paid to Facility Collateral Agent shall be held in, and disbursed from, the Lockbox Account by Facility Collateral Agent pursuant to the terms of the Facility Collateral Agency Agreement.

6. Exercise of Option. During the term of this Subordination, and so long as an Event of Default (as defined in the Credit Agreement) does not exist, Collateral Agent agrees to permit Agency to exercise the Option for the Property, or a portion thereof, in accordance with the Option Agreement and the Transbay Affordable Housing Obligation provided that (a) Borrower or Agency has taken (or caused to be taken) such actions as may be necessary and reasonably acceptable to Collateral Agent to either (i) subdivide the Property into (A) a parcel with the airspace, surface, and/or subsurface of the Property needed for the construction, operation, maintenance, repair, and replacement of the then existing train box components of the Transbay Transit Center Project and any future train box components reasonably required at the Property to operate the Transbay Transit Center Project as a transit facility (the "**Train Box Components**") and (B) a parcel with the remaining developable portion of the Property (such remaining developable portion of the Property the "**Parcel F Development Area**"), or (ii) permit the Borrower to retain an easement ("**Easement**") in the portion of the Property (the "**Easement Area**") needed for the construction, operation, maintenance, repair, and replacement of the Train Box Components, which Easement would prohibit any use of the remainder of the Property from interfering or damaging, or threatening to interfere or damage, the Train Box Components or Borrower's use of the Easement Area pursuant to the Easement, (b) Agency delivers timely written notice as required by Section 9(b) hereof, (c) substantially contemporaneously with the exercise of the Option, Agency disposes of the Parcel F Development Area, or disposes of the Property subject to the Easement, to a third party in a transaction for which the Gross Sales Proceeds realized from such disposition shall be equal to or greater than the Lien Release Price (as defined in the Lien Release Price Letter Agreement referred to in the Credit Agreement), the establishment of which took into consideration the Redevelopment Plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably affect the fair market value) for the Parcel F Development Area or the Property subject to the Easement, and (d) any sums due to Borrower or Agency under the Option Agreement for exercising the Option for the Property, or a portion thereof, or from the disposition of the Property, or a portion thereof, including Gross Sales Proceeds from such disposition, shall be paid directly to Facility Collateral Agent as required by Section 5 hereof on the Closing Date (as defined in the Option Agreement) of such disposition. If any Event of Default exists or any of the conditions in clauses (a) through (d) are not satisfied, Agency may not exercise the Option with respect to the Property unless agreed to in writing by Collateral Agent in its sole discretion .

7. Release of Optioned Property. If (a) Agency exercises the Option for the Property, or a portion thereof, and closes on the Option with respect to the Property in accordance with the terms of the Option Agreement and this Subordination and (b) all Gross Sales Proceeds for the Property, or portion thereof, are paid directly to Facility Collateral Agent for deposit in the Lockbox Account on the Closing Date for the disposition of the Property or a portion thereof, Collateral Agent shall provide on the Closing Date for the disposition of the Property, a document in form reasonably acceptable to each of Collateral Agent, Borrower and Agency to release from this Subordination and the Instrument all or that portion of the Property transferred pursuant to the Option, which document Borrower and/or Agency may record in the Official Records of the City and County of San Francisco.

8. Affordable Housing. Agency's consent to this Subordination is made with the following understandings and acknowledgements, which are consented to by Collateral Agent, for the benefit of Secured Parties: The Property is subject to the Transbay Affordable Housing Obligation, which applies to and passes with the Property, and applies to and binds the successors in interest of any owner of the Property; that the Property shall be held, transferred, sold and conveyed, subject to the conditions, restrictions, reservations and covenants set forth in the Transbay Redevelopment Project Area Declaration of Restrictions, recorded in the Official Records of the City and County of San Francisco on August 4, 2006 as Document No. 20061224839 (the "**Declaration of Restrictions**"), which includes the Transbay Affordable Housing Obligation. In the event of a foreclosure sale or a sale pursuant to any power of sale contained in or under the Instrument or any other mortgage, deed of trust, or other encumbrance upon the

Property, the purchaser or purchasers and their successors and assigns, and the Property, shall continue to be subject to all of the conditions, restrictions and covenants provided in the Declaration of Restrictions; and, consistent with its enforceable obligations under the Redevelopment Dissolution Law, Agency retains full authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on all or any portion of the Property to meet the Transbay Affordable Housing Obligation and implement the Redevelopment Plan.

9. Consent and Agreement by Agency. Agency hereby acknowledges and consents to this Subordination and agrees that Agency will act in conformity with the provisions of this Subordination and Collateral Agent's rights hereunder or otherwise related to the Option Agreement. Agency hereby agrees (a) not to contest or impede the exercise by Collateral Agent of any right it has under or in connection with this Subordination; and (b) that it shall, in the manner provided for in this Subordination, give at least thirty (30) days prior written notice to Collateral Agent of its intention to exercise the Option.

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

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

12. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (b) one (1) Business Day (hereinafter defined) after having been

deposited for overnight delivery with any reputable overnight courier service, or (c) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower:

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

With a copy to Borrower's Legal Counsel:

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

If to Collateral Agent:

If to Agency:

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 12, the term "**Business Day**" shall mean a day on which commercial banks are not authorized or required by law to close in either New York, New York or San Francisco, California.

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

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

14. Successors and Assigns. This Subordination shall be binding upon and inure to the benefit of Borrower, Agency and Collateral Agent and their respective successors and assigns forever.

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

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

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

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

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

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

[Signature page to follow]

IN WITNESS WHEREOF the undersigned have executed this Subordination as of the date and year first written above.

BORROWER:

TRANSBAY JOINT POWERS AUTHORITY,
a Joint Powers Agency

By: _____
Name: _____
Its: _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of the Notary Public

(Seal)

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

[SIGNATURE PAGE TO SUBORDINATION OF OPTION AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY]

AGENCY:

**CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF COMMUNITY INVESTMENT AND
INFRASTRUCTURE**, a public body corporate and
politic

By: _____
Name: _____
Its: _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public,
personally appeared _____, who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

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

WITNESS my hand and official seal.

Signature of the Notary Public

(Seal)

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

[SIGNATURE PAGE TO SUBORDINATION OF OPTION AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY]

COLLATERAL AGENT:

GOLDMAN SACHS BANK USA, as Collateral Agent

By: _____
Name: _____
Its: _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of the Notary Public

(Seal)

**THE CITY AND COUNTY OF SAN FRANCISCO HEREBY
ACKNOWLEDGES THE FOREGOING SUBORDINATION
OF OPTION AGREEMENT:**

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
Name: John Updike
Its: Director of Property

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public,
personally appeared _____, who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

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

WITNESS my hand and official seal.

Signature of the Notary Public

(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[To be attached.]

620905.25

**OCH DRAFT-10.31.14
PARCEL O SET OF PROPERTIES**

NOTE: THIS DRAFT OF THE SUBORDINATION OF OPTION AGREEMENT HAS NOT BEEN PREPARED IN RECORDABLE FORM, BUT THE SUBORDINATION (OR A MEMORANDUM THEREOF) WILL NEED TO BE RECORDED IN THE REAL PROPERTY RECORDS.

**SUBORDINATION OF OPTION AGREEMENT
FOR THE PURCHASE AND SALE OF REAL PROPERTY**

THIS SUBORDINATION OF OPTION AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY (this "**Subordination**") is made as of the ____ day of _____, 2014, by and among the TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created pursuant to an agreement among the City and County of San Francisco, the Alameda-Contra Costa Transit District and the Peninsula Corridor Joint Powers Board (Caltrain) and under the California Joint Exercise of Powers Act, codified at California Government Code Sections 6500 *et seq.* ("**Borrower**"), GOLDMAN SACHS BANK USA, as collateral agent on behalf the Secured Parties (as defined in the below-described Credit Agreement) (together with its successor and assigns in such capacity, "**Collateral Agent**"), and the CITY AND COUNTY OF SAN FRANCISCO OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE, serving as the successor agency to the Redevelopment Agency of the City and County of San Francisco, a public body corporate and politic of the State, established pursuant to the Community Redevelopment Law of the State of California (Health and Safety Code Sections 33000 *et seq.*) ("**Agency**").

RECITALS:

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

B. Borrower's Obligations (as defined in the Credit Agreement), including without limitation the repayment of certain loans made by Lenders under the Term Facility ("**Loans**"), are secured by, among other things, a pledge by Borrower of the Gross Sales Proceeds (as referenced in the below-described Option Agreement) from the disposition of a portion of that certain real property more particularly described on Exhibit A hereto (the "**Property**"), and to preserve and protect such pledge of such Gross Sales Proceeds, Borrower has entered into that certain Agreement Not to Encumber or Transfer Property, dated as of the date hereof (the "**Instrument**"), which for the benefit of Collateral Agent and the Secured Parties restricts certain rights of Borrower relative to the Property. The Credit Agreement, the Instrument, this Subordination and all other Credit Documents (as defined in the Credit Agreement) are referred to collectively herein as the "**Documents**."

C. Pursuant to that certain Collateral Agency Agreement, dated as of the date hereof (as amended, restated, supplemented, or otherwise modified from time to time, the "**Facility Collateral Agency Agreement**"), among Borrower, Collateral Agent and [____], in its capacity as depository and collateral agent thereunder (together with its successors and assigns in such capacity, "**Facility Collateral Agent**"), Facility Collateral Agent has established the Lockbox Account (as defined therein) and has agreed to receive into, hold in, and disburse from the Lockbox Account certain funds that

secure the Obligations, including Gross Sales Proceeds from the disposition of the portion of the Property defined as "Redevelopment Block 4" below.

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

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

F. Pursuant to that certain Option Agreement for the Purchase and Sale of Real Property, dated as of January 31, 2008 (the "**Original Option Agreement**"), by and among the City, Borrower, and Former Agency, Agency holds an option to purchase the Property (the "**Option**"). Pursuant to that certain First Amendment to Option Agreement by and among Borrower, Agency, and City, dated as of [] (the "**Option Agreement Amendment**"; the Original Option Agreement, as amended by the Option Agreement Amendment, is referred to herein as the "**Option Agreement**"), the City and the Agency consented to this Subordination and related matters.

G. This Subordination permits the Agency to exercise the Option to the Property before the full satisfaction of the Loans on the terms specified below, which includes a requirement that limits the Agency from exercising the Option for Redevelopment Block 4 unless it is for a third party transfer that generates Gross Sales Proceeds equal to or greater than the Lien Release Price (as defined in the Lien Release Price Letter Agreement referred to in the Credit Agreement). TJPA and the Agency have conducted their own due diligence to determine that it is reasonably likely that the third party sale of Redevelopment Block 4, which would be subject to a requirement that the purchaser develop a number of affordable units required by the Agency in its efforts to achieve compliance with the Transbay Affordable Housing Obligation, would generate Gross Sales Proceeds that are no less than the Lien Release Price.

H. Lenders require as a condition to extending credit to Borrower under the Term Facility that Borrower and Agency subordinate the Option Agreement, and Agency's interest in the Option relative to the Property to the Instrument as set forth below.

AGREEMENT:

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

1. Subordination of Option Agreement and Option. The Option Agreement, the Option and all rights and privileges of Agency thereunder relative to the Property are hereby and shall at all times continue to be subject and unconditionally subordinate in all respects to the lien and payment and satisfaction of the Instrument, the Credit Agreement and the other Documents and any Obligations arising thereunder and to any renewals, extensions, modifications, assignments, replacements, or consolidations thereof and the rights, privileges, and powers of Collateral Agent and Secured Parties thereunder, subject to the terms of this Subordination; provided, however, that nothing in this Subordination shall be construed as preventing Agency from complying with or enforcing the Transbay Affordable Housing Obligation with respect to the Property. For the avoidance of doubt, pursuant to this Subordination, Agency is not subordinating any of its right and privileges under the Option Agreement, the Option, or otherwise relative to any real property other than the Property.

2. Termination. At such time as either (i) the Obligations are paid in full or (ii) the Property is subdivided into separate legal parcels consisting of Redevelopment Block 4 and the Remainder Parcels and Borrower provides (or causes to be provided) to Collateral Agent a First Priority Mortgage (as defined in the Credit Agreement) on Redevelopment Block 4 and the other Redevelopment Block 4 Mortgage Deliverables (as defined in the Instrument), this Subordination, all of Collateral Agent's right, title and interest hereunder, and the Instrument shall terminate ("**Termination**"); provided, however, that if a First Priority Mortgage is delivered to Collateral Agency as to Redevelopment Block 4 at the time of the Termination, then the affordable housing rights of Agency specified in Section 8 of this Subordination shall remain in full force and effect, encumber, and run with the land as to Redevelopment Block 4. In such event, Agency shall have the right to require any owner of Redevelopment Block 4 to comply with the matters set forth in Section 8, including any party that acquires Redevelopment Block 4 through enforcement of the First Priority Mortgage, and Agency shall have the sole discretion to terminate the continuation of this Subordination as an encumbrance on Redevelopment Block 4 by recording a written document with such termination in the Official Records of San Francisco. On or as soon as practicable following the date of Termination, Collateral Agent shall provide a document in form reasonably acceptable to each of Collateral Agent, Borrower and Agency to release the Property from this Subordination and the Instrument (provided that Redevelopment Block 4 shall not be released as to this Subordination if a First Priority Mortgage is recorded against Redevelopment Block 4 at such time), which document Borrower and/or Agency may record in the Official Records of the City and County of San Francisco.

3. Estoppel. Agency represents and warrants that (a) the Option Agreement is in full force and effect and, except as amended by the Option Agreement Amendment, has not been modified, amended or assigned, (b) neither Agency nor Borrower is in default under any of the terms, covenants or provisions of the Option Agreement and Agency knows of no event which, but for the passage of time or the giving of notice or both, would constitute an event of default under the Option Agreement, (c) neither Agency nor Borrower has commenced any action or given or received any notice for the purpose of terminating the Option Agreement, (d) any and all sums due and payable to Agency under the Option Agreement, if any, have been paid in full, (e) Agency has the full legal right, power and authority to enter into this Subordination and to carry out and consummate all transactions contemplated hereby, (f) the execution, delivery and performance by Agency of this Subordination and the consummation by Agency of the transactions contemplated hereby (i) have been duly authorized by all necessary action on the part of Agency and (ii) 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 as have been made, obtained, given or taken prior to the date of this Subordination, and (g) this Subordination has been duly executed and

delivered by Agency and constitutes the legally valid and binding obligation of Agency, enforceable against Agency 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 government entities in the State of California.

4. Covenants of Borrower and Agency. Borrower and Agency each hereby covenant with Collateral Agent that during the term of this Subordination, except as set forth in Section 6 of this Subordination: (a) they shall not transfer or assign any right, title or interest or responsibility or liability under the Option Agreement with respect to Redevelopment Block 4 to any other person or entity without prior written notification to Collateral Agent and the prior written consent of Collateral Agent, which consent may be withheld by Collateral Agent in Collateral Agent's sole discretion; (b) without the prior consent of the Requisite Lenders (as defined in the Credit Agreement; such consent not to be unreasonably withheld), they shall not terminate or amend any terms or provisions of the Option Agreement with respect to Redevelopment Block 4 except as could not reasonably be expected to materially adversely affect the interests of the Lenders; and (c) they shall, in the manner provided for in this Subordination, give notice to Collateral Agent of any notice that either party receives with respect to the Option Agreement with respect to the Property.

5. Receipt of Payments and Fees. Collateral Agent, Borrower and Agency hereby agree that during the term of this Subordination, Borrower shall not be entitled to receive any fee, commission or other amount payable to Borrower by Agency under the Option Agreement for Redevelopment Block 4, and that such amounts shall instead be paid directly to Facility Collateral Agent. Without limiting the foregoing, and notwithstanding anything to the contrary in the Option Agreement, the Cooperative Agreement (as defined in the Option Agreement) or the Implementation Agreement, if Agency is permitted under Section 6 of this Subordination to exercise the Option under the Option Agreement for Redevelopment Block 4, then Agency and Borrower shall deliver (or cause to be delivered) to Facility Collateral Agent any and all Gross Sales Proceeds realized from the disposition of Redevelopment Block 4, and any and all other amounts due and payable to Agency or Borrower (including any amounts previously required to be deposited into the Trust Account (as defined in the Option Agreement) under the Option Agreement for exercising the Option for Redevelopment Block 4, and from any disposition by Borrower or Agency of Redevelopment Block 4. Any amounts paid to Facility Collateral Agent from the disposition of Redevelopment Block 4 shall be held in, and disbursed from, the Lockbox Account by Facility Collateral Agent pursuant to the terms of the Facility Collateral Agency Agreement. If Agency is permitted under Section 6 of this Subordination to exercise the Option under the Option Agreement for the Remainder Parcels, or any portion thereof, Borrower shall deliver (or cause to be delivered) any and all Gross Sales Proceeds realized from such disposition of the Remainder Parcels into the Trust Account.

6. Exercise of Option.

(a) Redevelopment Block 4. During the term of this Subordination, Collateral Agent agrees to permit Agency to exercise the Option for Redevelopment Block 4 in accordance with the Option Agreement and the Transbay Affordable Housing Obligation and to permit Borrower to transfer Redevelopment Block 4 to Agency in connection with such exercise of the Option, provided that (a) Borrower or Agency has taken (or caused to be taken) such actions as may be necessary to create Redevelopment Block 4 as a separate legal parcel, (b) Agency delivers timely written notice as required by Section 9(b) hereof, (c) substantially contemporaneously with the exercise of the Option for Redevelopment Block 4, Agency disposes of Redevelopment Block 4 to a third party in a transaction for which the Gross Sales Proceeds realized from such disposition shall be equal to or greater than the Lien Release Price for Redevelopment Block 4, and (d) any sums due to Borrower or Agency under the Option

Agreement for exercising the Option for Redevelopment Block 4, or from the disposition of Redevelopment Block 4, including Gross Sales Proceeds from such disposition, shall be paid directly to Facility Collateral Agent as required by Section 5 hereof on the Closing Date (as defined in the Option Agreement) for the disposition of Redevelopment Block 4. If any Event of Default exists or any of the conditions in clauses (a) through (d) are not satisfied, Agency may not exercise the Option with respect to Redevelopment Block 4 unless agreed to in writing by Collateral Agent in its sole discretion.

(b) Remainder Parcels. Agency shall further have the right to exercise the Option for the Remainder Parcels, and Borrower shall have the right to transfer the Remainder Parcels to Agency, at any time, even if there is an Event of Default under the Documents, so long as prior to such transfer of either of the Remainder Parcels, Borrower or Agency shall have taken (or caused to be taken) such actions as may be necessary to create the Remainder Parcels as separate legal parcels.

7. Release of Optioned Property. If (a) Agency exercises the Option for Redevelopment Block 4, and closes on the Option for Redevelopment Block 4 in accordance with the terms of the Option Agreement and this Subordination and (b) all Gross Sales Proceeds for Redevelopment Block 4 are paid directly to Facility Collateral Agent for deposit in the Lockbox Account on the Closing Date for the disposition of Redevelopment Block 4, Collateral Agent shall provide on the Closing Date for the disposition of Redevelopment Block 4, a document in form reasonably acceptable to each of Collateral Agent, Borrower and Agency to release from this Subordination and the Instrument all or that portion of Redevelopment Block 4 transferred pursuant to the Option, which document Borrower and/or Agency may record in the Official Records of the City and County of San Francisco.

If the Property is subdivided into Redevelopment Block 4 and the Remainder Parcels, and Agency exercises the Option for either of the Remainder Parcels, Collateral Agent shall provide on the Closing Date for the disposition of such Remainder Parcel, a document in form reasonably acceptable to each of Collateral Agent, Borrower and Agency to release from this Subordination and the Instrument all or that portion of such Remainder Parcel transferred pursuant to the Option, which document Borrower and/or Agency may record in the Official Records of the City and County of San Francisco.

8. Affordable Housing. Agency's consent to this Subordination is made with the following understandings and acknowledgements, which are consented to by Collateral Agent, for the benefit of Secured Parties, and shall bind any party (including its successors and assigns) that acquires Redevelopment Block 4 through the enforcement of any Redevelopment Block 4 Mortgage on Redevelopment Parcel 4: The Property is subject to the Transbay Affordable Housing Obligation, which applies to and passes with the Property, and applies to and binds the successors in interest of any owner of the Property; that the Property shall be held, transferred, sold and conveyed, subject to the conditions, restrictions, reservations and covenants set forth in the Transbay Redevelopment Project Area Declaration of Restrictions, recorded in the Official Records of the City and County of San Francisco on August 4, 2006 as Document No. 20061224839 (the "**Declaration of Restrictions**"), which includes the Transbay Affordable Housing Obligation. In the event of any foreclosure, sale or transfer of the Property, the acquirer, purchaser, acquirers or purchasers and their successors and assigns, and the Property, shall continue to be subject to all of the conditions, restrictions and covenants provided in the Declaration of Restrictions; and, consistent with its enforceable obligations under the Redevelopment Dissolution Law, Agency shall have full authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on all or any portion of the Property to meet the Transbay Affordable Housing Obligation and implement the Redevelopment Plan, including any requirement that there be a level of affordable housing on Redevelopment Block 4 that is higher than the minimum levels established for private developments in the Redevelopment Plan, and the requirement for the parcelization and assembly of land into block and lots that are suitable for development, as described in the Development Controls and Design Guidelines (as defined in the Redevelopment Plan).

9. Consent and Agreement by Agency. Agency hereby acknowledges and consents to this Subordination and agrees that Agency will act in conformity with the provisions of this Subordination and Collateral Agent's rights hereunder or otherwise related to the Option Agreement. Agency hereby agrees (a) not to contest or impede the exercise by Collateral Agent of any right it has under or in connection with this Subordination; and (b) that it shall, in the manner provided for in this Subordination, give at least thirty (30) days prior written notice to Collateral Agent of its intention to exercise the Option.

10. GOVERNING LAW. THIS SUBORDINATION AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING, WITHOUT LIMITATION, ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK; PROVIDED THAT WITH RESPECT TO THE MATTERS OF CAPACITY, POWER AND AUTHORITY OF BORROWER AND AGENCY, INCLUDING THE AGENCY'S RIGHTS UNDER SECTION 8 ABOVE, THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN.

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

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

If to Borrower:

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

With a copy to Borrower's Legal Counsel:

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

If to Collateral Agent:

If to Agency:

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 12, the term "**Business Day**" shall mean a day on which commercial banks are not authorized or required by law to close in either New York, New York or San Francisco, California.

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

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

14. Successors and Assigns. This Subordination shall be binding upon and inure to the benefit of Borrower, Agency and Collateral Agent and their respective successors and assigns forever.

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

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

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

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

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

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

[Signature page to follow]

IN WITNESS WHEREOF the undersigned have executed this Subordination as of the date and year first written above.

BORROWER:

TRANSBAY JOINT POWERS AUTHORITY,
a Joint Powers Agency

By: _____
Name: _____
Its: _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of the Notary Public

(Seal)

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

[SIGNATURE PAGE TO SUBORDINATION OF OPTION AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY]

AGENCY:

**CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF COMMUNITY INVESTMENT AND
INFRASTRUCTURE**, a public body corporate and
politic

By: _____
Name: _____
Its: _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public,
personally appeared _____, who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

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

WITNESS my hand and official seal.

Signature of the Notary Public

(Seal)

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

[SIGNATURE PAGE TO SUBORDINATION OF OPTION AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY]

COLLATERAL AGENT:

GOLDMAN SACHS BANK USA, as Collateral Agent

By: _____
Name: _____
Its: _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of the Notary Public

(Seal)

**THE CITY AND COUNTY OF SAN FRANCISCO HEREBY
ACKNOWLEDGES THE FOREGOING SUBORDINATION
OF OPTION AGREEMENT:**

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
Name: John Updike
Its: Director of Property

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public,
personally appeared _____, who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

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

WITNESS my hand and official seal.

Signature of the Notary Public

(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[To be attached.]

622380.24

RECORDING REQUESTED BY
AND WHEN RECORDED
MAIL TO:

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

Space Above for Recorder's Use Only

APN: [_____]

TRANSBAY JOINT POWERS AUTHORITY
(Trustor)

to

[_____
(Trustee)

for the Benefit of

GOLDMAN SACHS BANK USA, as Collateral Agent
(Beneficiary)

**DEED OF TRUST,
ASSIGNMENT OF LEASES AND RENTS,
AND SECURITY AGREEMENT**

Dated: As of _____, 2014

Location: As described on Exhibit A attached hereto

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS AND
SECURITY AGREEMENT**

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "*Deed of Trust*") is made as of this _____ day of _____, 2014, by 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., having its principal place of business at 201 Mission Street, Suite 2100, San Francisco, California 94105, as trustor ("*Trustor*"), to [_____] having an address of [_____], as trustee ("*Trustee*"), for the benefit of GOLDMAN SACHS BANK USA, as Collateral Agent for the Secured Parties (as defined in the Credit Agreement referred to below), having an address at [_____] (together with its successors and/or assigns in such capacity, "*Beneficiary*"), as beneficiary.

WITNESSETH:

A. Pursuant to that certain Credit Agreement, dated as of the date hereof (as amended, restated, supplemented, extended or otherwise modified from time to time and as refinanced, refunded or replaced from time to time, the "*Credit Agreement*"), by and among Trustor, as Borrower, the financial institutions from time to time party thereto, as lenders ("*Lenders*"), and Goldman Sachs Bank USA, as Sole Lead Arranger, Sole Lead Bookrunner, Syndication Agent, Administrative Agent and Collateral Agent, Lenders have agreed to extend a senior secured term loan facility (the "*Term Facility*") to Trustor in an aggregate principal amount of One Hundred Seventy-One Million Dollars (\$171,000,000). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Credit Agreement.

B. Trustor desires to secure the payment of loans made by Lenders under the Term Facility ("*Loans*") and the payment and performance of all other Obligations by, among other things, executing and delivering this Deed of Trust in favor of Trustee for the benefit of Beneficiary.

NOW THEREFORE, in consideration of the making of the Loans by the Lenders and the covenants, agreements, representations and warranties set forth in this Deed of Trust:

ARTICLE I.

GRANTS OF SECURITY

Section 1.01 Trust Property. Trustor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey unto Trustee, in trust for the benefit of Beneficiary and its successors and assigns, for the benefit of the Lenders, WITH POWER OF SALE, all right, title, interest and estate of Trustor now owned, or hereafter acquired, in and to the following (it being understood that all property of tenants under any Lease ("*Tenants*") are excluded from the scope of this Deed of Trust) (collectively, the "*Property*");

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "Land"), [subject to the train box component easement described in Exhibit B attached hereto and made a part hereof (the "Easement")];¹

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Trustor which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Deed of Trust;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land, but excluding improvements related to the train box component of the Transbay Transit Center Project and subject to the Easement (collectively, the "Improvements");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Trustor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Leases and Rents. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Trustor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") but excluding the occupancy rights of the CM/GC (as defined in the Credit Agreement) under the CM/GC Agreement (as defined in the Credit Agreement) (collectively, the "Leases"), and all right, title and interest of Trustor, its successors and assigns, therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements, whether paid or accruing before or after the filing by or against Trustor of any petition for relief under the Bankruptcy Code

¹ Subject to on-going discussion about reservation for trainbox and related infrastructure.

(collectively, the “*Rents*”), and all proceeds from the sale or other disposition of the Leases and the right, if any, to receive and apply the Rents to the payment and performance of the Obligations, including the payment of the Loans;

(f) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(g) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Property;

(h) Tax Certiorari. All refunds, rebates or credits in connection with any reduction in Taxes (as hereinafter defined) or Other Charges (as hereinafter defined) assessed against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction;

(i) Rights. The right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Beneficiary in the Property;

(j) Agreements. To the extent assignable, all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the business use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business conducted on the Land and any part thereof and all right, title and interest of Trustor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Trustor thereunder;

(k) Intellectual Property. All trade names, trademarks, service marks, logos, copyrights, goodwill, URLs or other online media, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(l) Accounts. All reserves, escrows and deposit accounts maintained by Trustor with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Credit Agreement or any other Credit Document, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

(m) Minerals. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above Land;

(n) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether in cash or in liquidation or other claims, or otherwise; and

(o) Other Rights. Any and all other rights of Trustor in and to the items set forth in Subsections (a) through (n) above.

AND, it being understood and agreed that the Improvements are part and parcel of the Land (the Land, and the Improvements collectively referred to as the "*Real Property*") appropriated to the use thereof and, whether affixed or annexed to the Land or not, shall for the purposes of this Deed of Trust be deemed conclusively to be real estate and subject to the lien hereof.

Section 1.02 Assignment of Rents. Trustor hereby absolutely and unconditionally assigns to Beneficiary all of Trustor's right, title and interest in and to all current and future Leases and Rents; it being intended by Trustor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of Section 7.01(i) of this Deed of Trust, Beneficiary grants to Trustor a revocable license to collect, receive, use and enjoy the Rents. Trustor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Loans, for use in the payment of such sums.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Beneficiary and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Trustor shall well and truly pay and perform the Obligations (including the payment of the Loans but excluding any obligations arising under Hedge Agreements) at the time and in the manner provided in this Deed of Trust, the Credit Agreement and the other Credit Documents, and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Credit Agreement and the other Credit Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Trustor's obligation to indemnify and hold harmless the Indemnitees pursuant to the provisions hereof that expressly survive termination shall survive any such payment or release.

ARTICLE II.

LOANS AND OTHER OBLIGATIONS SECURED

Section 2.01 Obligations. This Deed of Trust and the grants, assignments and transfers made in Article I are given for the purpose of securing the Obligations (as defined below), including, but not limited to, the Loans and the following:

- (a) the performance of all Obligations of Trustor contained herein;
- (b) the performance of each Obligation of Trustor contained in each other Credit Document and each Hedge Agreement; and

(c) the performance of each Obligation of Trustor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Credit Agreement, any other Credit Document or any Hedge Agreement.

Section 2.02 Loan Repayment. Provided that no Event of Default exists, the Lien of this Deed of Trust shall be terminated, released and reconveyed of record by Beneficiary (and the Trustee, to the extent required by law to effect a full and proper termination, release and reconveyance) prior to the Maturity Date only in accordance with the terms and provisions set forth in the Credit Agreement.

ARTICLE III.

TRUSTOR COVENANTS

Trustor covenants and agrees that:

Section 3.01 Payment of Loans. The Obligations will be paid and performed at the time and in the manner provided in the Credit Agreement, the other Credit Documents and the Hedge Agreements, as applicable.

Section 3.02 Incorporation by Reference. All the covenants, conditions and agreements of Trustor contained in all of the Credit Documents executed by Trustor are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Trustor (i) agrees to insure, repair, maintain and restore damage to the Property in accordance with the Credit Agreement, pay mean real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against all or part of the Property (individually or collectively, "*Taxes*") and all maintenance charges, impositions other than Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof (individually or collectively, "*Other Charges*"), and comply with all requirements of law applicable to the Property including but not limited to, the requirements for affordable housing, as described in Section 5027.1 of the California Public Resources Code, incorporated into the Redevelopment Plan for the Transbay Redevelopment Project and that certain Implementation Agreement, dated as of January 20, 2005 between the Trustor and the Redevelopment Agency of the City and County of San Francisco, and finally and conclusively determined by the California Department of Finance to be enforceable obligations under Redevelopment Dissolution Law (the "Transbay Affordable Housing Obligation") and the requirement for the parcelization and assembly of land into block and lots that are suitable for development, as described in the Development Controls and Design Guidelines for the Transbay Redevelopment Project ("Development Controls") (collectively, the "Transbay Affordable Housing Obligation," "Development Controls" and other legal requirements are referred to as ("*Requirements of Law*"), and (ii) agrees that the Net Cash Proceeds of any Asset Sale of the Property or of any Casualty Event with respect to the Property shall be settled, held, applied and/or disbursed in accordance with the Credit Agreement.

Section 3.03 Performance of Other Agreements. Trustor shall observe and perform each and every term, covenant and provision to be observed or performed by or pertaining to Trustor pursuant to the Credit Agreement, any other Credit Document and any Hedge Agreement, and each material term, covenant and provision of any other agreement or recorded instrument affecting or pertaining to the Property, and any amendments, modifications or changes thereto.

ARTICLE IV.

OBLIGATIONS AND RELIANCES

Section 4.01 Relationship of Trustor and Secured Parties. The relationship between Trustor and Secured Parties is solely that of debtor and creditor, and no Secured Party has a fiduciary or other special relationship with Trustor, and no term or condition of any of the Credit Agreement, this Deed of Trust, the other Credit Documents or the Hedge Agreements shall be construed so as to deem the relationship between Trustor and any Secured Party to be other than that of debtor and creditor.

Section 4.02 No Reliance on Beneficiary or Secured Parties. The direct or indirect general partners, members, principals and beneficial owners and/or managers of Trustor or the foregoing, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Trustor, Beneficiary and the Secured Parties are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Trustor is not relying on Beneficiary's or any of the Secured Parties' expertise, business acumen or advice in connection with the Property.

Section 4.03 No Beneficiary Obligations.

(a) Notwithstanding the provisions of Subsections 1.01(e) and (j) or Section 1.02, Beneficiary is not undertaking the performance of (i) any obligations under the Leases, or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents; provided, however, that nothing in this Deed of Trust shall affect compliance with the Requirements of Law.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to the Secured Parties pursuant to this Deed of Trust, the Credit Agreement, the other Credit Documents or the Hedge Agreements, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, neither Beneficiary nor any of the Secured Parties shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Beneficiary or the Secured Parties.

Section 4.04 Reliance. Trustor recognizes and acknowledges that in accepting the Credit Agreement, this Deed of Trust and the other Credit Documents, Beneficiary and the Lenders are expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article III of the Credit Agreement without any obligation to

investigate the Property and notwithstanding any investigation of the Property by Beneficiary or the Lenders; that such reliance existed on the part of Beneficiary and Lenders prior to the date hereof; that the warranties and representations are a material inducement to Lenders in making the Loans; and that the Lenders would not be willing to make the Loans and accept this Deed of Trust in the absence of the warranties and representations as set forth in Article III of the Credit Agreement.

ARTICLE V.

FURTHER ASSURANCES

Section 5.01 Recording of Deed of Trust, Etc. Trustor forthwith upon the execution and delivery of this Deed of Trust and thereafter, from time to time, will cause this Deed of Trust and any of the other Credit Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Lien or security interest hereof upon, and the interest of Beneficiary in, the Property. Subject to any limitation expressly set forth in the Credit Agreement, Trustor will pay all applicable taxes, filing, registration or recording fees, and all applicable expenses incident to the preparation, execution, acknowledgment and/or recording of this Deed of Trust, the other Credit Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of any of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Deed of Trust, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of any of the foregoing documents, except where prohibited by law so to do.

Section 5.02 Further Acts, Etc. Trustor will, at the cost of Trustor, and without expense to Beneficiary or the Lenders, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Beneficiary shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to convey or assign to Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or for filing, registering or recording this Deed of Trust, or for complying with all Requirements of Law. Trustor, on demand, in form and substance reasonably acceptable to Beneficiary, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Beneficiary to execute in the name of Trustor or without the signature of Trustor to the extent Beneficiary may lawfully do so, one or more financing statements to evidence more effectively the security interest of Beneficiary in the Property. Trustor grants to Beneficiary an irrevocable power of attorney coupled with an interest for the purpose of perfecting any lien or security interest granted hereunder for the purposes of exercising any and all rights and remedies available to Beneficiary or the Lenders at law and in equity.

Section 5.03 Changes in Tax, Obligations, Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the date of this Deed of Trust which deducts the Obligations from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Obligations or Beneficiary's interest in the Property (but expressly excluding income, franchise or similar taxes imposed on Beneficiary), Trustor will pay the tax, with interest and penalties thereon, if any.

(b) Trustor will not claim or demand or be entitled to any credit or credits on account of the Obligations for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Deed of Trust or the Obligations.

(c) If at any time the United States of America, any State thereof having jurisdiction over this Deed of Trust or any subdivision of any such State shall require revenue or other stamps to be affixed to this Deed of Trust, or any of the other Credit Documents or shall impose any other tax or charge on the same, Trustor will pay for the same, with interest and penalties thereon, if any.

ARTICLE VI.

DUE ON SALE/ENCUMBRANCE

Section 6.01 Beneficiary Reliance. Trustor acknowledges that Beneficiary and the Secured Parties have a valid interest in maintaining the value of the Property so as to ensure that, should Trustor default in the payment and/or performance of the Obligations, including the repayment of the Loans, Beneficiary, on behalf of the Secured Parties, can recover all or a portion of the Obligations by a sale of the Property.

Section 6.02 No Transfer. Trustor shall not permit or suffer any transfer, sale or further encumbrance to occur except in accordance with the terms of the Credit Agreement.

ARTICLE VII.

RIGHTS AND REMEDIES UPON DEFAULT

Section 7.01 Remedies. Upon the occurrence and during the continuance of any Event of Default, Trustor agrees that Beneficiary may take such action, without notice or demand (except as expressly provided in the Credit Documents or required by applicable Requirements of Law), as it deems advisable at law or in equity to protect and enforce its rights against Trustor and in and to the Property, including, without limitation, to the fullest extent permitted by Requirements of Law, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, without, to the fullest extent permitted by Requirements of Law, impairing or otherwise affecting the other rights and remedies of Beneficiary:

(a) foreclose this Deed of Trust, insofar as it encumbers the Property, either by judicial action or through Trustee. Foreclosure through Trustee will be initiated by Beneficiary's filing of its notice of election and demand for sale with Trustee. Upon the filing of such notice of election and demand for sale, Trustee shall promptly comply with all notice and other requirements of the laws of the State of California then in force with respect to such sales. The proceeds of any sale under this section shall be applied first to the fees and expenses of the officer conducting the sale, and then to the reduction or discharge of the Obligations in such order as Beneficiary may elect; any surplus remaining shall be paid over to Trustor or to such other person as may be lawfully entitled to such surplus. At the conclusion of any foreclosure sale, the officer conducting the sale shall execute and deliver to the purchaser at the sale such certificates of purchase or deeds or other instruments of conveyance as are permitted in accordance with California law. Nothing in this section dealing with foreclosure procedures or specifying particular actions to be taken by Beneficiary or by Trustee or any similar officer shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by California law, and any such inconsistency shall be resolved in favor of California law applicable at the time of foreclosure;

(b) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Deed of Trust for the portion of the Obligations then due and payable, subject to the continuing lien and security interest of this Deed of Trust for the balance of the Obligations not then due, unimpaired and without loss of priority;

(c) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Trustor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof, all as may be required or permitted by law; and, without limiting the foregoing:

(d) (i) In connection with any sale or sales hereunder, Beneficiary shall be entitled, subject to the Requirements of Law, to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any Improvements (without causing structural damage thereto), as if the same were, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property;

(ii) Should Beneficiary elect to sell any portion of the Property which is Real Property, Beneficiary shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property, each as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, subject to the terms hereof and of the other Credit Documents, and without the necessity of any demand on Trustor, Beneficiary at the time and place specified in the notice of sale, shall sell or cause to be sold such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Beneficiary may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed for any such sale; and

(iii) If the Property consists of several lots, parcels or items of property, Beneficiary shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Beneficiary designates. Any Person, including Trustor or Beneficiary, may purchase at any sale hereunder. Should Beneficiary desire that more than one sale or other disposition of the Property be conducted, Beneficiary shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Beneficiary may designate, and no such sale shall terminate or otherwise affect the Lien of this Deed of Trust on any part of the Property not sold until all the Obligations have been satisfied in full. In the event Beneficiary elects to dispose of the Property through more than one sale, except as otherwise provided by applicable law, Trustor agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Credit Agreement or in the other Credit Documents;

(f) recover judgment on the Obligations either before, during or after any proceedings for the enforcement of this Deed of Trust, the other Credit Documents or the Hedge Agreements;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice except as required by Requirements of Law and without regard for the adequacy of the security for the Loans and without regard for the solvency of Trustor, any guarantor or indemnitor with respect to the Loans or any Person otherwise liable for the payment of the Obligations or any part thereof;

(h) the license granted to Trustor under Section 1.02 hereof shall automatically be revoked and Beneficiary may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Trustor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Trustor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Trustor agrees to surrender possession of the Property and of such books, records and accounts to Beneficiary during the continuance of an Event of Default, and thereupon Beneficiary or its agents, nominees or attorneys may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business there at; (ii) exercise all rights and powers of Trustor with respect to the Property, whether in the name of Trustor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants and demand, sue for, collect and receive all Rents of the Property and every part thereof; (iii) require Trustor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Trustor; (iv) require Trustor to vacate and surrender possession of the Property to Beneficiary or to such receiver and, in default thereof, Trustor may be evicted by summary proceedings or otherwise; and (v) apply the receipts from the Property to the payment and performance of the Obligations (including, without

limitation, the payment of the Loans), in such order, priority and proportions as Beneficiary shall deem appropriate after deducting therefrom all reasonable expenses (including reasonable attorneys' fees and costs) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, premiums for all insurance required or otherwise maintained with respect to the Property (the "*Insurance Premiums*") and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Beneficiary, its counsel, agents and employees; and/or

(i) pursue such other remedies as Beneficiary or the Secured Parties may have under applicable law.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Deed of Trust, to the fullest extent permitted by applicable law, shall continue as a Lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 7.02 Application of Proceeds. The purchase money proceeds and avails of any disposition of the Property or any part thereof, or any other sums collected by Beneficiary pursuant to the Credit Agreement, this Deed of Trust or the other Credit Documents, shall, unless otherwise prohibited by applicable law, be applied by Beneficiary to the payment of the Obligations in the manner and order set forth in Section 8 of the Credit Agreement.

Upon any sale of the Property or any part thereof (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of Beneficiary or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Property so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to Beneficiary or such officer or be answerable in any way for the misapplication thereof.

Section 7.03 Right to Cure Defaults. During the continuance of any Event of Default, Beneficiary may, but without any obligation to do so and without further notice to or demand on Trustor and without releasing Trustor from any obligation hereunder, perform the obligations in Default in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. In connection with the foregoing, Beneficiary or its agents, nominees or attorneys are authorized to enter upon the Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Property or to foreclose this Deed of Trust or collect the Obligations, and the reasonable cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the rate for default interest described in the Credit Agreement for the period after notice from Beneficiary that such cost or expense was incurred to the date of payment to Beneficiary, shall constitute a portion of the Obligations, shall be secured by this Deed of Trust and shall be due and payable to Beneficiary within three (3) days of demand.

Section 7.04 Other Rights, Etc.

(a) The failure of Beneficiary to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Deed of Trust. Trustor shall not be

relieved of Trustor's obligations hereunder by reason of (i) the failure of Beneficiary to comply with any request of Trustor or any guarantor or indemnitor with respect to the Obligations to take any action to foreclose this Deed of Trust or otherwise enforce any of the provisions hereof, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Beneficiary or the Secured Parties extending the time of payment or otherwise modifying or supplementing the terms of the Credit Agreement, this Deed of Trust, the other Credit Documents or the Hedge Agreements.

(b) It is agreed that the risk of loss or damage to the Property is on Trustor, and neither Beneficiary nor any of the Secured Parties shall have any liability whatsoever for any decline in value of the Property, for failure to maintain any insurance policies covering the Property, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Beneficiary's possession.

(c) Beneficiary may resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Loans) to any other security held by Beneficiary or the Secured Parties in such order and manner as Beneficiary may elect. Beneficiary may take action to recover the Loans, or any portion thereof, or to enforce the other Obligations or any covenant hereof, without, to the fullest extent permitted by applicable law, prejudicing the right of Beneficiary thereafter to foreclose this Deed of Trust. The rights of Beneficiary under this Deed of Trust shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Beneficiary shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.05 Right to Release Any Portion of the Property. Subject to the Requirements of Law, Beneficiary may release any portion of the Property for such consideration as Beneficiary (on behalf of the Secured Parties) may require without, as to the remainder of the Property, to the fullest extent permitted by applicable law, in any way impairing or affecting the Lien or priority of this Deed of Trust, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Loans shall have been reduced by the actual monetary consideration, if any, received by Beneficiary for such release, and Beneficiary (for the benefit of the Secured Parties) may accept by assignment, pledge or otherwise any other property in place thereof as Beneficiary may require without being accountable for so doing to any other lienholder. This Deed of Trust shall continue as a Lien and security interest in the remaining portion of the Property.

Section 7.06 Violation of Laws. In the event that Trustor receives notice that the Property is not in material compliance with all Requirements of Law, Beneficiary may impose reasonable additional requirements upon Trustor in connection herewith.

Section 7.07 Right of Entry. Upon reasonable notice (which may be given verbally) to Trustor, Beneficiary and its agents shall have the right to enter and inspect the Property at all reasonable times.

ARTICLE VIII.

INDEMNIFICATION

Section 8.01 Mortgage and/or Intangible Tax. Trustor shall, at its sole cost and expense, defend, indemnify, release and hold harmless Beneficiary and each other Indemnitee from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including attorneys' fees and disbursements) imposed upon or incurred by or asserted against any Indemnitee by reason of any mortgage, recording, stamp, intangible or other similar taxes required to be paid by such Indemnitee under applicable Requirements of Law in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of this Deed of Trust (but excluding any income, franchise or other similar taxes).

Section 8.02 Duty to Defend; Attorneys' Fees and Other Fees and Expenses. Upon written request by any Indemnitee under Section 8.01 above, Trustor shall defend such Indemnitee (if requested by any Indemnitee, in the name of the Indemnitee) by attorneys and other professionals approved by the Indemnitees, or, at the option of such Indemnitee, such Indemnitee shall have the right to employ separate counsel of its own choosing and Trustor shall pay or, in the sole and absolute discretion of the Indemnitees, reimburse, the Indemnitees for the payment of the reasonable out-of-pocket fees and disbursements of attorneys. Trustor shall also pay or, in the sole and absolute discretion of the Indemnitees, reimburse, the Indemnitees for the payment of the reasonable out-of-pocket fees and disbursements of engineers, environmental consultants, laboratories and other professionals engaged in connection therewith.

ARTICLE IX.

WAIVERS

Section 9.01 Waiver of Counterclaim. To the extent permitted by applicable law, Trustor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Beneficiary or the Lenders arising out of or in any way connected with this Deed of Trust, the Credit Agreement, any of the other Credit Documents or the Obligations, except to the extent any such counterclaim arises from the gross negligence or willful misconduct of Beneficiary or the Lenders, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

Section 9.02 Marshalling and Other Matters. To the extent permitted by applicable law, Trustor hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, to the extent permitted by applicable law, Trustor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust on behalf of

Trustor, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Deed of Trust.

Section 9.03 Waiver of Notice. To the extent permitted by applicable law, Trustor shall not be entitled to any notices of any nature whatsoever from Beneficiary, except with respect to matters for which this Deed of Trust or the Credit Documents specifically and expressly provide for the giving of notice by Beneficiary to Trustor and Trustor hereby expressly waives the right to receive any notice from Beneficiary with respect to any matter for which this Deed of Trust or the other Credit Documents do not specifically and expressly provide for the giving of notice by Beneficiary to Trustor.

Section 9.04 Waiver of Statute of Limitations. To the extent permitted by applicable law, Trustor hereby expressly waives and releases its right to plead any statute of limitations as a defense to the payment and performance of the Obligations (including, without limitation, the payment of the Loans).

Section 9.05 Waiver of Jury Trial. TO THE MAXIMUM EXTENT NOT OTHERWISE PROHIBITED BY APPLICABLE LAW, EACH OF TRUSTOR AND BENEFICIARY, BY ITS ACCEPTANCE HEREOF, HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THE CREDIT AGREEMENT, THIS DEED OF TRUST OR THE OTHER CREDIT DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH OF TRUSTOR AND BENEFICIARY AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF TRUSTOR, BENEFICIARY AND THE LENDERS ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TRUSTOR.

Section 9.06 Survival. The indemnifications made pursuant to Article VIII herein shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by (a) any satisfaction, release or other termination of this Deed of Trust or any other Credit Document, (b) any assignment or other transfer of all or any portion of this Deed of Trust or any other Credit Document or Beneficiary's interest in the Property (but, in such case, such indemnifications shall benefit both the Indemnified Parties and any such assignee or transferee), (c) any exercise of Beneficiary's rights and remedies pursuant hereto, including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Credit Agreement or any of the other Credit Documents, any transfer of all or any portion of the Property (whether by Trustor or by Beneficiary following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), (d) any amendment to this Deed of Trust, the Credit Agreement or any other Credit Document, (e) the resignation or removal of Beneficiary and/or (f) any act or omission that might otherwise be construed as a release or discharge of Trustor from the Obligations or any portion thereof.

ARTICLE X.

NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.1 of the Credit Agreement, provided that (i) the address for Trustor hereunder shall be the address used for Trustor as Borrower under the Credit Agreement, and (ii) the address for Beneficiary hereunder shall be the address used for Collateral Agent under the Credit Agreement.

ARTICLE XI.

APPLICABLE LAW

Section 11.01 Governing Law; Jurisdiction; Service of Process. WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THIS DEED OF TRUST, THIS DEED OF TRUST SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES SHALL GOVERN ALL MATTERS RELATING TO THIS DEED OF TRUST; PROVIDED THAT WITH RESPECT TO THE MATTERS OF CAPACITY, POWER AND AUTHORITY OF TRUSTOR, THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN. ALL PROVISIONS OF THE CREDIT AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL, TO THE EXTENT CONSISTENT WITH THE FOREGOING, BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE CREDIT AGREEMENT.

Section 11.02 Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between Trustor, and Beneficiary are hereby and shall automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by Beneficiary shall never exceed the Highest Lawful Rate, (b) in calculating whether any interest exceeds the Highest Lawful Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Trustor to Beneficiary, and (c) if through any contingency or event, Beneficiary receives or is deemed to receive interest in excess of the Highest Lawful Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Trustor to the Lenders, or if there is no such indebtedness, shall immediately be returned to Trustor.

Section 11.03 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Deed of Trust may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary

so that they will not render this Deed of Trust invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Deed of Trust or any application thereof shall be invalid or unenforceable, the remainder of this Deed of Trust and any other application of the term shall not be affected thereby.

ARTICLE XII.

RULES OF INTERPRETATION

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust may be used interchangeably in the singular or plural form and the word "Trustor" shall mean "each Trustor and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels, incurred or paid by Beneficiary in protecting its interest in the Property, the Leases and/or the Rents and/or in enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

ARTICLE XIII.

MISCELLANEOUS PROVISIONS

Section 13.01 No Oral Change. This Deed of Trust, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Trustor or Beneficiary, but only by an agreement in writing signed by the party(ies) against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 13.02 Successors and Assigns. This Deed of Trust shall be binding upon, and shall inure to the benefit of, Trustor and Beneficiary and their respective successors and permitted assigns, as set forth in the Credit Agreement.

Section 13.03 Inapplicable Provisions. If any provision of this Deed of Trust is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Deed of Trust, such provision shall be fully severable and this Deed of Trust shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Deed of Trust, and the remaining provisions of this Deed of Trust shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Deed of Trust, unless such continued effectiveness of this Deed of Trust, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

Section 13.04 Headings, Etc. The headings and captions of the various Sections of this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 13.05 Intentionally omitted.

Section 13.06 Entire Agreement. The Credit Agreement, this Deed of Trust, the other Credit Documents and the Hedge Agreements constitute the entire understanding and agreement between Trustor, Beneficiary and the Secured Parties with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Trustor, Beneficiary and the Secured Parties with respect thereto. Trustor hereby acknowledges that, except as incorporated in writing in the Credit Agreement, this Deed of Trust, the other Credit Documents and the Hedge Agreements, there are not, and were not, and no Persons are or were authorized by Beneficiary or any Secured Party to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Credit Agreement, this Deed of Trust, the other Credit Documents and the Hedge Agreements.

Section 13.07 Limitation on Beneficiary's Responsibility. No provision of this Deed of Trust shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Beneficiary or the Secured Parties, nor shall it operate to make Beneficiary or the Secured Parties responsible or liable for any waste committed on the Property by the Tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Beneficiary or the Secured Parties a "mortgagee in possession."

Section 13.08 Recitals. The recitals hereof are a part hereof, form a basis for this Deed of Trust and shall be considered prima facie evidence of the facts and documents referred to therein.

Section 13.09 Trustee; Successor Trustee. Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever, except if the result of Trustee's negligence or willful misconduct. Trustee shall not be personally liable in case of entry by him or anyone acting by virtue of the powers herein granted him upon the Property for debts contracted or liability or damages or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder or believed by him to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for such of his services hereunder as shall be rendered. Trustor will, from time to time, reimburse Trustee for and save and hold him harmless from and against any and all loss, cost, liability, damage and reasonable expense whatsoever incurred by him in the performance of his duties. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent

required by law) and Trustee shall be under no liability for interest on any monies received by him hereunder. Trustee may resign by giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to exercise the same when requested by Beneficiary or if for any or no reason and without cause Beneficiary shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Beneficiary shall, without any formality or notice to Trustor or any other person, have full power to appoint a substitute trustee and, if Beneficiary so elects, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee. Each appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to, and the book and page of record of, this Deed of Trust, and the description of the real property herein described, which instrument, executed and acknowledged by Beneficiary, shall (i) be conclusive proof of the proper substitution and appointment of such successor Trustee or Trustees, (ii) duly assign and transfer all the estates, properties, rights, powers and trusts of Trustee so ceasing to act and (iii) be notice of such proper substitution and appointment to all parties in interest. In addition, such Trustee ceasing to act shall duly assign, transfer, and deliver any of the property and monies held by Trustee to the successor Trustee so appointed in its or his place. The Trustee may act in the execution of this trust and may authorize one or more parties to act on his behalf to perform the ministerial functions required of him hereunder, including without limitation, the transmittal and posting of any notices and it shall not be necessary for any Trustee to be present in person at any foreclosure sale.

Section 13.10 Credit Agreement. All of the rights, privileges, protections and immunities of the Beneficiary set forth in the Credit Agreement shall apply to the Beneficiary for purpose of this Agreement.

ARTICLE XIV.

ADDITIONAL STATE SPECIFIC PROVISIONS

Section 14.01 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article XIV and the terms and conditions of this Deed of Trust, the terms and conditions of this Article XIV shall control and be binding.

Section 14.02 Additional Remedies Provision. Upon the occurrence and continuance of an Event of Default, Trustor hereby authorizes and empowers Beneficiary, without any notice or demand, except to the extent required by applicable law, and without affecting the lien and charge of this Deed of Trust, to exercise any right or remedy which Beneficiary may have available to it, including, but not limited to, judicial foreclosure, exercise of rights of power of sale without judicial action as to any collateral security for the Obligations, whether real, personal or intangible property. Without limiting the foregoing, Trustor specifically agrees that any action maintained by Beneficiary for the appointment of any receiver, trustee or custodian to collect rents, issues or profits or to obtain possession of the Property shall not constitute an "action" within the meaning of §726 of the California Code of Civil Procedure.

Section 14.03 Credit Document Approval. Trustor has read and hereby approves the Credit Agreement, this Deed of Trust, the other Credit Documents, the Hedge Agreements and

all other documents relating thereto. Trustor acknowledges that it has been represented by counsel of its choice to review the Credit Agreement, this Deed of Trust, the other Credit Documents, the Hedge Agreements and all other documents relating thereto and said counsel has explained and Trustor understands the provisions thereof, or that Trustor has voluntarily declined to retain such counsel.

Section 14.04 Additional Waivers. Upon the occurrence and continuance of an Event of Default, Trustor hereby expressly waives diligence, demand, presentment, protest and notice of every kind and nature whatsoever (unless as otherwise required by law or under this Deed of Trust or the Credit Agreement) and waives any right to require Beneficiary to enforce any remedy against any guarantor, endorser or other person whatsoever prior to the exercise of its rights and remedies hereunder or otherwise.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, THIS DEED OF TRUST has been executed by Trustor as of the day and year first above written.

TRANSBAY JOINT POWERS AUTHORITY,
a Joint Powers Agency

By: _____

Name: _____

Its: _____

ACKNOWLEDGMENT

State of _____)

County of _____)

On _____, 2014, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION

[To be attached.]

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

AGREEMENT NOT TO ENCUMBER OR TRANSFER PROPERTY

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

RECITALS:

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

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

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

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

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

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

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

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

AGREEMENT:

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

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

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

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

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

4. Affordable Housing. The Property and this Agreement are subject to the Transbay Affordable Housing Obligation, which applies to and passes with the Property and applies to and binds the successors in interest of any owner of the Property. The Property shall be held, transferred, sold and conveyed, subject to the conditions, restrictions, reservations and covenants set forth in Transbay Redevelopment Project Area Declaration of Restrictions, recorded in the Official Records of the City and County of San Francisco on August 4, 2006 as Document No. 20061224839 (the "**Declaration of Restrictions**"), which include the Transbay Affordable Housing Obligation. In the event of any sale or transfer of the Property, the purchaser or purchasers and their successors and assigns, and the Property, shall continue to be subject to all of the conditions, restrictions and covenants provided in the Declaration of Restrictions; and, consistent with its enforceable obligations under the Redevelopment Dissolution Law, Agency retains full authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on the Property to meet the requirements of the Transbay Affordable Housing Obligation and implement the Redevelopment Plan.

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

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

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

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

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

If to Borrower:

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

With a copy to Borrower's Legal Counsel:

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

If to Collateral Agent:

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

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

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

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

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

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

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

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

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

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

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

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

[Signature page to follow]

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

BORROWER:

TRANSBAY JOINT POWERS AUTHORITY,
a Joint Powers Agency

By: _____
Name: _____
Its: _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of the Notary Public

(Seal)

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

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

COLLATERAL AGENT:

GOLDMAN SACHS BANK USA, as Collateral
Agent

By: _____
Name: _____
Its: _____

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public,
personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of the Notary Public

(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To be attached.]

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

\$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 [●]¹ 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).

¹ 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:

| | Base Rate Loans | Eurodollar Rate Loans |
|---|------------------------|------------------------------|
| 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.²

“**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

² 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 set.

“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 AA-Am-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.³

“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’

³ 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.⁴

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

⁴ 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 ContractsError! 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 MattersError! 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 34179.7.⁵

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

⁵ 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

(l) 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 \$1,000,000 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

| Lender | Commitment | Pro Rata Share |
|------------------------|-------------------|-----------------------|
| Goldman Sachs Bank USA | \$ _____ | __._% |
| | \$ _____ | __._% |
| | \$ _____ | __._% |
| Total | \$ _____ | 100% |

**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:

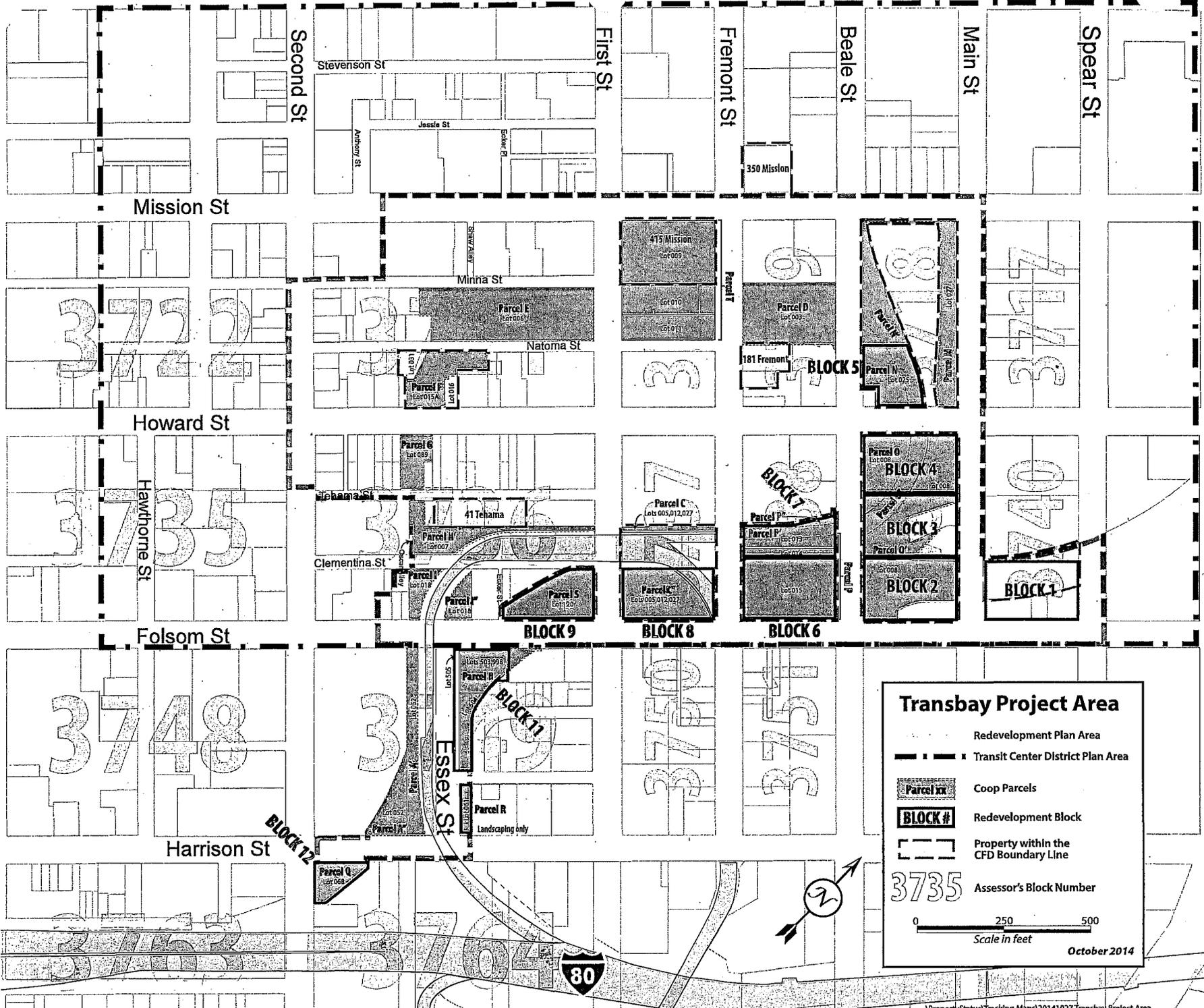
Attention:
E-mail:

with a copy to:

Attention:
E-mail:

633742.7

Attachmen



Stewart St

Spear St

Main St

Beale St

Fremont St

First St

Second St

Mission St

Howard St

Folsom St

Harrison St

Stevenson St

Jessie St

Minna St

Natoma St

Lebanon St

Clementina St

Essex St

350 Mission

415 Mission
Parcel T
Lot 005
Lot 010
Lot 011

181 Fremont
Parcel D
Lot 003
Parcel E
Lot 005
Parcel F
Lot 007

Parcel F
Lot 005
Parcel G
Lot 006

Parcel 6
Lot 089

41 Tehama
Parcel H
Lot 007

Parcel C
Lot 005, 012, 027

Parcel J
Parcel K
Parcel L
Parcel M
Parcel N
Parcel O
Parcel P

Parcel 0
Parcel 1
Parcel 2
Parcel 3
Parcel 4
Parcel 5
Parcel 6
Parcel 7
Parcel 8
Parcel 9

Parcel I
Lot 018

Parcel S
Lot 120

Parcel C
Lot 005, 012, 027

Parcel K
Parcel L
Parcel M
Parcel N
Parcel O
Parcel P
Parcel Q

Parcel R
Landscaping only

Parcel Q
Lot 008

Transbay Project Area

- Redevelopment Plan Area
- Transit Center District Plan Area
- Parcel xx
- BLOCK #
- Property within the CFD Boundary Line
- Assessor's Block Number

0 250 500
Scale in feet

October 2014

3030



Wong, Linda (BOS)

From: Pash, Courtney (CII)
Sent: Wednesday, November 12, 2014 12:28 PM
To: Wong, Linda (BOS)
Subject: RE: Request for Documents - File No. 141155 - First Amendment to Option Agmt
Attachments: Bridge Loan - Agreement Not to Encumber.pdf; Bridge Loan - Credit Agreement.pdf; Bridge Loan - City Consent Letter.pdf

Linda –

Attached per your request:

1. There is Credit Agreement (11-5-14 draft) (Note that there is no one document called "Bridge Loan." Instead there are multiple related documents that together make up the loan documents. We assume that the Credit Agreement is what the City is looking for.)
2. Agreement Not to Encumber of Transfer Property (10-31-14 draft) (Note that this is the same thing as the Recordable negative convent on Parcels O, O', and O".)
3. City Consent Letter (10-30-14 draft)
4. It is unclear if we have to fill out Ethics form 126. Can you call me to discuss.

Thanks,

Courtney

Courtney Pash
Acting Project Manager, Transbay
Office of Community Investment and Infrastructure
One South Van Ness Ave, 5th Floor
San Francisco, CA 94103
(415) 749-2439
courtney.pash@sfgov.org

From: Wong, Linda (BOS)
Sent: Monday, November 10, 2014 4:50 PM
To: Pash, Courtney (CII)
Subject: Request for Documents - File No. 141155 - First Amendment to Option Agmt

Hi Courtney,

Please provide the following documents regarding the above mentioned file:

1. Bridge Loan
2. Recordable negative convent on Parcels O, O', and O"
3. City Consent Letter
4. Ethics Form 126 (1 for BOS and 1 for the Mayor's Office)

Since this item may be heard at next Wednesday's Budget and Finance Committee meeting; therefore, please provide us with the documents no later than **5:00 p.m., Thursday, November 13, 2014.**

Thank you.

Linda

Linda Wong
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102-4689
Phone: 415.554.7719 | Fax: (415) 554-5163
Linda.Wong@sfgov.org | www.sfbos.org

Please complete a Board of Supervisors Customer Service Satisfaction form by clicking [here](#).

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Supervisor Jane Kim

Subject:

Approval of First Amendment to Option Agreement for the Purchase and Sale of Real Property. With Transbay Joint Powers Authority

The text is listed below or attached:

See attached.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

