

**OMNIBUS AMENDMENT  
AND RELEASE AGREEMENT**

by and among

**DEUTSCHE BANK AG, NEW YORK BRANCH,**  
as sole Bondholder,

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

**T8 URBAN HOUSING ASSOCIATES, LLC,**  
as Borrower

**T8 URBAN HOUSING ASSOCIATES BMR, L.P.**  
as BMR Owner,

**CITY AND COUNTY OF SAN FRANCISCO,**  
as Issuer

and

**T8 URBAN CONDO OWNER, LLC,**  
as Condo Borrower

Dated as of \_\_\_\_\_, 2020

**Relating to:**

**\$240,260,000**  
**City and County of San Francisco**  
**Variable Rate Multifamily Housing Revenue Bonds**  
**(Transbay Block 8 Tower Apartments)**  
**2016 Series H**

**OMNIBUS AMENDMENT  
AND RELEASE AGREEMENT  
(Series H)**

This **OMNIBUS AMENDMENT AND RELEASE AGREEMENT** (this “Amendment”) is made and entered into as of \_\_\_\_\_, 2020 (the “Effective Date”), by and among **DEUTSCHE BANK AG, NEW YORK BRANCH**, as sole Bondholder (together with its successors and assigns, “DBNY”), **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as Trustee (together with its successors and assigns, “Trustee”), **T8 URBAN HOUSING ASSOCIATES, LLC**, a Delaware limited liability company (together with its successors and assigns, “Borrower”), **T8 URBAN HOUSING ASSOCIATES BMR, L.P.** a California limited partnership (together with its successors and assigns, the “BMR Owner”), the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation organized and existing under the laws of the State of California (together with its successors and assigns, “Issuer”), and has been acknowledged and consented to by **T8 URBAN CONDO OWNER, LLC**, a Delaware limited liability company (together with its successors and assigns, the “Condo Borrower”).

**WITNESSETH:**

WHEREAS, in accordance with that certain Loan Agreement, dated as of December 1, 2016, by and among Issuer, Borrower, Condo Borrower and Trustee (as amended, restated and/or supplemented from time to time, the “Loan Agreement”), Issuer made a loan (the “Mortgage Loan”) to Borrower and Condo Borrower, the proceeds of which were used to finance, in part, the acquisition and construction of a 350-unit multifamily rental housing facility constituting a portion of a high-rise tower located at 450 Folsom Street in San Francisco, California, presently known as Avery 450 and originally known as Transbay Block 8 Tower Apartments (the “Project”); and

WHEREAS, to finance the Mortgage Loan, the Issuer issued, sold and delivered the following bonds: the City and County of San Francisco Variable Rate Multifamily Housing Revenue Bonds (Transbay Block 8 Tower Apartments), 2016 Series H, in the principal amount of \$240,260,000 (the “Bonds”), consisting of four subseries, including 2016 Series H-1, in the principal amount of \$85,940,000, 2016 Series H-2, in the principal amount of \$85,940,000, 2016 Series H-3 (Taxable), in the principal amount of \$34,190,000, and 2016 Series H-4 (Taxable), in the principal amount of \$34,190,000 pursuant to that certain Indenture of Trust, dated as of December 1, 2016 (as amended, restated and/or supplemented from time to time, the “Indenture” and together with the Loan Agreement and the other Mortgage Loan Documents, the “Bond Documents”); and

WHEREAS, the Bonds are currently outstanding in the principal amount of \$[208,130,000], consisting of \$85,940,000 of 2016 Series H-1, \$85,940,000 of 2016 Series H-2, \$[18,125,000] of 2016 Series H-3 and \$[18,125,000] of 2016 Series H-4; and

WHEREAS, the Bonds are secured and supported by: (a) a promissory note to evidence the principal amount of the Mortgage Loan originated pursuant to the Loan Agreement; (b) a pledge of the Revenues (as defined in the Indenture) derived by the Issuer pursuant to the Mortgage Loan; (c) the Deed of Trust (as defined in the Indenture); and (d) a letter of credit (the “Letter of”

Credit”) issued by Bank of China, New York Branch (the “Bank”) and delivered to the Trustee; and

WHEREAS, simultaneously with the execution and delivery of the Loan Agreement and the Bonds, Wells Fargo Bank, National Association (the “Condo Lender”) made a loan (the “Condo Loan”) to Borrower and Condo Borrower to, among other things, finance the development and construction of Condominium Component (as defined in that certain Declaration of Reciprocal Easement, Covenants, Conditions and Restrictions for Transbay Block 8 (the “REA”)) pursuant to that certain Building Loan Agreement between Condo Lender, Borrower and Condo Borrower dated December 1, 2016; and

WHEREAS, the Borrower has directed that the interest rate on the Bonds will be converted to a Fixed Rate and that the Letter of Credit is terminated in connection therewith (the “Conversion”); and

WHEREAS, at the time of the Conversion, the Bonds will be amended to be secured solely by the Market Rate Apartment Component, the Tower BMR Component, the Garage Component, the Commercial Component (as such terms are defined in the REA) and associated interests; and

WHEREAS, contemporaneously with the Conversion, the Condo Loan will be refinanced and secured solely by the Condominium Component and associated interests and the Condo Borrower will be released as an obligor under the Bond Documents and the Condominium Component will be released as security for the Bonds; and

WHEREAS, DBNY is purchasing the Bonds in whole at Conversion; and

WHEREAS, the parties hereto desire to modify the Bond Documents pursuant to the terms and conditions of this Amendment effective on the Effective Date from and after time of Conversion in connection with the foregoing.

#### **AGREEMENTS:**

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the parties do hereby agree as follows:

1. **Recitals**. The foregoing recitals are incorporated herein by reference and are part of this Amendment. The Borrower hereby represents and warrants that the recitals are true, accurate and correct as of the date hereof.

2. **Defined Terms**. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bond Documents.

3. **Effective Date**. The amendments herein shall be effective on the Effective Date from and after time of Conversion and thereafter.

4. **Omnibus Amendments**. The following

(a) References to “Owners”, “Beneficial Owners”, “Bondowners”, Bondholders”, “Holders” and “Registered Owners”. All references in the Bond Documents, as

applicable, to Owners”, “Beneficial Owners”, “Bondowners”, “Bondholders”, “Holders” and “Registered Owners” are hereby amended to refer to the Bondholder Representative, together with its successors and assigns.

(b) References to Bond Documents. All references in each of the Bond Documents to any one or more of the other Bond Documents are hereby amended to refer such other Bond Documents, as amended hereby and as further amended, restated and/or supplemented from time to time. The following documents delivered for the benefit of the Trustee on the date hereof shall constitute “Mortgage Loan Documents” for all purposes: (i) Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing; (ii) Non-Recourse Exceptions and Carry Guaranty; (iii) Environmental Compliance and Indemnification Agreement; (iv) Assignment of Service Contracts, Warranties and Guaranties; (v) Assignment of Contracts and Interest in Licenses, Permits and Agreements; and (vi) Replacement Reserve Agreement.

(c) Deletion of Certain References. The following defined terms are deleted and associated references removed where context may require: “Collateral Agent,” “Condo Borrower,” “Condo Lender,” “Condo Loan,” “Condo Loan Documents”, “Directly Purchased Bonds,” “Bond Intercreditor Agreement” and “HPS.”

(d) Inapplicability of Certain References during Fixed Rate Period. The following defined terms are not applicable and associated references shall be inapplicable where context may require during the Fixed Rate Period: “Bank,” “Bank Bonds,” “Bond Intercreditor Agreement,” “Credit Facility,” “Credit Agreement,” “Letter of Credit” and “Reimbursement Agreement.”

(e) Substitution of Rights of the Bank. Any and all references to rights of the Bank (as such term is defined in the Indenture) shall hereafter be the rights of the Bondholder Representative applicable during the Fixed Rate Period.

(f) Release of Condo Borrower. The Condo Borrower is hereby released as an obligor under all of the Bond Documents. For the purpose of clarity, the definition of Borrower in the Indenture is hereby amended to mean “T8 Urban Housing Associates, LLC, a Delaware limited liability company, and its successors and assigns.”

(g) Notice Provisions. The notice provision of each Bond Document is hereby amended by striking, as applicable, each notice address for the Bank, the Collateral Agent, the Rating Agency and the Remarketing Agents and replacing it with the following:

Deutsche Bank AG, New York Branch  
60 Wall Street  
3<sup>rd</sup> Floor  
New York, New York 10005  
Attention: Municipal Capital Markets  
Facsimile: (917) 338-4032

With a copy to:

Kutak Rock LLP

1760 Market Street, Suite 1100  
Philadelphia, Pennsylvania 19103  
Attention: Andrew P. Schmutz, Esquire  
E-mail: [Andrew.Schmutz@kutakrock.com](mailto:Andrew.Schmutz@kutakrock.com)

(h) Termination of Mezzanine Rights. All references to and rights of HPS (as defined in the Indenture) under or in connection with the Bond Documents shall hereby be stricken and terminated.

5. **Specific Amendments**.

(a) Definitions. The definition section of the Indenture shall be amended to add the definitions of “Bondholder Representative” and “Maturity Date” and to replace the definition of “Approved Investors” as follows:

“Approved Transferee” means (1) a “qualified institutional buyer” (“QIB”) as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof (the “Securities Act”) that is a financial institution or commercial bank having capital and surplus of \$5,000,000,000 or more; (2) an affiliate of an entity described in clause (1); (3) a trust or custodial arrangement established an entity described in clause (1) or (2), the beneficial interests in which will be owned only by QIBs; or (4) “accredited investors” as defined in Rule 501(a) (1) – (3) promulgated under the Securities Act (referred to herein as “Accredited Investors”).

“Bondholder Representative” shall mean the Person or Persons who are designated by the Holders of more than 50% of the aggregate principal amount of all Outstanding Bonds (or beneficial interests therein) to act on behalf of holders. Deutsche Bank Securities Inc. shall be the initial Bondholder Representative. The Bondholder Representative may appoint a third party to act as its representative in certain capacities, provided it does so in writing and provides such written designation to the Trustee and the Issuer.

“Maturity Date” shall mean November 1, 2056.”

(b) Section 202(f)(i)(D) of the Indenture is deleted and replaced with the following:

“(D) a certification from the Borrower that upon Conversion that the provisions of Section 6.18 of the Loan Agreement regarding continuing disclosure will be met;”

(c) Section 202(f)(i)(F) of the Indenture is deleted and replaced with the following:

“(F) a certification from the Borrower that prior to or upon Conversion a check or wire transfer shall be provided to the Trustee in the amount, if any, estimated by the Remarketing Agent, to pay all costs associated with the Conversion (excluding underwriter costs and fees to remarket Bonds but including the costs and applicable fees of the Trustee and the Issuer).”

(d) Section 203 of the Indenture is amended to add a new paragraph at the end thereof as follows:

“Notwithstanding anything to the contrary in this indenture, solely during the Fixed Rate Period, the following restrictions on transfer shall apply: Unless the Bonds are rated “A,” without regard to a modifier (or the equivalent) or better by a Rating Agency, the Bonds shall be sold and subsequently transferred only in Authorized Denominations to an Approved Transferee that shall execute and deliver to the Trustee an Required Transferee Representations Certificate. Notwithstanding the preceding sentence, no Required Transferee Representations Certificate shall be required to sell or transfer Bonds to (A) an affiliate of an Approved Transferee or Bondholder Representative or (B) a special purpose entity, a trust or custodial arrangement created pursuant to the definition of “Approved Transferee.”

(e) The first sentence of Section 401 of the Indenture is deleted and replaced with the following:

“The Issuer shall, with the consent of the Borrower and the Credit Provider, appoint a Remarketing Agent for each subseries of the Bonds subject to the conditions set forth in Section 402, pursuant to the Remarketing Agreement; provided however for Bonds to be remarketed pursuant to Section 212 (b) a Remarketing Agent may, but need not, be appointed at the election of the Borrower and provided further that after Conversion to a Fixed Rate Period a Remarketing Agent need not be in place during such Fixed Rate Period.”

(f) Interest Payment Dates after Fixed Rate Conversion Date. Section (d) of the definition of Interest Payment Date in the Indenture is hereby deleted as replaced with the following:

“(d) after the Fixed Rate Conversion Date, the first Business Day of each month,”

(g) Optional Redemption. Section 602(b)(iii) of the Indenture is hereby deleted and replaced with the following:

“(iii) The Bonds may be redeemed upon 45 days’ prior written notice from the Borrower (and approved by the Credit Provider, if applicable) to the Trustee (with a copy to the Issuer and Remarketing Agent, if applicable) in whole or in part on any Interest Payment Date on or after \_\_\_\_\_ 1, 2021 at a redemption price equal to the principal amount redeemed plus interest to the redemption date.”

(h) Section 608 of the Indenture is being deleted and replaced with the following:

“Section 608. Purchase in Lieu of Redemption. The Borrower shall have the option to cause the Bonds to be purchased in whole but not in part by the Borrower or its designee in lieu of redemption pursuant to Section 602(b) and the Bondholder Representative or the Borrower shall have the option to cause the Bonds to be purchased in lieu of redemption pursuant to Sections 602(a)(iii) or (v). Such option may be exercised by delivery to the Trustee on or prior to the Business Day preceding the redemption date of a written notice

of the Borrower or Bondholder Representative, as applicable, specifying that the Bonds shall not be redeemed, but instead shall be subject to purchase pursuant to this Section. Upon delivery of such notice, the Bonds shall not be redeemed but shall instead be subject to mandatory tender at the purchase price on the date that would have been the redemption date. In connection with such purchase, the Bonds shall, at the written direction of the Borrower be converted pursuant to Section 202(f). If a Conversion does not occur on such date the Bonds shall continue to bear interest at the Fixed Rate.”

(i) Disbursement of Loan Proceeds.

(i) Section 4.2(a) of the Loan Agreement is hereby amended to provide that the Bondholder Representative shall approve any Funding Requisitions.

(ii) Section 4.2(b) of the Loan Agreement is hereby amended to delete the third sentence thereof and replace it with

“In connection with such prepayment of the Mortgage Note, the Trustee shall cause the Bonds to be redeemed in such amount pursuant to Section 602(a)(i) of the Indenture.”

(j) Optional Prepayment of Mortgage Note. Section 5.4(b) of the Loan Agreement is hereby deleted and replaced with the following:

“(b) The Borrower may, at its option, prepay the Mortgage Note in a manner consistent with the requirements of Section 602(b)(iii) of the Indenture in whole or in part on any Interest Payment Date on or after \_\_\_\_\_ 1, 2021.”

(k) Credit Facility. Section 5.6 of the Loan Agreement is hereby amended to delete the words “(other than during any period when the Bonds are Directly Purchased Bonds (as such term is defined in the Indenture))” and insert in replacement thereof “(other than following the Fixed Rate Conversion Date).”

(l) Insurance and Condemnation Proceeds. Section 5.7 of the Loan Agreement is hereby deleted and replaced with “[Reserved]”

(m) Mortgage Note. All references in the Mortgage Note to “Credit Facility Termination Date” are hereby deleted and replaced with “Maturity Date of the Bonds.”

6. **Ratification.** Except as expressly amended by this Amendment, all terms and provisions of the Documents shall remain in full force and effect. Except as amended hereby, the parties hereto hereby ratify and reaffirm all of the terms and conditions of the Documents.

7. **Full Force and Effect.** Except as expressly amended pursuant to this Amendment, all of the terms and conditions of the Bond Documents are and shall remain in full force and effect.

8. **Not a Novation.** The parties hereto acknowledge and agree that this Amendment shall not constitute a novation of the obligations or indebtedness evidenced and/or secured by the Bond Documents.

9. **Further Assurances.** Borrower hereby agrees to promptly execute and deliver such additional documents, instruments or agreements as may be reasonably requested by DBNY and as may be necessary or appropriate to effectuate the purposes of this Amendment, provided, however, Borrower shall have no obligation to execute any such additional document, instrument or agreement which would alter any material provision of any Loan Document or cause an increase in Borrower's obligations or liabilities.

10. **Direction to Trustee.** By their execution of this Amendment, the other parties hereto direct the Trustee to enter into this Amendment.

11. **Governing Law.** This Amendment shall be governed by and enforced in accordance with the laws of the State of California, without giving effect to the choice of law principles of the State of California that would require the application of the laws of a jurisdiction other than the State of California.

12. **Severability.** The invalidity, illegality or unenforceability of any provision of this Amendment shall not affect the validity, legality or enforceability of any other provision of this Amendment, and all other provisions shall remain in full force and effect.

13. **Successors and Assigns.** This Amendment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

14. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which shall constitute an original but taken together shall constitute one agreement.

15. **Conflict.** If any of the provisions of this Amendment directly conflict with or contradict any other provision of the Bond Documents, this Amendment shall control.

[remainder of page intentionally left blank]



IN WITNESS WHEREOF, each of the undersigned has duly executed and delivered this Amendment or caused this Amendment to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intend that this Amendment shall be deemed to be signed and delivered as a sealed instrument.

**DEUTSCHE BANK AG, NEW YORK BRANCH,  
as sole bondholder**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

[signatures continue on following page]

**TRUSTEE:**

**U.S. BANK NATIONAL ASSOCIATION, as  
Trustee**

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

[signatures continue on following page]

**BORROWER:**

**T8 URBAN HOUSING ASSOCIATES, LLC**, a  
Delaware limited liability company

By: \_\_\_\_\_

Name:

Title:

[signatures continue on following page]

**BMR OWNER:**

**T8 URBAN HOUSING ASSOCIATES BMR,  
L.P.**, a California limited partnership

By: \_\_\_\_\_

Name:

Title:

[signatures continue on following page]

**ISSUER:**

**CITY AND COUNTY OF SAN FRANCISCO**, as  
the Issuer

By: \_\_\_\_\_

Name:

Title:

Approved as to form:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_

Heidi J. Gewertz

Deputy City Attorney

[signatures continue on following page]

Acknowledged and consented to by:

**T8 URBAN CONDO OWNER, LLC**, a  
Delaware limited liability company

By: T8 HOLDCO LLC, a Delaware  
limited liability company

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