

**STAFF REPORT FOR CALENDAR ITEM NO.: 9
FOR THE MEETING OF: November 13, 2014**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Approve a \$171 million direct loan with Goldman Sachs Bank USA (“Goldman Sachs”), and other associated documents, to provide interim financing for Phase 1 of the Transbay Transit Center Program (the “Project”).

SUMMARY:

The Transbay Joint Powers Authority (“TJPA”) has been planning for some time to secure interim bridge financing for Phase 1 of the Project. This plan allows TJPA to, on the one hand, time the sale of the former State-owned parcels with the recovery of the real estate market, maximizing the value of the parcels, while, on the other hand, certify construction packages and move construction work ahead promptly to secure pricing in the construction market.

In January 2010, TJPA closed a loan (the “TIFIA Loan”) in a principal amount up to \$171 million for eligible Project costs from the United States Department of Transportation (“USDOT”), acting by and through the Federal Highway Administrator (the “TIFIA Lender”) under the Transportation Infrastructure Finance and Innovation Act of 1998, §§ 1501 et seq. of Public Law 105-178 (as amended by the Public Law 105-206 and Public Law 109-59) to finance a portion of the costs of Phase 1 of the Project. The loan proceeds will be available when conditions precedent to draw are met, anticipated in Fiscal Year (“FY”) 2016. Earlier this year, TJPA and the TIFIA Lender negotiated an amendment to the TIFIA Loan to enable TJPA to secure interim financing (the “Bridge Financing”) that will allow TJPA to meet contract certification and cash flow needs in FY 2015 and FY 2016, prior to the time that the disbursement conditions of the TIFIA Loan are expected to be satisfied. The TJPA Board approved this amendment (the “TIFIA Amendment”) on May 8, 2014, and it was executed by the USDOT on June 3, 2014.

Concurrently with the negotiation of the TIFIA Amendment, TJPA conducted a competitive procurement process for an interim bridge financing, releasing a Request for Proposals (“RFP”) on February 28, 2014. Nine proposals were received in April, from various banks and investment banking firms. Six proposers were shortlisted and interviewed; following interviews, three teams were further shortlisted. 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. TJPA and Goldman Sachs have been working since April to negotiate the Credit Agreement and related documents.

The Bridge Financing proposed by Goldman Sachs will take the form of a direct loan in the amount of \$171 million. The Bridge Financing will have a 4-year term, with bullet 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 upon satisfaction of the conditions precedent to the TIFIA Loan, as modified by the TIFIA Amendment. As noted above, these conditions precedent are expected to be satisfied in FY 2016 (late calendar year 2015). Other terms and conditions of the Bridge Financing are as further described below.

EXPLANATION:

TJPA's Phase 1 funding plan (the "Phase 1 Funding Plan") identifies revenue sources such as grants, land sales proceeds, lease income from acquired property, and other one-time revenue generation opportunities. The Phase 1 Funding Plan also identifies long-term revenue sources, such as net tax increment generated by certain formerly State-owned parcels (the "State-owned parcels") in the Transbay Redevelopment Area, and commitments from transit operators using the new Transit Center. The bulk of the revenue from the long-term funding sources is anticipated to arrive after TJPA completes construction of the new Transit Center (that is, after the TJPA incurs the costs of construction). Thus, the Phase 1 Funding Plan includes a construction period loan to bridge that gap. In 2010, the TIFIA Lender approved the TIFIA Loan, a construction period loan for Phase 1 in the principal amount of up to \$171 million.

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

While the TIFIA Loan was closed in 2010, TJPA must meet a set of disbursement conditions prior to the initial draw of proceeds from it. 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 Redevelopment Blocks 5 and 8. 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 Amendment 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.

TJPA anticipated that interim Bridge Financing would allow TJPA to time the sale of the former State-owned parcels with the recovery of the real estate market, maximizing the value of the parcels. The gross sales proceeds from the parcels directly funds Capital Costs for the Project. The Bridge Financing also allows TJPA to certify construction packages and move construction work ahead promptly to secure pricing in the current construction market.

Since the current Project construction schedule for Phase 1 requires funding in FY 2015 and FY 2016, prior to the anticipated drawdown of the TIFIA Loan, TJPA initiated a process to amend the TIFIA Loan agreement to, among other things, allow for the Bridge Financing. On June 3, 2014, after approval of the TIFIA Amendment by the TJPA Board, USDOT executed the TIFIA Amendment. The TIFIA Amendment permits TJPA to issue short-term indebtedness on parity with and/or subordinate to the TIFIA loan, secured by the Pledged Revenues under the TIFIA Loan, and which TJPA expects to be repaid with TIFIA Loan proceeds once the TIFIA Loan conditions precedent to disbursement have been satisfied.

On February 28, 2014, an RFP was issued for a \$171 million bridge financing and/or long-term tax increment financing. The RFP was not a prescriptive term sheet; TJPA encouraged responders to offer creative financing solutions that could include bridge financing for the period during which TJPA is not able to draw down on the TIFIA Loan, or alternatives to the TIFIA Loan altogether. A pre-proposal meeting was held on March 6, 2014. An additional information session, focusing on the progress of both land sales and construction, was held on March 28, 2014. On April 3, 2014, nine proposals were received, from the following banks and investment banking firms:

- Backstrom McCarley Berry & Co.
- Bank of America Merrill Lynch
- Barclays
- Goldman Sachs
- J.P. Morgan
- Morgan Stanley
- Stifel, Nicolaus & Company
- US Bancorp
- Wells Fargo

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 evaluated the proposals and shortlisted the following six firms for interviews, which were held on April 9, 2014:

- Bank of America Merrill Lynch
- Barclays
- Goldman Sachs
- Morgan Stanley
- Stifel, Nicolaus & Company
- Wells Fargo

Following the interviews, three firms were further shortlisted—Goldman Sachs, Morgan Stanley, and Wells Fargo—and additional questions were sent to these firms. The three firms each offered a variety of solutions involving issuing different types of debt, but Goldman Sachs was the only firm offering this particular solution. The Bridge Financing is expected to be repaid with the proceeds of the TIFIA Loan. The selection committee

ranked the Goldman Sachs proposal the highest, largely for its cost-effectiveness and potential for greater certainty of execution, and negotiations commenced in April 2014.

TJPA and Goldman Sachs, together with their consultants, entered into a phase of due diligence and negotiation of the terms and conditions for the Bridge Financing. Key terms and conditions of the Bridge Financing include, among others:

- Goldman Sachs (“GS”) will serve as Sole Lead Arranger, Administrative Agent and Syndication Agent.
- GS intends to syndicate the Bridge Financing loan to other financial institutions and potential lenders (collectively, the “Lenders”).
- The Bridge Financing will be a \$171 million senior secured term loan facility, with one disbursement on the closing date and a four-year term with payment at maturity, with the option to pre-pay the loan without penalty 12 months after the closing date.
- The interest rate shall be variable, based upon the 3-month adjusted London Interbank Offered Rate (“LIBOR”), plus a 2.25% margin which steps up 50 basis points (0.5%) each year that the loan is outstanding. Interest will be paid quarterly, from a capitalized interest account set up at closing netted from the Bridge Financing proceeds and equal to the aggregate amount of interest projected to be paid by TJPA on the entire outstanding principal amount of the Bridge Financing through the maturity date (after giving effect to any interest rate protection agreements entered into by TJPA, as described below). Thus, TJPA would set aside the full interest assuming a four year term and no prepayments of the Bridge Financing. A portion of this set aside would be returned to TJPA if it prepays the loan before maturity.

Interest Rate Protection

TJPA will enter into interest rate protection against increases in interest rates for 100% of the outstanding principal amount of the Bridge Financing on the closing date, through an interest rate cap. TJPA has analyzed several interest rate management tools and selected an interest rate cap as the most cost-effective and suitable form of interest rate protection required under the Bridge Financing. The interest rate cap will be based on the \$171 million loan notional amount and a term of four years (coterminous with the final maturity of the Bridge Financing).

Under the terms of the interest rate cap, TJPA and the interest rate cap provider will agree to a maximum interest rate. If the 3-month LIBOR variable rate that the Bridge Financing is based on increases above this maximum rate, the interest rate cap provider will pay TJPA the difference. In exchange for this agreement, TJPA will pay the interest rate cap provider a one-time fee when the interest rate cap is priced (after the pricing of the Bridge Financing). The interest rate cap premium will be paid at financial close of the Bridge Financing, from the proceeds of the Bridge Financing.

As noted above, the interest to be paid by TJPA on the Bridge Financing will be equal to 3-month LIBOR plus the margin, or spread. The margin or spread is a fixed percent that

starts at 2.25% for the first year of the Bridge Financing and steps up 0.5% each year that the Bridge Financing is outstanding. The interest rate cap transaction will allow TJPA to cap the portion of the interest that is based on 3-month LIBOR. For example, if the cap rate is set at 1.00%, then the maximum rate that TJPA will pay with respect to 3-month LIBOR is 1.00% even if 3-month LIBOR exceeds 1.00%. The overall maximum rate that TJPA will pay is the 1.00% cap rate plus the margin or spread.

To provide a more detailed example, if 3-month LIBOR is 0.25% and the margin or spread is 2.25% at the time of closing, the loan rate at the time of closing will be 2.50% per annum. TJPA is considering setting the cap rate an additional 50-100 basis points (0.5% to 1.00%) above 3-month LIBOR at the time of closing, or in this example at 0.75% if the cap rate is 50 basis points above or 1.25% if the cap rate is 100 basis points above. On each scheduled quarterly payment date the interest rate cap provider will compensate TJPA to the extent that 3-month LIBOR exceeds the 0.75%, or 1.25%, as applicable, over the interest payment period. Thus in the 50 basis point cap rate example, TJPA would pay interest at a rate not to exceed 3.00% (i.e., 0.75% based on 3-month LIBOR cap rate, plus the margin of 2.25%). The cap rate and the cost of the interest rate cap and other business terms will be based on the market and finalized at the time the cap transaction is entered into.

TJPA will enter into an International Swaps and Derivatives Association, Inc. (“ISDA”) Master Agreement which sets forth all of the general terms and conditions (including, but not limited to, representations, covenants, events of default, termination events and early termination provisions) governing the interest rate cap transaction between the parties. The ISDA Master Agreement is a pre-printed form of agreement which includes a Schedule that allows parties to modify the various sections of the ISDA Master Agreement as well as a Credit Support Annex that provides the terms upon which collateral is pledged to one party from another party. Since the obligations of TJPA will be met by the payment by TJPA of a cap premium at the time of inception of the cap transaction, TJPA will have no obligations to post collateral under the Credit Support Annex. However, the cap provider will have an obligation to post collateral to TJPA under certain specified circumstances because the cap provider will have potential payment obligations to TJPA over the term of the cap transaction. The ISDA Master Agreement does not contain any commercial terms specific to a particular transaction. The final commercial terms will be included in the Confirmation, which contains information specific to the proposed TJPA interest rate cap, i.e., the four year maturity or scheduled termination date, the optional termination rights, the scheduled payment dates, the cap rate, the amount of the premium, etc.

Additional Security

In addition to the security of Pledged Revenues, because the net tax increment portion of the Pledged Revenues is not yet mature, GS requires additional security as further protection in the unlikely event that TJPA is unable to drawdown 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 Redevelopment Parcel F and the two adjacent parcels that TJPA previously acquired with funds provided by the Metropolitan Transportation

Commission (“MTC”), which deed of trust 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 Cooperative Agreement Parcels O, O’, and O”, specifying that if the portion of the parcels that make up Redevelopment Block 4 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 attached map shows the location of the real estate collateral.

Provision of a first priority lien on and security interest in the real estate collateral requires that Caltrans relinquish its existing power of termination over Cooperative Agreement Parcel F and the portions of Cooperative Agreement Parcels O, O’, and O” that make up Redevelopment Block 4. Caltrans has indicated that it is amenable to this requirement so long as TJPA deposits all of the Bridge Financing proceeds into the trust account set up for land sales proceeds to pay for capital costs associated with construction of the Transit Center, 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. If after the Bridge Financing is redeemed Redevelopment Parcel F or Block 4 are sold to a third party for more than the amount of funds deposited into the trust account at closing of the Bridge Financing, TJPA would also deposit that difference into the trust account. TJPA staff has been working with Caltrans staff to finalize the form of relinquishments and escrow instructions.

Redevelopment Parcel F is comprised of Cooperative Agreement Parcel F and two private parcels, 75 Natoma and 546 Howard, that TJPA acquired from private entities with bridge toll funds from MTC in order to demolish the former bus ramps and construct a portion of the train box. When MTC provided the funds to acquire the two parcels (approximately \$5 million), MTC and TJPA entered a quitclaim agreement pursuant to which TJPA deposited a quitclaim deed for the properties in a master escrow account held by a title company. The title company is holding the deed and will not record it unless/until certain triggering events occur (related to timing for completion of construction of the new Transit Center). GS requires that MTC release its right under the quitclaim agreement in order to perfect the security interest. TJPA’s obligations under the quitclaim agreement shall be fully-released, including any obligation to convey the property to MTC upon the occurrence of a triggering event, upon deposit of the above-described amount into the trust account funding construction of the Transit Center, which deposit includes an amount equal to MTC’s earlier funding for the acquisition of the properties. If after the Bridge Financing is redeemed, 75 Natoma and 546 Howard have not yet been conveyed for development, TJPA’s obligations under the quitclaim agreement would be reinstated. MTC has agreed to bring approval of an amendment to the quitclaim agreement to its committee on November 12 and the full Commission on November 19.

To perfect the security package, GS also requires that the Office of Community Investment and Infrastructure (“OCII”) subordinate its existing option on Parcel F and Parcels O, O’, and O” while the Bridge Financing is outstanding. Under the 2008 Option Agreement, OCII has an existing option to acquire certain former State-owned parcels from the City or TJPA, and prepare the parcels for disposition and development by third parties. As a condition of granting the option, OCII has 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 net tax increment generated by the parcels over time. Under the Bridge Financing, 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 (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 between TJPA and OCII.

Under the TJPA-OCII current schedule for disposition and development of Redevelopment Parcel F and Block 4, these parcels are not expected to be developed until TJPA is finished using the parcels for the Temporary Terminal (Block 4) and for construction of the Bus Ramps (Redevelopment Parcel F). Since TJPA expects to meet the conditions to draw on the TIFIA Loan in late 2015 and take out the Bridge Financing at that time, the subordination should be fully released one to two years before OCII expects to exercise its option. If the Bridge Financing and subordination are still outstanding when TJPA and OCII release Redevelopment Parcel F and Block 4 for development, however, the subordination would allow OCII to move forward with exercising its option and selling the parcels so long as the Lien Release Amount is deposited into the lockbox as collateral to secure the Bridge Financing. The Lenders have the discretion, but not the obligation, to allow OCII to exercise the option during the period when the Bridge Financing is outstanding if less than the Lien Release Amount is available.

The real estate collateral, particularly Block 4, is subject to certain affordable housing obligations, which apply to and pass with the property, and apply to and bind 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 the Transbay Redevelopment Project Area Declaration of Restrictions. 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 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. Consistent with OCII’s enforceable obligations under the redevelopment dissolution law, OCII retains full authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on the property to meet the affordable housing obligation and implement the Redevelopment Plan.

Due to the dissolution of redevelopment agencies, several approvals are required to amend the Option Agreement, subordinate the option on the real estate collateral parcels,

and take related measures. The OCII Commission (sitting as successor agency to the former Redevelopment Agency on all matters except matters related to affordable housing) provided authorization to amend the Option Agreement and enter into the subordinations at its meeting of November 4. Also on November 4, the San Francisco Board of Supervisors (sitting as both the successor agency to the former Redevelopment Agency on matters relating to affordable housing, and the City as a party to the Option Agreement) heard the introduction of legislation authorizing the amendment to the Option Agreement and the subordinations. It is then expected that the items providing City approval as a party to the amendment to the Option Agreement will be considered by a Board of Supervisors Committee the week of November 17. TJPA expects that the full Board of Supervisors, which must approve both successor agency affordable housing actions and City actions, would consider approval of the City and OCII items at their November 25 meeting. As required under the redevelopment dissolution law, the OCII Oversight Board would be asked to approve the items thereafter. Following the Oversight Board action, the successor agency items would be submitted to the State Department of Finance (“DOF”). The submittal triggers a 5 business day review period, which DOF may extend by 40 additional days.

The Bridge Financing is to be executed pursuant to the Marks-Roos Local Bond Pooling Act of 1985, Government Code section 6584. In accordance with the Act, following published notice, the City must conduct a public hearing regarding the proposed financing, and, following such hearing, the City must make certain findings under the Act and approve the financing. It is expected that the City would hold the hearing and make the findings at its November 25 meeting.

Other Terms

While the Bridge Financing is outstanding, Pledged Revenues will be deposited into a debt service reserve account for the benefit of the Lenders should the Bridge Financing not be repaid when due and payable. As noted above, TJPA anticipates meeting the conditions precedent to draw on the TIFIA loan in late 2015, which will coincide with the end of the 12-month lockout period of the Bridge Financing; in this instance TJPA plans to draw on the TIFIA Loan and repay the Bridge Financing in full at that time. As the capitalized interest will be sized for the full four-year term of the Bridge Financing, any unused amount, based on actual interest rates and margins over the life of the Bridge Financing will be returned to TJPA upon repayment of the Bridge Financing in full. In addition, after repayment of the Bridge Financing, TJPA will seek to recover the unused value of the interest rate cap by seeking to sell the cap to a third party. TJPA’s ability to sell the cap and the amount recoverable will depend on the movement and expectations regarding future movement of interest rates over the remaining life of the cap, among other factors.

If the Bridge Financing has not been repaid in full on or prior to the date that is 18 months after the closing date of the Bridge Financing, TJPA would be obligated under the Credit Agreement to use its commercially reasonable efforts to provide the Administrative Agent, as security for the benefit of the Lenders, a first priority mortgage on Block 4 (rather than just the negative covenant giving GS the right to the sales

proceeds). If the Bridge Financing has not been repaid in full on or prior to the date that is three years after the closing date, 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 Financing in full.

In addition TJPA and GS have revised the recently amended Collateral Agency and Account Agreement between TJPA, the TIFIA Lender, and U.S. Bank as the Collateral Agent set up for deposit of the Pledged Revenues, such that its terms are consistent with that of the Bridge Financing (the “Second Amendment to the Collateral Agency Agreement”). TJPA and GS also have drafted a new collateral agency agreement with U.S. Bank to reflect certain terms and conditions regarding collateral specific only to the Bridge Financing, including the terms under which funds will be deposited in and withdrawn from the capitalized interest account and lockbox account described above (the “Facility Collateral Agency and Account Agreement”). The TIFIA Lender has reviewed and indicated it will approve the Second Amendment to the Collateral Agency Agreement, which will terminate once the Bridge Financing is repaid in full. The TIFIA Lender has also requested a second amendment to the TIFIA Loan (the “Second TIFIA Amendment”), to include the Parcel F deed of trust and the Block 4 negative pledge as Permitted Liens as defined in the TIFIA Loan. A condition precedent to drawing on the TIFIA Loan will be added, requiring that the Parcel F mortgage and Block 4 negative pledge be released at the time of TIFIA Loan disbursement.

The following table summarizes the sources and estimated uses of funds for the Bridge Financing and costs of issuance. The “Uses of Funds” amounts are based on indicative costs and estimates as of September and October 2014. Actual costs will be dependent upon market and finalized at financial close. Capitalized Interest/Hedging Fees and Transaction Fees are upfront costs netted from the Bridge Financing proceeds. As noted above, if the Bridge Financing is repaid before the maturity date, amounts remaining in the capitalized interest account will be returned to TJPA and TJPA may also be able to offset the initial hedging cost by recovering the unused portion of the interest rate cap by selling it to a third party.

Sources of Funds	
Bridge Financing	\$171,000,000
Uses of Funds	
Proceeds to TJPA	\$133,973,000
Capitalized Interest/Hedging Fees	\$32,360,000
Transaction Fees	\$4,667,000
Total Uses	\$171,000,000

GS has provided its proposed commitment letter, referenced in the Credit Agreement, confirming aspects of the arrangements under which GS would (i) be exclusively authorized by TJPA to act as sole lead arranger, sole bookrunner, and sole syndication agent in connection with the Bridge Financing, (ii) be exclusively authorized by TJPA to act as administrative agent in connection with the Bridge Financing, and (iii) commit to

provide the Bridge Financing (“Commitment Letter”). GS has also provided its proposed fee letter, referenced in the Credit Agreement, setting forth fees payable by TJPA to GS in connection with the Bridge Financing and certain other terms relating to the syndication of the Bridge Financing (“Fee Letter”). The Fee Letter and Commitment Letter have been provided to the Board under separate cover on a confidential basis until all of the contract agreement under the Bridge Financing has been obtained so as not to jeopardize the TJPA’s and the public’s position in the syndication of the Bridge Financing.

Because TJPA cannot fully control the final approval/action dates of the TIFIA, MTC, City, and OCII-related requirements, the closing date for the Bridge Financing has not been set, but is expected to occur between December 8, 2014 and January 15, 2015.

RECOMMENDATION:

Staff recommends that the Board of Directors approve the Bridge Financing and related documents including the Credit Agreement; the ISDA Master Agreement and Attachments, including the Interest Rate Cap Confirmation with final terms to be determined at close; the Second Amendment to the Collateral Agency and Account Agreement; the Facility Collateral Agency and Account Agreement; the Deed of Trust; the Agreement Not to Encumber or Transfer Property; the First Amendment to the Option Agreement; the Subordinations of the Option Agreement; the Amendment to the MTC Quitclaim Agreement; the Second Amendment to the TIFIA Loan; the Fee Letter; the Commitment Letter; and the Lien Release Letter, and authorize the Executive Director to execute the above described documents in substantially the form attached hereto, together with any additions thereto or changes therein or other documents ancillary thereto deemed necessary or advisable by the Executive Director for the purposes of executing and implementing the Bridge Financing.

ENCLOSURES:

Resolution
Credit Agreement
Form of ISDA Master Agreement, Schedule, Credit Support Annex and Confirmation
First Amendment to the Option Agreement
Deed of Trust
Agreement Not to Encumber or Transfer Property
Subordinations of the Option Agreement
Amendment to the MTC Quitclaim Agreement
Second Amendment to the Collateral Agency Agreement
Facility Collateral Agency and Account Agreement
Second Amendment to the TIFIA Loan
Map showing the location of the real estate collateral

CONFIDENTIAL ENCLOSURES PROVIDED UNDER SEPARATE COVER:

Fee Letter
Commitment Letter
Lien Release Letter

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The City and County of San Francisco (the “City”), the Alameda-Contra Costa Transit District (“AC Transit”) and the Peninsula Corridor Joint Powers Board-Caltrain have heretofore executed a Joint Powers Agreement, dated as of April 4, 2001 (the “Joint Powers Agreement”), which Joint Powers Agreement creates and establishes the Transbay Joint Powers Authority (the “TJPA”); and

WHEREAS, The Joint Powers Agreement and state law charge TJPA with financing, design, development, construction, and operation of the Transbay Transit Center Program (the “Transbay Program”), which includes: (1) the design and construction of a temporary terminal and then the permanent Transbay Transit Center, including bus ramps and bus storage facility (“Phase 1”); (2) the extension of Caltrain commuter rail service from its current San Francisco terminus at Fourth and Townsend Streets to a new underground terminus beneath the Transbay Transit Center (“Phase 2”); and (3) activities related to implementation of the Redevelopment Plan for the Transbay Redevelopment Project Area; and

WHEREAS, In January 2010, TJPA closed on a loan in a principal amount up to \$171,000,000 for project costs and additional amounts for capitalized interest from the United States Department of Transportation (“USDOT”), acting by and through the Federal Highway Administrator (the “TIFIA Lender”) under the Transportation Infrastructure Finance and Innovation Act of 1998, §§ 1501 et seq. of Public Law 105-178 (as amended by the Public Law 105-206 and Public Law 109-59) (the “TIFIA Loan”), to finance a portion of the costs of Phase 1 with certain disbursement conditions to be met prior to drawing upon the loan; and

WHEREAS, Securing interim bridge financing for Phase 1 of the Project allows TJPA to time the sale of the former State-owned parcels with recovery of the real estate market and move construction work ahead promptly to secure pricing in the construction market; and

WHEREAS, TJPA and the TIFIA Lender negotiated an amendment (the “TIFIA Amendment”) to the TIFIA Loan that allows, among other things, TJPA to secure interim financing that will allow Phase 1 to move forward on schedule prior to meeting the disbursement conditions of the TIFIA Loan, and the TJPA Board approved the TIFIA Amendment on May 8, 2014 which was executed by USDOT on June 3, 2014; and

WHEREAS, TJPA conducted a competitive procurement process in spring 2014 for an interim bridge financing and received nine proposals from various banks and investment banking firms, and 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 evaluated the proposals and shortlisted six firms for interviews and then further shortlisted three firms for additional inquiries; and

WHEREAS, The selection committee determined a proposal for a variable rate taxable bridge loan from Goldman Sachs Bank USA (“Goldman Sachs”) to be the highest-ranked proposal in the best interest of TJPA; and

WHEREAS, TJPA staff, consultants and counsel have negotiated a Credit Agreement and related documents with Goldman Sachs for a direct loan (the “Bridge Financing”) of \$171,000,000 with a four-year term and a prepayment option at par after one-year, on parity with the TIFIA Loan and anticipated to be repaid with the TIFIA Loan proceeds once the TIFIA Loan is disbursed; and

WHEREAS, In addition to the TIFIA Loan and the revenues pledged to repay the TIFIA Loan, Goldman Sachs requires certain real estate collateral as security for the Bridge Financing, specifically Redevelopment Parcel F and Block 4; and

WHEREAS, Providing a first priority lien on and security interest in the real estate collateral requires Caltrans to relinquish its power of termination over these two former State-owned Parcels, conditioned on the deposit into the trust account established for land sales proceeds, which are then dedicated to pay capital costs of the Project (“Trust Account”), an amount equal to the Bridge Financing proceeds, 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; and

WHEREAS, Providing a first priority lien on and security interest in the real estate collateral requires the Metropolitan Transportation Commission (“MTC”) to release its right under a quitclaim agreement to hold quitclaim deeds for two properties to be aggregated with Parcel F prior to development, 75 Natoma and 546 Howard, in a master escrow account pending occurrence of certain triggering events, conditioned upon the deposit of the above-referenced Bridge Financing proceeds into the Trust Account; and

WHEREAS, Providing a first priority lien on and security interest in the real estate collateral also requires the successor agency to the former Redevelopment Agency, the Office of Community Investment and Infrastructure (“OCII”), to amend the 2008 Option Agreement relating to certain former State-owned parcels, and subordinate its option to purchase and sell Parcel F and Block 4, although OCII will be able to exercise its option as to either or both parcels even if the Bridge Financing is still outstanding so long as a minimum amount of proceeds from the sale of the related real estate collateral is deposited into a lockbox as collateral until the Bridge Financing is repaid; and

WHEREAS, The Bridge Financing is to be executed pursuant to the Marks-Roos Local Bond Pooling Act of 1985, (the “Act”) constituting Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, and pursuant to the Bridge Financing agreements. In accordance with the Act, following published notice, a public hearing regarding the proposed financing must be conducted by the City, and, following such hearing, the City must make certain findings under the Act and approve the financing; and

WHEREAS, The Board has duly considered the proposed financing and hereby determines there are significant public benefits to financing and wishes at this time to approve such finding; now, therefore, be it

RESOLVED, That the foregoing recitals are true and correct, and the TJPA hereby so finds and determines; and be it further

RESOLVED, That the Board approves a \$171 million direct loan with Goldman Sachs, under and pursuant to the Act, to provide for project costs for the Transbay Program and funding of capitalized interest and transaction costs, conditioned on completion of all necessary approvals and actions prior to closing the Bridge Financing; and be it further

RESOLVED, That the Board approves the Credit Agreement, the ISDA Master Agreement and Attachments, including the Interest Rate Cap Confirmation with final terms to be determined at close; the First Amendment to the Option Agreement, the Agreement Not to Encumber or Transfer Property, the Subordinations of the Option Agreement, the Deed of Trust, the Amendment to the MTC Quitclaim Agreement, the Second Amendment to the Collateral Agency and Account Agreement, the Facility Collateral Agency and Account Agreement, the Second Amendment to the TIFIA Loan, the Fee Letter, the Commitment Letter, and the Lien Release Letter, all in substantially the form on file with the Board Secretary, together with any additions thereto or changes therein or other documents ancillary thereto deemed necessary or advisable by the Executive Director, whose execution thereof shall be conclusive evidence of approval of any such additions and changes; and be it further

RESOLVED, That the Board authorizes the recording of the Deed of Trust for Redevelopment Parcel F, and the recording of the Agreement Not to Encumber or Transfer Property on Cooperative Agreement Parcels O, O', and O'', and be it further

RESOLVED, That the Executive Director is hereby authorized and directed to execute, and, as appropriate, record, and if necessary or advisable, the Board Secretary is hereby authorized and directed to attest, the final form of the documents for and in the name and on behalf of TJPA; and be it further

RESOLVED, That the Board authorizes the Executive Director and her designees and/or the Board Secretary to do any and all things and to take any and all such actions, which they, or any of them, deem necessary or advisable to consummate the lawful execution of or the performance of the TJPA under the Credit Agreement and related documents.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of November 13, 2014.

Secretary, Transbay Joint Powers Authority

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).

¹ To be completed with the name of a commercial bank in the deal.

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

“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,

² Subject to on-going discussion about reservation for trainbox and related infrastructure.

subordination agreements, collateral agency agreements and other documents, instruments and 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 AAAM-G or AAA-m or if rated by Moody's having a rating of Aaa;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Redevelopment Plan” means the Redevelopment Plan for the Transbay Redevelopment Project Area approved by Ordinance No. 124-05, adopted by The Board of Supervisors of the City and County of San Francisco on June 21, 2005 and Ordinance No. 99-06 adopted by The Board of Supervisors of the City and County of San Francisco on May 9, 2006, as may be amended, supplemented, or otherwise modified from time to time.

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

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

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

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

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

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

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

“Replacement Lender” as defined in Section 2.20.

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

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

“Revenue and Proceeds Collateral” as defined in 7.1.

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

“Sanctions” as defined in Section 4.26.

“Sanctions Laws” as defined in Section 4.26.

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

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

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

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

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

“State” means the State of California.

“State-owned Parcels” means those parcels identified as “State-owned Parcels” under the Cooperative Agreement.

“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’ and O”, to be executed by Borrower, Successor Agency and Administrative Agent, 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. 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.

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

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

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

2.13. General Provisions Regarding Payments.

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

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

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

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

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

(f) Administrative Agent shall deem any payment by or on behalf of Borrower hereunder that is not made in same day funds prior to 12:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to Borrower and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.7 from the date such amount was due and payable until the date such amount is paid in full.

(g) If an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to Section 8.1 or pursuant to any sale of, any collection from, or other realization upon all or any part of the

Collateral, all payments or proceeds received by Agents in respect of any of the Obligations, shall be applied in accordance with the application arrangements described in Section 8.2.

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

2.15. Making or Maintaining Eurodollar Rate Loans.

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

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

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Borrower shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid or payable by such Lender to Lenders of funds borrowed by it to make or carry its Eurodollar Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a

default by such Lender) a borrowing of any Eurodollar Rate Loan does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing, or a conversion to or continuation of any Eurodollar Rate Loan does not occur on a date specified therefor in a Conversion/Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its Eurodollar Rate Loans occurs on a date prior to the last day of an Interest Period applicable to that Loan (which shall be deemed for this purpose to include any assignments by a Terminated Lender pursuant to Section 2.20); or (iii) if any prepayment of any of its Eurodollar Rate Loans is not made on any date specified in a notice of prepayment given by Borrower.

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

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

2.16. Increased Costs; Capital Adequacy.

(a) Compensation for Increased Costs and Taxes. Subject to the provisions of Section 2.17 (which shall be controlling with respect to the matters covered thereby), in the event that any Lender shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (A) any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (regardless of whether the underlying law, treaty or governmental rule, regulation or order was issued or enacted prior to the date hereof), including the introduction of any new law, treaty or governmental rule, regulation or order but excluding solely proposals thereof, or any determination of a court or Governmental Authority, in each case that becomes effective after the date hereof, or (B) any guideline, request or directive by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law) or any implementation rules or interpretations of previously issued guidelines, requests or directives, in each case that is issued or made after the date hereof: (i) subjects such Lender (or its applicable lending office) or any company controlling such Lender to any additional Tax (other than any Tax on the overall net income of such Lender) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, liquidity, compulsory loan, FDIC

insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Eurodollar Rate Loans that are reflected in the definition of “Adjusted Eurodollar Rate”) or any company controlling such Lender; or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or any company controlling such Lender or such Lender’s obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto; then, in any such case, Borrower shall promptly pay to such Lender, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or in a lump sum or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender shall deliver to Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.16(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (A) the adoption, effectiveness, phase-in or applicability of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or (B) compliance by any Lender (or its applicable lending office) or any company controlling such Lender with any guideline, request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, in each case after the date hereof, has or would have the effect of reducing the rate of return on the capital of such Lender or any company controlling such Lender as a consequence of, or with reference to, such Lender’s Loans, or participations therein or other obligations hereunder with respect to the Loans to a level below that which such Lender or such controlling company could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling company with regard to capital adequacy), then from time to time, within five Business Days after receipt by Borrower from such Lender of the statement referred to in the next sentence, Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling company on an after-tax basis for such reduction. Such Lender shall deliver to Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.16(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error. For the avoidance of doubt, subsections (a) and (b) of this Section 2.16 shall apply to all requests, rules, guidelines or directives concerning liquidity and capital adequacy issued by any United States regulatory authority (i) under or in connection with the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act and (ii) in connection with the implementation of the recommendations of the Bank for International

Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority), regardless of the date adopted, issued, promulgated or implemented.

2.17. Taxes; Withholding, Etc.

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

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

(c) Evidence of Exemption From U.S. Withholding Tax. Each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a "**Non-U.S. Lender**") shall, to the extent such Lender is legally able to do so, deliver to Administrative Agent for transmission to Borrower, on or prior to the Closing Date (in the case of each Lender listed on the signature

pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Borrower or Administrative Agent (each in the reasonable exercise of its discretion), (i) two original copies of Internal Revenue Service Form W-8BEN, W-8ECI, W-8EXP and/or W-8IMY (or, in each case, any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower to establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of United States federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or (ii) if such Lender is not a “bank” or other Person described in Section 881(c)(3) of the Internal Revenue Code, a Certificate re Non-Bank Status together with two original copies of Internal Revenue Service Form W-8BEN (or any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower to establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of United States federal income tax with respect to any payments to such Lender of interest payable under any of the Credit Documents. Each Lender that is a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for United States federal income tax purposes (a **“U.S. Lender”**) and is not an exempt recipient within the meaning of Treasury Regulation Section 1.6049-4(c) shall deliver to Administrative Agent and Borrower on or prior to the Closing Date (or, if later, on or prior to the date on which such Lender becomes a party to this Agreement) two original copies of Internal Revenue Service Form W-9 (or any successor form), properly completed and duly executed by such Lender, certifying that such U.S. Lender is entitled to an exemption from United States backup withholding tax, or otherwise prove that it is entitled to such an exemption. Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this Section 2.17(c) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Administrative Agent for transmission to Borrower two new original copies of Internal Revenue Service Form W-8BEN, W-8ECI, W-8EXP, W-8IMY and/or W-9 (or, in each case, any successor form), or a Certificate re Non-Bank Status and two original copies of Internal Revenue Service Form W-8BEN (or any successor form), as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower to confirm or establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to payments to such Lender under the Credit Documents, or notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence. Borrower shall not be required to pay any additional amount to any Non-U.S. Lender under Section 2.17(b)(iii) if such Lender shall have failed (1) to deliver the forms, certificates or other evidence required by the first sentence of this Section 2.17(c) or (2) to notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, if such Lender shall have satisfied the requirements of the first sentence of this Section 2.17(c) on the Closing Date or on the date of the Assignment Agreement pursuant to which it became a Lender, as applicable, nothing in this last sentence of Section 2.17(c) shall

relieve Borrower of its obligation to pay any additional amounts pursuant this Section 2.17 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described herein.

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

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

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

(g) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to

require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

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

2.19. Defaulting Lenders.

(a) Defaulting Lender Waterfall. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law, any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to Section 10.4 shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; *second*, as Borrower may request (so long as no Default or Event of Default shall have occurred and be continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *third*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fourth*, so long as no Default or Event of Default shall have occurred and be continuing, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *fifth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y)

such Loans were made at a time when the conditions set forth in Section 3.1 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the applicable Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

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

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

2.20. Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an **“Increased-Cost Lender”**) shall give notice to Borrower that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.15, 2.16 or 2.17, (ii) the circumstances which have caused such Lender to be an Affected Lender or which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after Borrower’s request for such withdrawal; or (b) (i) any Lender shall become and continues to be a Defaulting Lender, and (ii) such Defaulting Lender shall fail to cure the default pursuant to Section 2.19(b) within five Business Days after Borrower’s request that it cure such default; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.5(b), the consent of Requisite Lenders shall have been obtained but the consent of one or more of such other Lenders (each a **“Non-Consenting Lender”**) whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender, Defaulting Lender or Non-Consenting Lender (each, a **“Terminated Lender”**), Borrower may, by giving written notice to Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans in full to one or more Eligible Assignees (each a **“Replacement Lender”**) in accordance with the provisions of Section 10.6 and Borrower shall pay the fees, if any, payable thereunder in connection with any such assignment from such Terminated Lender; provided, (1) on the date of such assignment, the Replacement Lender shall pay to such

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

SECTION 3. CONDITIONS PRECEDENT

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

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

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

(c) Organizational Documents; Incumbency. Administrative Agent and Arranger shall have received, in respect of Borrower, (i) copies of each Organizational Document, certified as of the Closing Date or a recent date prior thereto by, as applicable, the

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

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

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

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

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

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

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

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

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

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

(i) a fully executed and notarized (A) Negative Pledge encumbering Parcels O, O’ and O”, (B) Subordination of Option Agreement with respect to Parcels O, O’ and O”, (C) State Relinquishment Agreement with respect to Block 4, each in proper form for recording in the Recorder’s Office;

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

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

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

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

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

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

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

(iii) a fully executed TIF Pledge Letter Agreement;

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

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

(h) Environmental Reports. Administrative Agent and Arranger shall have received reports and other information, in form, scope and substance satisfactory to

Administrative Agent and Arranger, regarding environmental matters relating to the Specified Real Property.

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

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

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

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

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

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

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

(p) No Litigation. Other than as set forth on Schedule 3.1(p) ("**Disclosed Litigation**"), (i) there shall not exist any material action, suit, investigation, litigation, proceeding, hearing or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority affecting Borrower, the Project, the creation of the CFD or the satisfaction of any TIFIA Borrowing Condition or that, in the reasonable opinion of Administrative Agent and Arranger, materially impairs any of the transactions contemplated by the Credit Documents and (ii) there shall have been no material adverse developments with respect to the Disclosed Litigation as of the date of this Agreement.

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

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

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

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

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

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

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

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

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

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

SECTION 4. REPRESENTATIONS AND WARRANTIES

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

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

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

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

4.4. No Conflict. The execution, delivery and performance by Borrower of the Credit Documents and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate (i) the JPA Act, the Constitution of the State or any other provision of any law or any governmental rule or regulation applicable to Borrower, (ii) any of the Organizational Documents of Borrower, or (iii) any order, judgment or decree of any court or other Governmental Authority binding on Borrower; (b) conflict with, result in a breach of or

constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Borrower; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Borrower (other than any Liens created under any of the Credit Documents in favor of Collateral Agent, for the benefit of the Secured Parties); or (d) require any approval of the JPA Members or any approval or consent of any Person under any Contractual Obligation of Borrower, except for such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Lenders.

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

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

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

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

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

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

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

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

4.12. Properties.

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

(b) Real Estate. As of the Closing Date, Schedule 4.12 contains a true, accurate and complete list of (i) all Real Estate Assets, and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of Borrower, regardless of whether Borrower is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in clause (ii) of the immediately preceding sentence is in full force and effect and Borrower does not have knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization,

moratorium or similar laws relating to or limiting creditors' rights generally, (ii) equitable principles relating to enforceability (regardless of whether enforceability is considered in equity or at law) or (iii) the exercise of judicial discretion and the limitations on legal remedies against joint power authorities in the State.

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

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

4.15. Material Contracts. Schedule 4.15 contains a true, correct and complete list of all the Material Contracts in effect on the Closing Date, and except as described thereon, all such Material Contracts are in full force and effect and no defaults currently exist thereunder as of the Closing Date.

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

investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940, as amended.

4.17. Federal Reserve Regulations; Exchange Act.

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

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

4.18. Labor Matters. 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.

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

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

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

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

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

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

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

SECTION 6. NEGATIVE COVENANTS

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

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

- (a) the Obligations;
- (b) the TIFIA Loan or, if the TIFIA Borrowing Conditions are not satisfied, TI Indebtedness, but only if the net proceeds of the TIFIA Loan or such TI Indebtedness, as applicable, are in an aggregate amount at least sufficient to repay, and are in fact used to repay, the Obligations in full;
- (c) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business;
- (d) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with Deposit Accounts;
- (e) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Borrower; and
- (f) reimbursement obligations in respect of letters of credit, and other financial obligations, arising under the Principal Project Contracts or any other agreement executed by Borrower in connection with the Project that are payable as Project Costs, Eligible Project Costs, or Operations and Maintenance Expenses (as defined in the TIFIA Loan Agreement) or that do not in the aggregate have face amounts exceeding \$5,000,000 (inflated annually by CPI).

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

- (a) Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Credit Document;
- (b) the Lien on the Pledged Revenues securing the TIFIA Loan and securing the fees owing to TIFIA Collateral Agent under the TIFIA Collateral Agency Agreement;

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

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

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

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

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

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

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

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

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

6.4. Leases of or Easements Over Specified Real Property. Borrower shall not lease or grant any easements or rights of occupancy over any portion of the Specified Real Property, other than (a) with respect to Block 4 (i) pursuant to the Lease and Use Agreement and (ii) easements and rights-of-way over Block 4 granted to any transportation operator in

connection with its lease of any remaining portion of the Temporary Terminal and (b) with respect to Parcel F, the occupancy rights of the CM/GC under the CM/GC Agreement.

6.5. Investments; Other Business Transactions.

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

(i) Investments in Cash and Permitted Investments;

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

(iii) Hedge Agreements which constitute Investments.

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

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

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

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

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

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

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

(b) Borrower shall not, without the prior consent of the Requisite Lenders (such consent not to be unreasonably withheld): (i) amend, modify or supplement, waive the performance by any Person of its obligations under, or permit the termination or assignment of, (x) the CM/GC Agreement if the effect thereof would be to (A) reduce the maximum aggregate amount of liquidated damages payable by the CM/GC by more than 10%, unless such reduction is offset by an equivalent or greater reduction in the amount of Project costs payable by Borrower to the CM/GC under the CM/GC Agreement, (B) postpone by more than 60 days the first date on which liquidated damages are payable by CM/GC in the event of delay in completing the Project or (C) extend the period of time during which CM/GC is permitted to use Parcel F as a construction staging area for the Project, (y) except as could not reasonably be expected to materially adversely affect the interests of the Lenders, any Collateral-Related Document or (z) except as could not reasonably be expected to have a Material Adverse Effect, any Principal Project Contract, (ii) amend, modify or supplement, waive the performance by the TIFIA Lender of its obligations under, or permit the termination or assignment of, the TIFIA Loan Agreement in any manner that could reasonably be expected to make it more burdensome or less likely for Borrower to satisfy the TIFIA Borrowing Conditions, (iii) amend or modify the Project Budget unless (x) such amendment or modification does not increase the Project Budget beyond the resources available or programmed to Borrower to pay such costs as set forth in the Financial Plan and (y) the TIFIA Lender has approved such amendment or modification to the extent such approval is required under the TIFIA Loan Agreement, or (iv) amend or modify the Construction Schedule if the effect thereof is to extend the date for Substantial Completion beyond December 31, 2017. Borrower shall provide to Administrative Agent copies of any proposed amendments or modifications to any Material Contract, the TIFIA Loan Agreement, the Project Budget or the Construction Schedule requiring the consent of the Requisite Lenders under this Section 6.10(b) at least 30 days prior to the effective date thereof.

SECTION 7. SECURITY INTEREST IN REVENUE AND PROCEEDS COLLATERAL.

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

- (a) all Pledged Revenues;

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

7.2. Continuing Liability under Collateral-Related Documents. Notwithstanding anything herein to the contrary, (a) Borrower shall remain liable hereunder and under each Collateral-Related Document to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither Collateral Agent nor any Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall Collateral Agent nor any Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Revenue and Proceeds Collateral and (b) the exercise by Collateral Agent of any of its rights hereunder shall not release Borrower from any of its duties or obligations hereunder or under the Collateral-Related Documents.

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

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

responsible to Borrower for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

SECTION 8. EVENTS OF DEFAULT

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

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

(b) Default in Other Agreements. (i) Failure of Borrower to pay when due any principal of or interest on or any other amount, including any payment in settlement, payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) in an aggregate principal amount (or Net Mark-to-Market Exposure) of \$5,000,000 or more, in each case beyond the grace period, if any, provided therefor; (ii) breach or default by Borrower with respect to any other material term of (1) one or more items of Indebtedness in the individual or aggregate principal amounts (or Net Mark-to-Market Exposure) referred to in clause (i) above or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; (iii) any Event of Default (as defined in the TIFIA Loan Agreement) shall occur or (iv) Borrower shall default in the timely performance of any covenant, agreement or obligation under any Material Contract or any Material Contract shall be terminated prior to its scheduled expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect), and Borrower shall have failed to cure such default or to obtain an effective written waiver thereof, or to obtain an effective revocation of such termination (as the case may be), within 30 days after receipt of written notice thereof from Administrative Agent (unless Borrower shall have failed to comply with its obligation under Section 5.1(d)(iv) to deliver to Administrative Agent and Lenders written notice of such default or termination, which case such 30-day period shall commence with the occurrence of such default or termination); provided, however, that if such cure or waiver or revocation (as the case may be) cannot reasonably be obtained within such 30-day period, then no Event of Default shall be deemed to have occurred or be continuing under this clause if and so long as within such 30-day period Borrower shall commence actions reasonably designed to obtain a cure or waiver of such default or a revocation of such termination (as the case may be) and shall obtain such cure, waiver or revocation within 90 days after the end of such 30-day period; or

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

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

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

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Borrower in an involuntary case under any Debtor Relief Laws now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Borrower under any Debtor Relief Laws now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Borrower, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Borrower for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Borrower, and any such event described in this clause (ii) shall continue for 60 days without having been dismissed, bonded or discharged; or

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

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

unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

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

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

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

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

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

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

THEN, (1) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence and during the continuance of any other Event of Default, at the request of (or with the consent of) Requisite Lenders, upon notice to Borrower by Administrative Agent, (A) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Borrower: the unpaid principal amount of and accrued interest

and, if applicable, Make-Whole Premium on the Loans, and all other Obligations; and (B) Administrative Agent may cause Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents or as otherwise permitted by applicable laws.

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

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

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

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

fourth, to the payment of that portion of the Obligations constituting termination amounts payable in connection with the early termination of Hedge Agreements for the ratable benefit of the Lender Counterparties in proportion to the respective amounts described in this clause *fourth* payable to them;

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

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

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

SECTION 9. AGENTS

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

9.2. Powers and Duties. Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender or any other Person; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

9.3. General Immunity.

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of Borrower to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of Borrower or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements

contained in any of the Credit Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the component amounts thereof.

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

(c) Delegation of Duties. Administrative Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Credit Document by or through any one or more sub-agents appointed by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 9.3 and of Section 9.6 shall apply to any the Affiliates of Administrative Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 9.3 and of Section 9.6 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by Administrative Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of

the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of Borrower and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to Administrative Agent and not to Borrower, Lender or any other Person and none of Borrower, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

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

9.5. Lenders’ Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Borrower in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Borrower. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

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

9.6. Right to Indemnity. Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, to the extent that such Agent shall not have been reimbursed by Borrower, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Agent in any way relating to or

arising out of this Agreement or the other Credit Documents; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

9.7. Successor Administrative Agent and Collateral Agent.

(a) Administrative Agent shall have the right to resign at any time by giving prior written notice thereof to Lenders and Borrower and Administrative Agent may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to Borrower and Administrative Agent and signed by Requisite Lenders. Administrative Agent shall have the right to appoint a financial institution to act as Administrative Agent and/or Collateral Agent hereunder, subject to the reasonable satisfaction of Borrower and the Requisite Lenders, and Administrative Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the acceptance of such successor Administrative Agent by Borrower and the Requisite Lenders or (iii) such other date, if any, agreed to by the Requisite Lenders. Upon any such notice of resignation or any such removal, if a successor Administrative Agent has not already been appointed by the retiring Administrative Agent, Requisite Lenders shall have the right, upon five Business Days' notice to Borrower, to appoint a successor Administrative Agent. If neither Requisite Lenders nor Administrative Agent have appointed a successor Administrative Agent, Requisite Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that, until a successor Administrative Agent is so appointed by Requisite Lenders or Administrative Agent, any collateral security held by Administrative Agent in its role as Collateral Agent on behalf of the Lenders under any of the Credit Documents shall continue to be held by the retiring Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent and the retiring or removed Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, and (ii) take actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Collateral Documents, whereupon such retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder. Except as

provided above, any resignation or removal of Goldman Sachs or its successor as Administrative Agent pursuant to this Section 9.7 shall also constitute the resignation or removal of Goldman Sachs or its successor as Collateral Agent. After any retiring or removed Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder. Any successor Administrative Agent appointed pursuant to this Section 9.7 shall, upon its acceptance of such appointment, become the successor Collateral Agent for all purposes hereunder.

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

9.8. Collateral Documents.

(a) Agents Under Collateral Documents. Each Secured Party hereby further authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of Secured Parties with respect to the Collateral and the Collateral Documents; provided that neither Administrative Agent nor Collateral Agent shall owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure or

any other obligation whatsoever to any holder of Obligations with respect to any Hedge Agreement. Subject to Section 10.5, without further written consent or authorization from any Secured Party, Administrative Agent or Collateral Agent, as applicable, may execute any documents or instruments necessary to in connection with a sale or disposition of assets permitted by this Agreement, release any Lien encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented.

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

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

(d) Release of Collateral, Termination of Credit Documents. Notwithstanding anything to the contrary contained herein or any other Credit Document, when all Obligations (other than obligations in respect of any Hedge Agreement) have been paid in full, all Commitments have terminated or expired, upon request of Borrower, Administrative Agent shall (without notice to, or vote or consent of, any Lender, or any affiliate of any Lender that is a party to any Hedge Agreement) take such actions as shall be required to release its security interest in all Collateral, and to release all guarantee obligations provided for in any Credit Document, whether or not on the date of such release there may be outstanding Obligations in respect of Hedge Agreements. Any such release of guarantee obligations shall be deemed subject to the

provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower or any substantial part of its property, or otherwise, all as though such payment had not been made.

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

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

9.10. Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Laws relative to Borrower, Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

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

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

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

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

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

SECTION 10. MISCELLANEOUS

10.1. Notices.

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

(b) Electronic Communications.

(i) Notices and other communications to any Agent and Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including the Platform) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices

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

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

(iii) The Platform and any Approved Electronic Communications are provided "as is" and "as available". None of the Agents or any of their respective officers, directors, employees, agents, advisors or representatives (the "**Agent Affiliates**") warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by the Agent Affiliates in connection with the Platform or the Approved Electronic Communications.

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

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

(c) Private Side Information Contacts. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the

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

10.2. Expenses. Whether or not the transactions contemplated hereby shall be consummated, Borrower agrees to pay promptly (a) all the actual and reasonable costs and expenses incurred in connection with the negotiation, preparation and execution of the Credit Documents and any consents, amendments, waivers or other modifications thereto; (b) all the costs of furnishing all opinions by counsel for Borrower; (c) the reasonable fees, expenses and disbursements of counsel to Agents in connection with the negotiation, preparation, execution and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrower; (d) all the actual costs and reasonable expenses of creating, perfecting, recording, maintaining and preserving Liens in favor of Collateral Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to each Agent and of counsel providing any opinions that any Agent or Requisite Lenders may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) all the actual costs and reasonable fees, expenses and disbursements of any auditors, accountants, consultants or appraisers; (f) all the actual costs and reasonable expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (g) all other actual and reasonable costs and expenses incurred by each Agent in connection with the syndication of the Loans and Commitments and the transactions contemplated by the Credit Documents and any consents, amendments, waivers or other modifications thereto and (h) after the occurrence of a Default or an Event of Default, all costs and expenses, including reasonable attorneys' fees and costs of settlement incurred by any Agent and Lenders in enforcing any Obligations of or in collecting any payments due from Borrower hereunder or under the other Credit Documents by reason of such Default or Event of Default (including in connection with the sale, lease or license of, collection from, or other realization upon any of the Collateral) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings; provided that Borrower shall not be required pursuant to this clause (h) to reimburse such costs and expenses of more than one counsel to Agents and all the Lenders, taken as a whole, unless the representation of one or more Lenders by such counsel would be inappropriate due to the existence of an actual or potential conflict of interest, in which case, upon prior written notice to Borrower, Borrower shall also be required to reimburse the costs and expenses of one additional counsel to such affected Lenders.

10.3. Indemnity.

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

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

(c) Borrower also agrees that no Lender, Agent nor their respective Affiliates, directors, employees, attorneys, agents or sub-agents will have any liability to Borrower or any person asserting claims on behalf of or in right of Borrower or any other person in connection with or as a result of this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, in each case, except in the case of Borrower to the extent that any losses, claims, damages, liabilities or expenses incurred by Borrower or its affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Lender, Agent or their respective Affiliates, directors, employees, attorneys, agents or sub-agents in performing its obligations under this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein; provided, however, that in no event will such Lender, Agent, or their respective Affiliates, directors, employees, attorneys, agents or sub-agents have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such Lender's, Agent's or their respective Affiliates', directors', employees', attorneys', agents' or sub-agents' activities related to this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein.

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

10.5. Amendments and Waivers.

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

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

- (i) extend the Maturity Date;

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

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

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

- (i) amend, modify or waive this Agreement so as to alter the ratable treatment of Obligations arising under the Credit Documents and Obligations arising under Hedge Agreements or the definition of “Lender Counterparty,” “Hedge Agreement” or “Obligations,” in each case in a manner adverse to any Lender Counterparty with Obligations then outstanding without the written consent of any such Lender Counterparty; or
- (ii) amend, modify, terminate or waive any provision of the Credit Documents as the same applies to any Agent or Arranger, or any other provision hereof as the same applies to the rights or obligations of any Agent or Arranger, in each case without the consent of such Agent or Arranger, as applicable.

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

10.6. Successors and Assigns; Participations.

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

(b) Register. Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until recorded in the Register following receipt of a fully executed Assignment Agreement effecting the assignment or transfer thereof, together with the required forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in Section 10.6(d). Each assignment shall be recorded in the Register promptly following receipt by Administrative Agent of the fully executed Assignment Agreement and all other necessary documents and approvals, prompt notice thereof shall be provided to Borrower and a copy of such Assignment Agreement shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the "**Assignment Effective Date.**" Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

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

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

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

(d) Mechanics.

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

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

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

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

(g) Participations.

(i) Each Lender shall have the right at any time to sell one or more participations to any Person (other than Borrower or any natural person) in all or any part of its Commitments, Loans or in any other Obligation. Each Lender that sells a participation pursuant to this Section 10.6(g) shall, acting solely for U.S. federal income tax purposes as an agent of Borrower, maintain a register on which it records the name and address of each participant and the principal amounts of each participant’s participation interest with respect to the Loan (each, a **“Participant Register”**); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant’s interest in any Commitments, Loans or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such

Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. Unless otherwise required by the Internal Revenue Service, any disclosure required by the foregoing sentence shall be made by the relevant Lender directly and solely to the Internal Revenue Service. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of a participation with respect to the Loan for all purposes under this Agreement, notwithstanding any notice to the contrary.

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

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

(h) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.6 any Lender may assign, pledge and/or grant a security interest in all or any portion of its Loans, the other Obligations

owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank; provided that no Lender, as between Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee, be considered to be a “Lender” or be entitled to require the assigning Lender to take or omit to take any action hereunder.

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

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

10.9. No Waiver; Remedies Cumulative. No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents or any of the Hedge Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

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

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

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

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

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

10.15. CONSENT TO JURISDICTION. SUBJECT TO CLAUSE (E) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENTS, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN ANY FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, BORROWER, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE (SUBJECT TO CLAUSE (E) BELOW) JURISDICTION AND VENUE OF SUCH COURTS; (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO BORROWER AT ITS

ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER BORROWER IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) AGREES THAT AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST BORROWER IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY CREDIT DOCUMENT OR AGAINST ANY COLLATERAL OR THE ENFORCEMENT OF ANY JUDGMENT, AND HEREBY SUBMITS TO THE JURISDICTION OF, AND CONSENTS TO VENUE IN, ANY SUCH COURT.

10.16. WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.17. Confidentiality. Each Agent and each Lender shall hold all non-public information regarding Borrower and its businesses identified as such by Borrower and obtained by such Agent or such Lender pursuant to the requirements hereof in accordance with such Agent's and such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by Borrower that, in any event, Administrative Agent may

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

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

Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to Borrower.

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

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

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

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

10.23. No Fiduciary Duty. Each Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the "**Lenders**"), may have economic interests that conflict with those of Borrower and/or its Affiliates. Borrower agrees that nothing in the Credit Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and Borrower or its Affiliates, on the other. Borrower acknowledges and agrees that (i) the transactions contemplated by the Credit Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and Borrower, on the other, and (ii) in connection therewith and with the process leading thereto,

(x) no Lender has assumed an advisory or fiduciary responsibility in favor of Borrower or its Affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise Borrower or its Affiliates on other matters) or any other obligation to Borrower except the obligations expressly set forth in the Credit Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of Borrower, its management, its JPA Members, its creditors or any other Person. Borrower acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Borrower agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to Borrower, in connection with such transaction or the process leading thereto.

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

[Remainder of page intentionally left blank]

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

TRANSBAY JOINT POWERS AUTHORITY

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

APPROVED AS TO FORM:

By: _____
Deborah Miller
Shute, Mihaly & Weinberger

DRAFT

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

By: _____
Name:
Title:

DRAFT

**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 fidc-sbdagency-nydallas@ny.email.gs.com

with a copy to:

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

DRAFT

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:

DRAFT

Draft 11/5/14

**SCHEDULES
TO CREDIT AGREEMENT**

[To be inserted prior to execution]

DRAFT

EXHIBIT A-1 TO
CREDIT AGREEMENT

FUNDING NOTICE

Reference is made to the Credit Agreement, dated as of [●], 2014 (as it may be amended, supplemented or otherwise modified, the “**Credit Agreement**”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among **TRANSBAY JOINT POWERS AUTHORITY**, the Lenders party thereto from time to time and **GOLDMAN SACHS BANK USA**, as Sole Lead Arranger, Sole Lead Bookrunner, Syndication Agent, Administrative Agent and Collateral Agent.

Pursuant to Section 2.1 of the Credit Agreement, Borrower desires that Lenders make the following Loans to Borrower in accordance with the applicable terms and conditions of the Credit Agreement on [●], 2014 (the “**Credit Date**”):

- Base Rate Loans: \$[____,____,____]
- Eurodollar Rate Loans, with an initial Interest Period
of _____ month(s): \$[____,____,____]

Borrower hereby certifies that:

(i) as of the Credit Date, the representations and warranties contained in each of the Credit Documents are true and correct in all material respects on and as of such Credit Date to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties are 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; and

(ii) as of the Credit Date, no event has occurred and is continuing or would result from the consummation of the borrowing contemplated hereby that would constitute an Event of Default or a Default.

The Borrower hereby directs the Administrative Agent to disburse the proceeds of the Loans requested on the Credit Date pursuant to the Funds Flow Memorandum attached hereto.

Date: [●], 2014

**TRANSBAY JOINT POWERS
AUTHORITY**

By: _____

Name:

Title:

DRAFT

EXHIBIT A-2 TO
CREDIT AGREEMENT

CONVERSION/CONTINUATION NOTICE

Reference is made to the Credit Agreement, dated as of [●], 2014 (as it may be amended, supplemented or otherwise modified, the “**Credit Agreement**”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among **TRANSBAY JOINT POWERS AUTHORITY**, the Lenders party thereto from time to time and **GOLDMAN SACHS BANK USA**, as Sole Lead Arranger, Sole Lead Bookrunner, Syndication Agent, Administrative Agent and Collateral Agent.

Pursuant to Section 2.6 of the Credit Agreement, Borrower desires to convert or to continue the following Loans, each such conversion and/or continuation to be effective as of [mm/dd/yy]:

- \$[____,____,____] Eurodollar Rate Loans to be continued with Interest Period of [____] month(s)
- \$[____,____,____] Base Rate Loans to be converted to Eurodollar Rate Loans with Interest Period of [____] month(s)
- \$[____,____,____] Eurodollar Rate Loans to be converted to Base Rate Loans

Borrower hereby certifies that as of the date hereof, no event has occurred and is continuing or would result from the consummation of the conversion and/or continuation contemplated hereby that would constitute an Event of Default or a Default.

Date: [mm/dd/yy]

**TRANSBAY JOINT POWERS
AUTHORITY**

By: _____
Name:
Title:

EXHIBIT B TO
CREDIT AGREEMENT

NOTE

[\$³][____,____,____]
[●], 2014

New York, New York

FOR VALUE RECEIVED, 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**”), promises to pay [NAME OF LENDER] (“**Payee**”) or its registered assigns the principal amount of [1][DOLLARS] (\$[____,____,____][1]) in the manner set forth below.

Borrower also promises to pay interest on the unpaid principal amount hereof, from the date hereof until paid in full, at the rates and at the times which shall be determined in accordance with the provisions of that certain Credit Agreement, dated as of [●], 2014 (as it may be amended, supplemented or otherwise modified, the “**Credit Agreement**”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Borrower, the Lenders party thereto from time to time and **GOLDMAN SACHS BANK USA**, as Sole Lead Arranger, Sole Lead Bookrunner, Syndication Agent, Administrative Agent and Collateral Agent.

Borrower shall repay the outstanding principal amounts of the Loans on this Note in full in cash on the Maturity Date as set forth in Section 2.9 of the Credit Agreement.

This Note is one of the “Notes” issued pursuant to and entitled to the benefits of the Credit Agreement, to which reference is hereby made for a more complete statement of the terms and conditions under which the Loan evidenced hereby was made and is to be repaid.

All payments of principal and interest in respect of this Note shall be made in lawful money of the United States of America in same day funds at the Principal Office of Administrative Agent or at such other place as shall be designated in writing for such purpose in accordance with the terms of the Credit Agreement. Unless and until an Assignment Agreement effecting the assignment or transfer of the obligations evidenced hereby shall have been accepted by Administrative Agent and recorded in the Register, Borrower, each Agent and Lenders shall be entitled to deem and treat Payee as the owner and holder of this Note and the obligations evidenced hereby. Payee hereby agrees, by its acceptance hereof, that before disposing of this Note or any part hereof it will make a notation hereon of all principal payments previously made hereunder and of the date to which interest hereon has been paid; provided that the failure to make a notation of any payment made on this Note shall not limit or otherwise affect the obligations of Borrower hereunder with respect to payments of principal of or interest on this Note.

[³] Lender’s Commitment

This Note is subject to mandatory prepayment and to prepayment at the option of Borrower under the terms and conditions provided in the Credit Agreement.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF BORROWER AND PAYEE HEREUNDER 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.

Upon the occurrence of an Event of Default, the unpaid balance of the principal amount of this Note, together with all accrued and unpaid interest thereon, may become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Credit Agreement.

The terms of this Note are subject to amendment only in the manner provided in the Credit Agreement.

No reference herein to the Credit Agreement and no provision of this Note or the Credit Agreement shall alter or impair the obligations of Borrower, which are absolute and unconditional, to pay the principal of and interest on this Note at the place, at the respective times, and in the currency herein prescribed.

Borrower promises to pay all costs and expenses, including reasonable attorneys' fees, all as provided in the Credit Agreement, incurred in the collection and enforcement of this Note. Borrower and any endorsers of this Note hereby consent to renewals and extensions of time at or after the maturity hereof, without notice, and hereby waive diligence, presentment, protest, demand notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed and delivered by its officer thereunto duly authorized as of the date and at the place first written above.

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name:
Title:

DRAFT

EXHIBIT C TO
CREDIT AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this “**Assignment**”) is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the “**Assignor**”) and [*Insert name of Assignee*] (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as it may be amended, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto (the “**Standard Terms and Conditions**”) are hereby agreed to and incorporated herein by reference and made a part of this Assignment as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below, (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of the Assignor’s outstanding rights and obligations under the Credit Agreement, and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as the “**Assigned Interest**”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment, without representation or warranty by the Assignor.

1. Assignor: _____
2. Assignee: _____ [and is an Affiliate/Related Fund¹ of [*identify Lender*] [Assignor is not a Defaulting Lender]
Markit Entity Identifier (if any): _____
3. Borrower(s): _____
4. Administrative Agent: Goldman Sachs Bank USA, as the administrative agent under the Credit Agreement
5. Credit Agreement: The \$171,000,000 Credit Agreement, dated as of [●], 2014, by and among Transbay Joint Powers Authority, the Lenders party thereto from time to time and Goldman Sachs Bank USA, as Sole Lead Arranger, Sole Lead Bookrunner, Syndication Agent, Administrative Agent and Collateral Agent
6. Assigned Interest[s]: _____

¹ Select as applicable

Aggregate Amount of Commitment/Loans <u>for all Lenders</u>	Amount of Commitment/Loans <u>Assigned</u>	Percentage Assigned of Commitment/Loans ²
\$ _____	\$ _____	_____ %

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

7. Notice and Wire Instructions:

[NAME OF ASSIGNOR]

[NAME OF ASSIGNEE]

Notices:

Notices:

Attention:
Telecopier:

Attention:
Telecopier:

with a copy to:

with a copy to:

Attention:
Telecopier:

Attention:
Telecopier:

Wire Instructions:

Wire Instructions:

The terms set forth in this Assignment are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: _____
Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By: _____
Title:

[Consented to and]³ Accepted:

GOLDMAN SACHS BANK USA, as
Administrative Agent

By: _____
Title:

² Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

³ To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT
AND ASSUMPTION AGREEMENT

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and (iv) it is not a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with any Credit Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement or any other instrument or document delivered pursuant thereto, other than this Assignment (herein collectively the "**Credit Documents**"), or any collateral thereunder, (iii) the financial condition of Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Credit Document or (iv) the performance or observance by Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Credit Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 5.1 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and to purchase the Assigned Interest, and (vii) if it is a Non-U.S. Lender, attached to this Assignment is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Documents are required to be performed by it as a Lender.

2. Payments. All payments with respect to the Assigned Interests shall be made on the Effective Date as follows:

2.1 From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to the Assignee.

3. General Provisions. This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment. This Assignment shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to conflict of laws principles thereof.

[Remainder of page intentionally left blank]

DRAFT

EXHIBIT D TO
CREDIT AGREEMENT

CERTIFICATE RE NON BANK STATUS

Reference is made to the Credit Agreement, dated as of [●], 2014 (as it may be amended, supplemented or otherwise modified, the “**Credit Agreement**”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among **TRANSBAY JOINT POWERS AUTHORITY**, the Lenders party thereto from time to time and **GOLDMAN SACHS BANK USA**, as Sole Lead Arranger, Sole Lead Bookrunner, Syndication Agent, Administrative Agent and Collateral Agent. Pursuant to Section 2.17(c) of the Credit Agreement, the undersigned hereby certifies that it is not a “bank” or other Person described in Section 881(c)(3) of the Internal Revenue Code of 1986, as amended.

[NAME OF LENDER]

By: _____

Name:

Title:

EXHIBIT E-1 TO
CREDIT AGREEMENT

CLOSING DATE CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFY AS FOLLOWS:

1. We are the Executive Director and the Chief Financial Officer of **TRANSBAY JOINT POWERS AUTHORITY** (“**Borrower**”).

2. We have reviewed the terms of Section 3 of the Credit Agreement, dated as of [●], 2014 (as it may be amended, supplemented or otherwise modified, the “**Credit Agreement**”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among Borrower, the Lenders party thereto from time to time and Goldman Sachs Bank USA, as Sole Lead Arranger, Sole Lead Bookrunner, Syndication Agent, Administrative Agent and Collateral Agent, and the definitions and provisions contained in such Credit Agreement relating thereto, and in our opinion we have made, or have caused to be made under our supervision, such examination or investigation as is necessary to enable us to express an informed opinion as to the matters referred to herein.

3. Based upon our review and examination described in paragraph 2 above, we certify, on behalf of Borrower, that as of the date hereof:

(i) the representations and warranties contained in each of the Credit Documents are true and correct in all material respects on and as of the Closing Date to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties are true and correct in all 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;

(ii) no injunction or other restraining order has been issued and no hearing to cause an injunction or other restraining order to be issued is pending or noticed with respect to any action, suit or proceeding seeking to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the borrowing contemplated hereby; and

(iii) no event has occurred and is continuing or would result from the consummation of the borrowing contemplated hereby that would constitute an Event of Default or a Default.

4. Attached as Annex A hereto are true and complete (and, where applicable, executed and conformed) copies of each of the Material Contracts, and we have reviewed the terms of each of such documents and in our opinion we have made, or have caused to be made under our supervision, such examination or investigation as is necessary to enable us to express an informed opinion as to the matters referred to in paragraph 3.

5. Borrower has requested Shute, Mihaly & Weinberger LLP and Nixon Peabody LLP to deliver to Agents and Lenders on the Closing Date favorable written opinions, as to such matters as Administrative Agent may reasonably request.

6. Attached hereto as Annex B are true, complete and correct copies of Historical Audited Financial Statements.

The foregoing certifications are made and delivered as of [●], 2014

TRANSBAY JOINT POWERS AUTHORITY

Name: Maria Ayerdi-Kaplan
Title: Executive Director

Name: Sara Gigliotti
Title: Chief Financial Officer

EXHIBIT E-2 TO
CREDIT AGREEMENT

SOLVENCY CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:

1. I am the Chief Financial Officer of **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**").

2. Reference is made to that certain Credit Agreement, dated as of [●], 2014 (as it may be amended, supplemented or otherwise modified, the "**Credit Agreement**"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among **TRANSBAY JOINT POWERS AUTHORITY**, the Lenders party thereto from time to time and **GOLDMAN SACHS BANK USA**, as Sole Lead Arranger, Sole Lead Bookrunner, Syndication Agent, Administrative Agent and Collateral Agent.

3. I have reviewed the terms of Sections 3 and 4 of the Credit Agreement and the definitions and provisions contained in the Credit Agreement relating thereto, and, in my opinion, have made, or have caused to be made under my supervision, such examination or investigation as is necessary to enable me to express an informed opinion as to the matters referred to herein.

4. Based upon my review and examination described in paragraph 3 above, I certify that as of the date hereof, after giving effect to the consummation of the transactions contemplated by the Credit Documents, Borrower is not Insolvent.

The foregoing certifications are made and delivered as of [●], 2014.

Name: Sara Gigliotti
Title: Chief Financial Officer

EXHIBIT H TO
CREDIT AGREEMENT

TRANSBAY JOINT POWERS AUTHORITY
201 Mission Street, Suite 2100
San Francisco, CA 94105

[●], 2014

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

1600 Franklin Street
Oakland, California 94612
Attention: General Manager

Re: Additional AC Transit Capital Contribution Written Direction

Ladies and Gentlemen:

Reference is hereby made to (i) that certain Credit Agreement, dated as of [●], 2014 (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among Transbay Joint Powers Authority (the “**Borrower**”), various lenders from time to time party thereto and Goldman Sachs Bank USA, as Sole Lead Arranger, Sole Lead Bookrunner, Syndication Agent, Administrative Agent and Collateral Agent and (ii) that certain Transbay Transit Center Program Lease and Use Agreement for the Temporary Terminal and Terminal, dated as of September 10, 2008 (as amended, restated, supplemented or otherwise modified from time to time, the “**Lease and Use Agreement**”), by and between the Borrower and Alameda-Contra Costa Transit District (“**AC Transit**”). Capitalized terms used herein but not otherwise defined herein shall have the respective meanings assigned to such terms in the Credit Agreement or the Lease and Use Agreement, as applicable.

In accordance with Section 3.1(g)(iv) of the Credit Agreement, the Borrower hereby irrevocably directs AC Transit to deposit all Additional AC Transit Capital Contributions directly into the following account:

[account details]
[_____
[_____]

As used herein, “**Additional AC Transit Capital Contributions**” means Tenant Capital Contributions 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 made by AC Transit prior to the date hereof but excluding any amounts that constitute Pledged Revenues).

[Remainder of page intentionally left blank]

Very truly yours,

TRANSBAY JOINT POWERS AUTHORITY

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

APPROVED AS TO FORM:

By: _____
Deborah Miller
Shute, Mihaly & Weinberger

DRAFT

EXHIBIT L TO
CREDIT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Transbay Joint Powers Authority
201 Mission Street Suite 2100
San Francisco, CA 94105

Recording Fee \$0 (Govt Code § 27383)
Document Transfer Tax \$0
(Rev. & Tax. Code § 11922; SF Bus. & Tax. Code 1105)

(Space above this line for Recorder's use)

RELINQUISHMENT OF POWER OF TERMINATION

Caltrans Parcel F
Block 3721 Lot 15A,
San Francisco, CA

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, THE STATE OF CALIFORNIA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State"), does hereby REMISE, RELEASE, and QUITCLAIM to TRANSBAY JOINT POWERS AUTHORITY ("TJPA"), a joint powers agency created under California Government Code Sections 6500 et seq., all of the State's remaining right, title and interest in the real property located in the City and County of San Francisco, State of California, described in Exhibit A attached hereto and made a part hereof, and does further hereby relinquish, release and forever terminate its rights and interest in and to the Power of Termination reserved by the State in, and all of Exhibit B to, its Director's (Quitclaim) Deed (Parcel F) recorded on August 9, 2010 in the Official Records of the City and County of San Francisco (the "Official Records") as Instrument No. 2010J017202, and, does further, hereby relinquish, release and forever terminate its rights and interest in and to any Gross Sale Proceeds (including any requirement that such Gross Sale Proceeds be deposited in the Trust Account under the July 11, 2003 Cooperative Agreement No. 4-1981-C by and between the State, the City and County of San Francisco, and the TJPA ("Cooperative Agreement") and any gross lease revenues generated from any portion of the above mentioned real property as set forth in the Cooperative Agreement.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
Mark L. Weaver
Deputy District Director

Dated: _____

EXHIBIT "A"

LEGAL DESCRIPTION
TRANSBAY CO-OP PARCEL F

Parcel 1

All that parcel of land (State Parcel No.371) conveyed to the State of California by instrument recorded August 3, 1937, in Volume 3153, Page 450, Official Records of the City and County of San Francisco and described therein as follows:

BEGINNING at a point on the northwesterly line of Howard Street, distant thereon 275 feet northeasterly from the northeasterly line of Second Street; and running thence northeasterly along said line of Howard Street 50 feet; thence at a right angle northwesterly 85 feet; thence at a right angle southwesterly 50 feet; and thence at a right angle southeasterly 85 feet to the point of beginning.

Being portion of 100 Vara Block No. 347.

Parcel 2

All that parcel of land (State Parcel No.372) conveyed to the State of California by instrument recorded September 4, 1937, in Volume 3192, Page 151, Official Records of the City and County of San Francisco and described therein as follows:

COMMENCING at a point on the southeasterly line of Natoma Street, distant thereon 423 feet northeasterly from the northeasterly line of Second Street; running thence northeasterly along said line of Natoma Street 90 feet; thence at a right angle southeasterly 50 feet; thence at a right angle southwesterly 90 feet; and thence at a right angle northwesterly 50 feet to the point of commencement.

Being portion of 100 Vara Block No. 347.

Parcel 3

All that parcel of land (State Parcel No.502) described in the instrument recorded September 3, 1937, in Volume 3195, Page 96, Official Records of the City and County of San Francisco and described therein as follows:

COMMENCING at a point on the southeasterly line of Natoma Street, distant thereon 335 feet northeasterly from the northeasterly line of Second Street; running thence northeasterly and along said line of Natoma Street 88 feet; thence at a right angle southeasterly 70 feet 2 inches; thence at a right angle southwesterly 25 feet; thence at a right angle southeasterly 10 feet; thence at a right angle southwesterly 11 feet 6 inches; thence at a right angle southeasterly 85 feet to a point on the northwesterly line of Howard Street, distant thereon 386 feet 6 inches northeasterly from the northeasterly line of Second Street; thence southwesterly along said line

of Howard Street 61 feet 6 inches; thence at a right angle northwesterly 85 feet; thence at a right angle southwesterly 28 feet; thence at a right angle northwesterly 2 inches; thence in a direct line northwesterly 88 feet 6-3/4 inches to the point of commencement.

Being part of 100 Vara Lot No.29 in Block No. 347.

Parcel 4

All that parcel of land (State Parcel No.502A) described in the instrument recorded June 22, 1937, in Volume 3147, Page 423, Official Records of the City and County of San Francisco and described therein as follows:

COMMENCING at a point on the southeasterly line of Natoma Street. Distant thereon 225 feet northeasterly from the northeasterly line of 2nd Street; running thence northeasterly and along said line of Natoma Street 144 feet; thence at a right angle southeasterly 80 feet; thence at a right angle southwesterly 124 feet; thence at a right angle northwesterly 15 feet; thence at a right angle southwesterly 20 feet; thence at a right angle northwesterly 65 feet to the point of beginning.

Being part of 100 Vara Lots No. 29 and 30 in Block No.347.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, 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.

DRAFT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Transbay Joint Powers Authority
201 Mission Street Suite 2100
San Francisco, CA 94105

Recording Fee \$0 (Govt Code § 27383)
Document Transfer Tax \$0
(Rev. & Tax. Code § 11922; SF Bus. & Tax. Code 1105)

(Space above this line for Recorder's use)

RELINQUISHMENT OF POWER OF TERMINATION

Block 4 portion of Caltrans Parcels O, O', and O"
portion of Block 3739 Lot 008,
San Francisco, CA

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, THE STATE OF CALIFORNIA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State"), does hereby REMISE, RELEASE, and QUITCLAIM to TRANSBAY JOINT POWERS AUTHORITY ("TJPA"), a joint powers agency created under California Government Code Sections 6500 et seq., all of the State's remaining right, title and interest in the real property located in the City and County of San Francisco, State of California, described in Exhibit A attached hereto and made a part hereof and commonly described as "Block 4", and, as to such property, does further hereby relinquish, release and forever terminate its rights and interest in and to the Power of Termination reserved by the State in, and all of Exhibit B to, its Director's (Quitclaim) Deed (Parcel O) recorded on December 16, 2008 in the Official Records of the City and County of San Francisco (the "Official Records") as Instrument No. I694633-00, Director's (Quitclaim) Deed (Parcel O') recorded on October 31, 2008 in the Official Records as Instrument No. I673663, and Director's (Quitclaim) Deed (Parcel O'') recorded on December 16, 2008 in the Official Records as Instrument No. I694634, and, as to such property, does further, hereby relinquish, release and forever terminate its rights and interest in and to any Gross Sale Proceeds (including any requirement that such Gross Sale Proceeds be deposited in the Trust Account under the July 11, 2003 Cooperative Agreement No. 4-1981-C by and between the State, the City and County of San Francisco, and the TJPA ("Cooperative Agreement") and any gross lease revenues generated from any portion of the above mentioned real property as set forth in the Cooperative Agreement.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
Mark L. Weaver
Deputy District Director

Dated: _____

EXHIBIT "A"

**LEGAL DESCRIPTION
BLOCK 4
(PORTION OF TRANSBAY CO-OP PARCELS O, O', and O")**

DRAFT

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, 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.

DRAFT

EXHIBIT O TO
CREDIT AGREEMENT

TRANSBAY JOINT POWERS AUTHORITY
201 Mission Street, Suite 2100
San Francisco, CA 94105

[●], 2014

U.S. BANK NATIONAL ASSOCIATION,
as Collateral Agent
One California Street, Suite 1000
Mail Code – SF-CA-SFCT
San Francisco, CA 94111
Attention: Andrew Fung

Re: Collateral Agent Written Direction

Ladies and Gentlemen:

Reference is hereby made to (i) that certain Collateral Agency and Account Agreement, dated as of January 1, 2010, as amended by the Amendment to Collateral Agency and Account Agreement, dated as of May 8, 2014 and executed on June 3, 2014, and as further amended by the Second Amendment to Collateral Agency and Account Agreement, dated as of [●], 2014 (as so amended, and as the same may be further amended, restated, supplemented or otherwise modified from time to time, the “**Collateral Agency Agreement**”), by and among Transbay Joint Powers Authority (the “**Borrower**”), U.S. Bank National Association, as Collateral Agent (the “**Collateral Agent**”), and the United States Department of Transportation, acting through the Federal Highway Administrator, as TIFIA Lender, and (ii) that certain Counterpart to the Collateral Agency Agreement, dated as of the date hereof, executed by Goldman Sachs Bank USA (“**Goldman Sachs**”), as the Permitted Debt Holder Representative (together with its successors and assigns in such capacity, the “**GS Lenders Representative**”) for the lenders (the “**GS Lenders**”) from time to time party to that certain Credit Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among the Borrower, the GS Lenders and Goldman Sachs, as Sole Lead Arranger, Sole Lead Bookrunner, Syndication Agent, Administrative Agent and Collateral Agent. Capitalized terms used herein but not otherwise defined herein shall have the respective meanings assigned to such terms in the Collateral Agency Agreement.

In accordance with Section 4 of the Collateral Agency Agreement, the Borrower hereby directs the Collateral Agent to establish a subaccount in the Parity Permitted Debt Service Account (the “**GS Debt Service Subaccount**”) and a subaccount in the Parity Permitted Debt Service Reserve Account (such subaccount, the “**GS Debt Service Reserve Subaccount**”), each for the exclusive benefit of the GS Lenders and the GS Lenders Representative. Furthermore, in accordance with clause Fourth of Section 5(b) of the Collateral Agency Agreement, the Borrower hereby further irrevocably directs the Collateral Agent to withdraw from the Net Tax Increment Revenues Account and the Annual Capital Contributions Account any and all Available Pledged Revenues that are from time to time held therein and deposit such Available

Pledged Revenues in the GS Debt Service Reserve Subaccount in satisfaction of the debt service reserve fund requirement established for and under the Credit Agreement. As used herein, “**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 Collateral Agency Agreement.

[Remainder of page intentionally left blank]

DRAFT

Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed copy of this Collateral Agent Written Direction, which will become a binding agreement upon our receipt.

Very truly yours,

TRANSBAY JOINT POWERS AUTHORITY

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

APPROVED AS TO FORM:

By: _____
Deborah Miller
Shute, Mihaly & Weinberger

ACCEPTED AND AGREED:

U.S. BANK NATIONAL ASSOCIATION, as TIFIA
Collateral Agent

By: _____
Name:
Title:

EXHIBIT P TO
CREDIT AGREEMENT

TRANSBAY JOINT POWERS AUTHORITY

201 Mission Street, Suite 2100
San Francisco, CA 94105

[●], 2014

Tiffany Bohee, Executive Director
Office of Community Investment and Infrastructure
One South Van Ness Avenue
San Francisco, CA 94103

Re: Transbay Transit Center Bridge Loan

Dear Ms. Bohee:

I am writing to request the assistance of the Office of Community Investment and Infrastructure (as Successor Agency to the Redevelopment Agency of the City and County of San Francisco) (“OCII”) in satisfying a condition to closing a bridge loan arranged by Goldman Sachs Bank USA (“Goldman”) for the Transbay Joint Powers Authority (“TJPA”), which bridge loan will provide TJPA the financing necessary to continue authorizing construction contracts for the Transbay Transit Center on schedule.

As you know, TJPA has not yet drawn on its \$171 million Transportation Infrastructure Finance and Innovation Act (“TIFIA”) loan. One of the key conditions that TJPA must satisfy before it can draw on the TIFIA loan is the sale of at least \$429 million in formerly State-owned parcels. With the recent offer by a developer to purchase Redevelopment Block 5 for more than \$172 million, TJPA anticipates meeting all conditions and drawing on the TIFIA loan in late 2015.

Despite this strong progress toward satisfying the conditions to drawing on the TIFIA loan, TJPA requires interim cash flow funding for the period between September 30, 2014 and late 2015, when TJPA expects to draw on the TIFIA loan. TJPA had been in discussions with TIFIA regarding an amendment to the TIFIA loan that would have allowed TJPA to draw down on the federal loan in proportion to land sales achieved. Earlier this year TIFIA indicated that it was unable to accommodate this request, so TJPA was forced to seek a private bridge financing. After engaging in a competitive process, TJPA has elected to engage Goldman as the arranger of a \$171 million bridge loan. TJPA expects to close on the bridge loan by [____], 2014. Although the bridge loan will have a four-year term, TJPA expects to redeem the bridge loan in late 2015 by drawing on the TIFIA loan and using the TIFIA loan proceeds to repay the bridge loan in full.

As security for the bridge loan, Goldman requires TJPA to pledge certain revenues, which consist primarily of the net tax increment generated by the formerly State-owned parcels and are pledged to the TJPA for construction of the Transbay Transit Center. In particular, Section 2 of the 2008 Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge

Agreement (“Pledge Agreement”) between the City and County of San Francisco (“City”), OCII, and TJPA, provides as follows:

Pursuant to Article XVI, Section 16 of the California Constitution and Section 33445, 33670, 33671, and 33675 of the Community Redevelopment Law, [OCII as successor to the former agency] and City agree that all property tax increment revenues attributable to parcels or portions thereof acquired by the City or the [TJPA] from the State of California pursuant to the Cooperative Agreement (“Net Tax Increment”), and any interest thereon, are hereby irrevocably pledged to the [TJPA] for costs associated with construction and design of the Transbay Terminal Project, and further agree that such revenues shall not be subject to any other indebtedness whether from the Transbay Redevelopment Plan or any other City or [OCII] obligation.

See also 2003 Cooperative Agreement, Section III(I); 2005/2006 Redevelopment Plan for the Transbay Redevelopment Project Area, Section 5.7; and 2008 Option Agreement for the Purchase and Sale of Real Property, Section 2.2(c).

The 2013 Disposition and Development Agreement for Transbay Block 6, Section 4.11, provides as follows (capitalized terms are as defined in the referenced agreement):

Should Completion of Construction . . . not commence or be complete by the dates specified in the Schedule of Performance for reasons other than allowable delays . . . , the Developer or Affordable Developer, as applicable, will be required to pay to [OCII] the estimated property tax increment that would otherwise be due to the San Francisco Office of the Assessor-Recorder. . . .

I am requesting that OCII confirm its understanding that any payments owed by the developers under this Section 4.11 (and the corresponding provision of any future Disposition and Development Agreement entered into by OCII after the closing date of the bridge loan) constitute “Net Tax Increment” irrevocably pledged to TJPA under, and for the purposes of, the Pledge Agreement. Such confirmation is not intended to, and shall not for any purpose whatsoever be construed or act to, amend, restate or otherwise modify the Pledge Agreement.

Since TJPA expects to close on the bridge loan by [_____, 2014], TJPA requests that OCII provide the requested confirmation by countersigning this letter in the space provided below and returning a copy to me no later than [_____, 2014].

Very truly yours,

[TJPA]

cc: Goldman Sachs Bank USA

OCII hereby confirms its understanding that any payments owed by the developers under Section 4.11 of the Disposition and Development Agreement for Block 6 (and the corresponding provision of any future Disposition and Development Agreement entered into by OCII after the closing date of the bridge loan) constitute "Net Tax Increment" irrevocably pledged to TJPA under, and for the purposes of, the Pledge Agreement. Such confirmation is not intended to, and shall not for any purpose whatsoever be construed or act to, amend, restate or otherwise modify the Pledge Agreement.

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

By: _____
Name: Tiffany Bohee
Title: Executive Director

DRAFT

(Local Currency-Single Jurisdiction)

ISDA[®]

International Swaps and Derivatives Association, Inc.

MASTER AGREEMENT

dated as of [_____], 2014

[SWAP DEALER] (“Party A”) and Transbay Joint Powers Authority (“Party B”) have entered and/or anticipate entering into one or more transactions (each a “Transaction”) that are or will be governed by this Master Agreement (the “Master Agreement”), which includes the schedule (the “Schedule”), and the documents and other confirming evidence (each a “Confirmation”) exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

1. Interpretation

- (a) **Definitions.** The terms defined in Section 12 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this “Agreement”), and the parties would not otherwise enter into any Transactions.

2. Obligations

- (a) General Conditions.
 - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
 - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of branches or offices through which the parties make and receive payments or deliveries.

(d) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into) that:—

(a) **Basic Representations.**

- (i) **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;
 - (ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorize such execution, delivery and performance;
 - (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
 - (iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
 - (v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).
- (b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.
- (c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.
- (d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

- (a) **Furnish Specified Information.** It will deliver to the other party any forms, documents or certificates specified in the Schedule or any Confirmation by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorizations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) or to give notice of a Termination Event) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified

Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If “Cross Default” is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its

assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

- (1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or
- (2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (ii) below or an Additional Termination Event if the event is specified pursuant to (iii) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

- (1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or
- (2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(iii) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) ***Right to Terminate Following Event of Default.*** If at any time an Event of Default with respect to a party (the “Defaulting Party”) has occurred and is then continuing, the other party (the “Non-defaulting Party”) may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, “Automatic Early Termination” is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) ***Right to Terminate Following Termination Event.***

(i) ***Notice.*** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) ***Two Affected Parties.*** If an Illegality under Section 5(b)(i)(1) occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iii) ***Right to Terminate.*** If:—

(1) an agreement under Section 6(b)(ii) has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality other than that referred to in Section 6(b)(ii), a Credit Event Upon Merger or an Additional Termination Event occurs,

either party in the case of an Illegality, any Affected Party in the case of an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(d) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss," and a payment method, either the "First Method" or the "Second Method." If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method," as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:—

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party over (B) the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party less (B) the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Unpaid Amounts owing to X less (II) the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

8. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) **Counterparts and Confirmations.**
 - (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
 - (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

9. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

10. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

11. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

12. Definitions

As used in this Agreement:—

“**Additional Termination Event**” has the meaning specified in Section 5(b).

“**Affected Party**” has the meaning specified in Section 5(b).

“**Affected Transactions**” means (a) with respect to any Termination Event consisting of an Illegality, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

“**Affiliate**” means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

“**Applicable Rate**” means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

“**consent**” includes a consent, approval, action, authorization, exemption, notice, filing, registration or exchange control consent.

“Credit Event Upon Merger” has the meaning specified in Section 5(b).

“Credit Support Document” means any agreement or instrument that is specified as such in this Agreement.

“Credit Support Provider” has the meaning specified in the Schedule.

“Default Rate” means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

“Defaulting Party” has the meaning specified in Section 6(a).

“Early Termination Date” means the date determined in accordance with Section 6(a) or 6(b)(iii).

“Event of Default” has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

“Illegality” has the meaning specified in Section 5(b).

“law” includes any treaty, law, rule or regulation and **“lawful”** and **“unlawful”** will be construed accordingly.

“Local Business Day” means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

“Loss” means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party’s legal fees and out-of-pocket expenses referred to under Section 9. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

“Market Quotation” means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the “Replacement Transaction”) that would have the effect of preserving for such party the economic equivalent of any payment or delivery

(whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

“Non-default Rate” means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

“Non-defaulting Party” has the meaning specified in Section 6(a).

“Potential Event of Default” means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Reference Market-makers” means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

“Scheduled Payment Date” means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

“Set-off” means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

“Settlement Amount” means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party’s Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

“Specified Entity” has the meaning specified in the Schedule.

“Specified Indebtedness” means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

“Specified Transaction” means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

“Terminated Transactions” means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if “Automatic Early Termination” applies, immediately before that Early Termination Date).

“Termination Event” means an Illegality or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

“Termination Rate” means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

“Unpaid Amounts” owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

[SWAP DEALER]

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name:
Title:
Date:

By: _____
Name: Sara Gigliotti
Title: Chief Financial Officer
Date:

DRAFT

SCHEDULE
to the
ISDA Master Agreement

dated as of [_____], 2014,

between

[SWAP DEALER],
("Party A")

and

TRANSBAY JOINT POWERS AUTHORITY,
("Party B")

Part 1. Termination Provisions.

In this Agreement:—

- (a) **"Specified Entity"** has no applicability in this Agreement.
- (b) **"Specified Transaction"** will have the meaning specified in Section 12 of this Agreement.
- (c) The **"Cross Default"** provisions of Section 5(a)(vi) of this Agreement, as modified below, will apply to Party A and will apply to Party B. Section 5(a)(vi) of this Agreement is hereby amended by deleting in the seventh line thereof the words ", or becoming capable at such time of being declared," and by inserting the following proviso at the end thereof:

"provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under either (1) or (2) above if, as demonstrated to the reasonable satisfaction of the other party, (a) the event or condition referred to in (1) or the failure to pay referred to in (2) is a failure to pay caused by an error or omission of an administrative or operational nature; (b) the event or condition referred to in (1) or the failure to pay referred to in (2) has not resulted in such Specified Indebtedness becoming due and payable under such agreements or instruments before it would otherwise have become due and payable; (c) funds were available to such party to enable it to make the relevant payment when due; and (d) such relevant payment is made within three Business Days following receipt of written notice from an interested party of such failure to pay."

The following provisions apply:

"Specified Indebtedness" will have the meaning specified in Section 12 of this Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of a party's banking business. For the avoidance of doubt, the Credit Agreement will constitute Specified Indebtedness of Party B.

"Threshold Amount" means (i) with respect to Party A, an amount equal to [2% of Shareholder Equity], (ii) with respect to Party A's Credit Support Provider, an amount equal to [2% of Shareholder Equity], and (iii) with respect to Party B, USD 5,000,000. [As used herein, Shareholder Equity shall mean an amount determined in accordance with generally accepted accounting principles and reflected as Shareholder's Equity in the most recent annual audited financial statements of [_____].]

- (d) The “**Credit Event Upon Merger**” provisions of Section 5(b)(ii) will apply to Party A and will apply to Party B.
- (e) The “**Automatic Early Termination**” provisions of Section 6(a) will not apply to Party A and will not apply to Party B.
- (f) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement, Market Quotation and the Second Method will apply.
- (g) **Events of Default.**
 - (i) **Bankruptcy.** Clause (6) of Section 5(a)(vii) of this Agreement is hereby amended to read in its entirety as follows:

“(6)(A) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets or (B) in the case of Party B, any Credit Support Provider of Party B or any applicable Specified Entity of Party B, there shall be declared by it or by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it and, as a result of such declaration, (i) the ability of Party B to perform its obligations under this Agreement is materially and adversely affected, or (ii) a receiver, trustee, custodian or similar official is appointed for all or a substantial portion of the assets of Party B;”.
 - (ii) **Merger Without Assumption.** Section 5(a)(viii) of this Agreement is hereby amended to read in its entirety as follows:

“(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity (or, without limiting the foregoing, if such party is Party B, an entity such as an organization, board, commission, authority, agency, or body succeeds to the principal functions of, or powers and duties granted to, such party, any Credit Support Provider of such party or any applicable Specified Entity) and, at the time of such consolidation, amalgamation, merger, transfer or succession:

 - (1) the resulting, surviving, transferee, or successor entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or
 - (2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement.”
- (h) **Additional Termination Event** will apply. The following shall constitute an Additional Termination Event with respect to Party A:

- (i) with respect to Party A, if [Party A's] [Party A's Credit Support Provider's] senior, unsecured, unenhanced debt rating is withdrawn, suspended or reduced below "BBB" in the case of S&P, or "Baa2" in the case of Moody's or "BBB" in the case of Fitch; and

For the purpose of Termination Event (i) above, the Affected Party shall be Party A and all Transactions shall be Affected Transactions.

Part 2. Agreement to Deliver Documents.

For the purpose of Section 4(a) of this Agreement, each party agrees to deliver the following documents, as applicable:

<u>Party required to deliver document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be Delivered</u>	<u>Covered by Section 3(d)</u>
Party A	Opinions of counsel to Party A and Party A's Credit Support Provider in form and substance satisfactory to Party B. .	Upon execution of this Agreement and, with respect to each Transaction, upon request at the time of the execution of such Transaction.	No
Party B	Opinion of counsel to Party B in form and substance satisfactory to Party A..	Upon execution of this Agreement and, with respect to each Transaction, upon request at the time of the execution of such Transaction.	No
Party A and Party B	Evidence reasonably satisfactory to Party A and Party B, respectively, of the (i) authority of Party A and Party B to enter into the Agreement and any Transactions and (ii) the authority and genuine signature of the individual signing the Agreement, any Transactions and any Credit Support Documents on behalf of Party A and Party B to execute the same.	Prior to the execution of this Agreement and, with respect to each Transaction, prior to the execution of such Transaction.	Yes
Party B	A certified copy of the resolution or resolutions (or the equivalent thereof) of the governing body of Party B, certified by an appropriate official of Party B, pursuant to which Party B is authorized to enter into this Agreement and each Transaction.	Prior to the execution of this Agreement and, with respect to each Transaction, prior to the execution of such Transaction.	Yes

<u>Party required to deliver document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be Delivered</u>	<u>Covered by Section 3(d)</u>
Party A and Party B	Such party's [or in the case of Party A, such party's Credit Support Provider's] annual report containing audited consolidated financial statements for each fiscal year certified by independent certified public accountants and prepared in conformity with accounting principles generally accepted in the United States of America.	As soon as practicable after becoming publicly available and in any event within 210 days after the end of each of its fiscal years; provided that Party A and Party B will be deemed to have delivered such annual report upon posting the same on its public website.	Yes
Party A	Guarantee of Credit Support Provider of Party A, if applicable, substantially in the form of Exhibit B to this Schedule.	Upon execution of this Agreement	No

Part 3. Miscellaneous.

- (a) **Addresses for Notices.** For the purpose of Section 10(a) to this Agreement:

Address for notices or communications to Party A:

[TO BE PROVIDED BY PARTY A]

Address:

Attention:
Telephone:
Facsimile:

Address for notices or communications to Party B:

Address: Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105

Attention: Sara Gigliotti, Chief Financial Officer
Facsimile No.: (415) 597-4615
Telephone No.: (415) 597-4620

- (b) **Offices.** Party A, if it enters into a Transaction through an Office other than its head or home office represents to Party B that, notwithstanding the place of booking office or jurisdiction of incorporation or organization, the obligations of Party A are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by Party A on each date on which a Transaction is entered into.

- (c) **Calculation Agent.** The Calculation Agent is Party A, unless otherwise specified in a Confirmation in relation to the relevant Transaction or unless Party A is the Defaulting Party, in which case Party B shall be the Calculation Agent.
- (d) **Credit Support Document.** Details of any Credit Support Document:

The Credit Support Annex attached hereto as Exhibit D shall be a Credit Support Document with respect to Party A for all purposes hereunder and is incorporated herein by this reference. The Guaranty of [Party A's Credit Support Provider, if applicable] will be considered a Credit Support Document with respect to Party A. [Any Guaranty provided with respect to Party A will be considered a Credit Support Document with respect to Party A.] . Credit Support Document means in relation to Party B, not applicable.
- (e) **Credit Support Provider.** Credit Support Provider means in relation to Party A, [_____] and in relation to Party B, not applicable. [If any Guaranty is provided with respect to Party A, the entity providing the Guaranty will be considered a Credit Support Provider with respect to Party A.]
- (f) **Governing Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE, EXCEPT THAT (I) THE CAPACITY, POWER AND AUTHORITY OF PARTY B TO ENTER INTO THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA. AND (II) NEW YORK GENERAL OBLIGATIONS LAW §§ 5-1401 AND 5-1402 SHALL APPLY.
- (g) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will apply to all Transactions, unless otherwise provided in a Confirmation.
- (h) **"Affiliate"** will have the meaning specified in Section 12 of this Agreement.

Part 4. Other Provisions.

- (a) **Obligations.** Section 2(a)(iii) of this Agreement is hereby amended to read in its entirety as follows:

"(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default, Potential Event of Default or Incipient Illegality with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement."
- (b) **Representations.**
 - (i) The introductory clause of Section 3 of this Agreement is hereby amended to read in its entirety as follows:

"Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(a), 3(e) and 3(f), at all times until the termination of this Agreement) that:"
 - (ii) Section 3(a)(ii) of this Agreement is hereby amended to read in its entirety as follows:

“(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action and made all necessary determinations and findings to authorize such execution, delivery and performance;”.

(iii) Section 3(b) of this Agreement is hereby amended to read in its entirety as follows:

“(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Incipient Illegality (in the case of Party B) or Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.”

(iv) Section 3 of this Agreement is hereby amended by adding the following subsection “(e)” thereto, which subsection shall only apply to Party B:

“(e) **Non-Speculation.** This Agreement has been, and each Transaction hereunder will be (and, if applicable, has been), entered into for purposes of managing its borrowings or investments, or hedging its underlying assets or liabilities and not for purposes of speculation.”

(v) Section 3 of this Agreement is hereby amended by adding the following subsection “(f)” thereto:

“(f) **ERISA.** It is not (i) an employee benefit plan (hereinafter an "ERISA Plan"), as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), subject to Title I of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended, (ii) a person acting on behalf of an ERISA Plan or (iii) a person the assets of whom constitute assets of an ERISA Plan. Each party will provide notice to the other party in the event that it is aware that it is in breach of any aspect of this representation or is aware that with the passing of time, giving of notice or expiry of any applicable grace period it will breach this representation.”

(c) **Agreements.**

(i) The introductory clause of Section 4 of this Agreement is hereby amended to read in its entirety as follows:

“Each party agrees with the other (or, in the case of Section 4(d) Party B agrees with the other party) that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:”

(ii) Section 4 of this Agreement is hereby amended by adding the following subsections “(d)” thereto:

(d) **Notice of Incipient Illegality.** If an Incipient Illegality occurs, Party B will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Incipient Illegality and will also give such other information about that Incipient Illegality as the other party may reasonably require.

(d) **Jurisdiction.** Section 11(b) of this Agreement is hereby amended to read in its entirety as follows:

“(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement (“Proceedings”), each party irrevocably:

(i) submits, to the fullest extent permitted by applicable law, to the non-exclusive jurisdiction of the United States District Court located in the Borough of Manhattan in New York City and the United States District Court located in San Francisco, California; and

(ii) waives, to the fullest extent permitted by applicable law, (1) any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, (2) any claim that such Proceedings have been brought in an inconvenient forum and (3) the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.”

(e) **Definitions.** Section 12 of this Agreement is hereby amended to add the following definitions in their appropriate alphabetical order:

“**Fitch**” means Fitch, Inc., or any successor to the rating business of such entity.

“**Incipient Illegality**” means (a) the enactment by any legislative body with competent jurisdiction over Party B of legislation which, if adopted as law, would render unlawful (i) the performance by Party B of any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of a Transaction or the compliance by Party B with any other material provision of this Agreement relating to such Transaction or (ii) the performance by Party B or a Credit Support Provider of Party B of any contingent or other obligation which Party B (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction, (b) any assertion in any proceeding, forum or action by Party B, in respect of Party B to the effect that performance under this Agreement is unlawful or (c) the occurrence with respect to Party B or any Credit Support Provider of Party B of any event that constitutes an Illegality.”

“**Moody’s**” means Moody’s Investor Services, Inc., or any successor to the rating business of such entity.

“**S&P**” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor to the rating business of such entity.

(f) **Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):—

(i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No

communication (written or oral) received from the other party shall be deemed any assurance or guarantee as to the expected results of that Transaction.

(ii) Assessment and Understanding. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

(iii) Status of Parties. The other party is not acting as a fiduciary for or as an advisor to it in respect of that Transaction.”

- (g) **No Set-off.** Without affecting the provisions of this Agreement requiring the calculation of certain net payment amounts and without affecting the provisions in the Credit Support Annex relating to Set-off, any amount payable under this Agreement in respect of an Early Termination Date and determined pursuant to Section 6(e) of this Agreement shall not be subject to any Set-off.
- (h) **Waiver of Right to Trial by Jury.** Each party hereby irrevocably waives any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Agreement or any Credit Support Document. Each party (i) certifies that no representative, agent or attorney of the other party or any Credit Support Provider has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Agreement and provide for any Credit Support Document, as applicable, by, among other things, the mutual waivers and certifications in this Part 4(h).
- (i) **Consent to Recording.** Each party consents to the recording of the telephone conversations between trading, marketing and operations personnel of the parties in connection with this Agreement or any potential Transaction, and agrees that any such tape recordings may be submitted in evidence in any proceedings relating to the Agreement.
- (j) **Severability.** In the event that any one or more of the provisions contained in this Agreement should be held invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby; provided, however, that this severability provision will not be applicable if any provision of Section 1(c), 2, 5, or 6 (or any definition or provision in Section 12 to the extent it relates to or is used in connection with such Section) is held to be invalid or unenforceable. The parties shall endeavor, in good faith negotiations, to replace the invalid, illegal or unenforceable provisions with valid provisions, the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.
- (k) **Additional Representations.** For purposes of Section 3 of this Agreement, the following shall be added, immediately following paragraph (f) thereof:

“(g) **No Agency.** It is entering into this Agreement, any Credit Support Document to which it is a party, each Transaction, and any other documentation relating to this Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise).

(h) **Due Execution.** The individual(s) executing and delivering this Agreement and any other documentation (including any Credit Support Document and each Confirmation) relating to this Agreement to which it is a party or that it is required to deliver are duly

empowered and authorized to do so, and it has duly executed and delivered this Agreement, each Confirmation and any Credit Support Document to which it is a party.

(i) **Eligible Contract Participant.** Each of Party A and Party B represents to each other (which representation will be deemed to be repeated by each of Party A and Party B on each date on which a Transaction is entered into) that it is an “eligible contract participant” as defined in Section 1(a)(18) of the Commodity Exchange Act, as amended.

- (l) **Confirmation Procedures.** For each Transaction that Party A and Party B enter into hereunder, Party A shall promptly send to Party B a Confirmation setting forth the terms of such Transaction. Party B shall execute and return the Confirmation to Party A or request correction of any error within five Business Days of receipt.
- (m) **Additional Provision Relating to Options and Interest Rate Caps, Collars and Floors.** Notwithstanding the terms of Sections 5 and 6 of this Agreement, if at any time and so long as one of the parties to this Agreement (“X”) shall have satisfied in full all its payment obligations under Section 2(a)(i) of this Agreement and shall at the time have no future payment obligations, whether absolute or contingent, under such Section, then unless the other party (“Y”) is required pursuant to appropriate proceedings to return to X or otherwise returns to X upon demand of X any portion of any such payment, (a) the occurrence of an Event of Default described in Section 5(a) of this Agreement with respect to X or any Specified Entity of X, other than the event of default specified in Section 5(a)(iii) as it relates to the obligations of X to return Posted Collateral (as defined in and pursuant to the Credit Support Annex) to Y, shall not constitute an Event of Default or a Potential Event of Default with respect to X as the Defaulting Party and (b) Y shall be entitled to designate an Early Termination Date pursuant to Section 6 of this Agreement only as a result of (I) the occurrence of an Event of Default specified in Section 5(a)(iii) as it relates to the obligations of X to return Posted Collateral (as defined in and pursuant to the Credit Support Annex) to Y with X as the Defaulting Party or (II) the occurrence of a Termination Event set forth in Section 5(b)(i) of this Agreement with respect to Y as the Affected Party.
- (n) **Form of Agreement.** The entire text of this Agreement preceding this Schedule is intended by the parties to be a verbatim transcription of the printed terms of the form of Master Agreement (Local Currency- Single Jurisdiction) (Second Printing) published by the International Swap and Derivatives Association, Inc. (formerly the International Swap Dealers Association, Inc.) in 1992. If the text of this Agreement preceding this Schedule is different in any respect from those printed terms, the differences shall be disregarded and treated as inadvertent errors or omissions or additions, and the text of this Agreement preceding this Schedule shall be deemed corrected to include those printed terms verbatim. The parties agree that this Agreement, any documents to be delivered pursuant to this Agreement and any notices hereunder (other than notices pursuant to Sections 5 or 6 of the Agreement) may be transmitted between them by email and/or facsimile. The parties intend that faxed signatures and electronically imaged signatures such as .pdf files shall constitute original signatures and are binding on all parties.

The parties executing this Schedule have executed the Master Agreement and have agreed as to the contents of this Schedule.

[SWAP DEALER]

By: _____
Title: _____

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Title: Chief Financial Officer

DRAFT

EXHIBIT A to Schedule

ISDA[®]

International Swaps and Derivatives Association, Inc.

CREDIT SUPPORT ANNEX

CREDIT SUPPORT ANNEX

to the Schedule to the

ISDA MASTER AGREEMENT

dated as of [_____], 2014

between

[SWAP DEALER]

And TRANSBAY JOINT POWERS
AUTHORITY

(“Party A”)

(“Party B”)

This Annex supplements, forms part of, and is subject to, the above-referenced Agreement, is part of its Schedule and is a Credit Support Document under this Agreement with respect to each party.

Accordingly, the parties agree as follows:

Paragraph 1. Interpretation

(a) **Definitions and Inconsistency.** Capitalized terms not otherwise defined herein or elsewhere in this Agreement have the meanings specified pursuant to Paragraph 12, and all references in this Annex to Paragraphs are to Paragraphs of this Annex. In the event of any inconsistency between this Annex and the other provisions of this Schedule, this Annex will prevail, and in the event of any inconsistency between Paragraph 13 and the other provisions of this Annex, Paragraph 13 will prevail.

(b) **Secured Party and Pledgor.** All references in this Annex to the “Secured Party” will be to either party when acting in that capacity and all corresponding references to the Pledgor will be to the other party when acting in that capacity; *provided, however*, that if Other Posted Support is held by a party to this Annex, all references herein to that party as the Secured Party with respect to that Other Posted Support will be to that party as the beneficiary thereof and will not subject that support or that party as the beneficiary thereof to provisions of law generally relating to security interests and secured parties.

Paragraph 2. Security Interest

Each party, as the Pledgor, hereby pledges to the other party, as the Secured Party, as security for its Obligations and grants to the Secured Party a first priority continuing security interest in, lien on and right of Set-off against all Posted Collateral Transferred to or received by the Secured Party hereunder. Upon the Transfer by the Secured Party to the Pledgor of Posted Collateral, the security interest and lien granted

hereunder on that Posted Collateral will be released immediately and, to the extent possible, without any further action by either party.

Paragraph 3. Credit Support Obligations

(a) **Delivery Amount.** Subject to Paragraphs 4 and 5, upon demand made by the Secured Party on or promptly following a Valuation Date, if the Delivery Amount for that Valuation Date equals or exceeds the Pledgor's Minimum Transfer Amount, then the Pledgor will Transfer to the Secured Party Eligible Credit Support having a Value as of the date of Transfer at least equal to the applicable Delivery Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "*Delivery Amount*" applicable to the Pledgor for any Valuation Date will equal the amount by which:

(i) the Credit Support Amount

exceeds

(ii) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party.

(b) **Return Amount.** Subject to Paragraphs 4 and 5, upon a demand made by the Pledgor on or promptly following a Valuation Date, if the Return Amount for that Valuation Date equals or exceeds Secured Party's Minimum Transfer Amount, then the Secured Party will Transfer to the Pledgor Posted Credit Support specified by the Pledgor in that demand having a Value as of the date of Transfer as close as practicable to the applicable Return Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "*Return Amount*" applicable to the Secured Party for any Valuation Date will equal the amount by which:

(i) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party

exceeds

(ii) the Credit Support Amount.

"Credit Support Amount" means, unless otherwise specified in Paragraph 13, for any Valuation Date (i) the Secured Party's Exposure for that Valuation Date plus (ii) the aggregate of all Independent Amounts applicable to the Pledgor, if any, minus (iii) all Independent Amounts applicable to the Secured Party, if any, minus (iv) the Pledgor's Threshold; *provided, however*, that the Credit Support Amount will be deemed to be zero whenever the calculation of Credit Support Amount yields a number less than zero.

Paragraph 4. Conditions Precedent, Transfer Timing, Calculations and Substitutions

(a) **Conditions Precedent.** Each Transfer obligation of the Pledgor under Paragraphs 3 and 5 and of the Secured Party under Paragraphs 3, 4(d)(ii), 5 and 6(d) is subject to the conditions precedent that:

(i) no Event of Default, Potential Event of Default or Specified Condition has occurred and is continuing with respect to the other party; and

(ii) no Early Termination Date for which any unsatisfied payment obligations exist has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the other party.

(b) **Transfer Timing.** Subject to Paragraphs 4(a) and 5 and unless otherwise specified, if a demand for the Transfer of Eligible Credit Support or Posted Credit Support is made by the Notification Time, then the relevant Transfer will be made not later than the close of business on the next Local Business Day; if a demand is made after the Notification Time, then the relevant Transfer will be made not later than the close of business on the second Local Business Day thereafter.

(c) **Calculations.** All calculations of Value and Exposure for purposes of Paragraphs 3 and 6(d) will be made by the Valuation Agent as of the Valuation Time. The Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) of its calculations not later than the Notification Time on the Local Business Day following the applicable Valuation Date (or in the case of Paragraph 6(d), following the date of calculation).

(d) **Substitutions.**

(i) Unless otherwise specified in Paragraph 13, upon notice to the Secured Party specifying the items of Posted Credit Support to be exchanged, the Pledgor may, on any Local Business Day, Transfer to the Secured Party substitute Eligible Credit Support (the “Substitute Credit Support”); and

(ii) subject to Paragraph 4(a), the Secured Party will Transfer to the Pledgor the items of Posted Credit Support specified by the Pledgor in its notice not later than the Local Business Day following the date on which the Secured Party receives the Substitute Credit Support, unless otherwise specified in Paragraph 13 (the “Substitution Date”); *provided* that the Secured Party will only be obligated to Transfer Posted Credit Support with a Value as of the date of Transfer of that Posted Credit Support equal to the Value as of that date of the Substitute Credit Support.

Paragraph 5. Dispute Resolution

If a party (a “Disputing Party”) disputes (I) the Valuation Agent’s calculation of a Delivery Amount or a Return Amount or (II) the Value of any Transfer of Eligible Credit Support or Posted Credit Support, then (1) the Disputing Party will notify the other party and the Valuation Agent (if the Valuation Agent is not the other party) not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in case of (I) above or (Y) the date of Transfer in the case of (II) above, (2) subject to Paragraph 4(a), the appropriate party will Transfer the undisputed amount to the other party not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (3) the parties will consult with each other in an attempt to resolve the dispute and (4) if they fail to resolve the dispute by the Resolution Time, then:

(i) In the case of a dispute involving a Delivery Amount or Return Amount, unless otherwise specified in Paragraph 13, the Valuation Agent will recalculate the Exposure and the Value as of the Recalculation Date by:

(A) utilizing any calculations of Exposure for the Transactions (or Swap Transactions) that the parties have agreed are not in dispute;

(B) calculating the Exposure for the Transactions (or Swap Transactions) in dispute by seeking four actual quotations at mid-market from Reference Market-makers for purposes of calculating Market Quotation, and taking the arithmetic average of those obtained; *provided* that if four quotations are not available for a particular Transaction (or Swap Transaction), then fewer than four quotations may be used for that Transaction (or Swap

Transaction); and if no quotations are available for a particular Transaction (or Swap Transaction), then the Valuation Agent's original calculations will be used for that Transaction (or Swap Transaction);

(C) utilizing the procedures specified in Paragraph 13 for calculating the Value, if disputed, of Posted Credit Support.

(ii) In the case of a dispute involving the Value of any Transfer of Eligible Credit Support or Posted Credit Support the Valuation Agent will recalculate the Value as of the date of Transfer pursuant to Paragraph 13.

Following a recalculation pursuant to this Paragraph, the Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) not later than the Notification Time on the Local Business Day following the Resolution Time. The appropriate party will, upon demand following that notice by the Valuation Agent or a resolution pursuant to (3) above and subject to Paragraphs 4(a) and 4(b), make the appropriate Transfer.

Paragraph 6. Holding and Using Posted Collateral

(a) **Care of Posted Collateral.** Without limiting the Secured Party's rights under Paragraph 6(c), the Secured Party will exercise reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable law, and in any event the Secured Party will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, the Secured Party will have no duty with respect to Posted Collateral, including, without limitation, any duty to collect any Distributions, or enforce or preserve any rights pertaining thereto.

(b) **Eligibility to Hold Posted Collateral; Custodians.**

(i) **General.** Subject to the satisfaction of any conditions specified in Paragraph 13 for holding Posted Collateral, the Secured Party will be entitled to hold Posted Collateral or to appoint an agent (a "Custodian") to hold Posted Collateral for the Secured Party. Upon notice by the Secured Party to the Pledgor of the appointment of a Custodian, the Pledgor's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Posted Collateral by a Custodian will be deemed to be the holding of that Posted Collateral by the Secured Party for which the Custodian is acting.

(ii) **Failure to Satisfy Conditions.** If the Secured Party or its Custodian fails to satisfy conditions for holding Posted Collateral, then upon a demand made by the Pledgor, the Secured Party will, not later than five Local Business Days after the demand, Transfer or cause its Custodian to Transfer all Posted Collateral held by it to a Custodian that satisfies those conditions or to the Secured Party if it satisfies those conditions.

(iii) **Liability.** The Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(c) **Use of Posted Collateral.** Unless otherwise specified in Paragraph 13 and without limiting the rights and obligations of the parties under Paragraphs 3, 4(d)(ii), 5, 6(d) and 8, if the Secured Party is not a Defaulting Party or an Affected Party with respect to a Specified Condition and no Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to

the Secured Party, then the Secured Party will, notwithstanding Section 9-207 of the New York Uniform Commercial Code, have the right to:

- (i) sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business any Posted Collateral it holds, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor; and
- (ii) register any Posted Collateral in the name of the Secured Party, its Custodian or a nominee for either.

For purposes of the obligation to Transfer Eligible Credit Support or Posted Credit Support pursuant to Paragraphs 3 and 5 and any rights or remedies authorized under this Agreement, the Secured Party will be deemed to continue to hold all Posted Collateral and to receive Distributions made thereon, regardless of whether the Secured Party has exercised any rights with respect to any Posted Collateral pursuant to (i) or (ii) above.

(d) ***Distributions and Interest Amount.***

(i) ***Distributions.*** Subject to Paragraph 4(a), if the Secured Party receives or is deemed to receive Distributions on a Local Business Day, it will Transfer to the Pledgor not later than the following Business Day any Distributions it receives or is deemed to receive to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose).

(ii) ***Interest Amount.*** Unless otherwise specified in Paragraph 13 and subject to Paragraph 4(a), in lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Posted Collateral in the form of Cash (all of which may be retained by the Secured Party), the Secured Party will Transfer to the Pledgor at the times specified in Paragraph 13 the Interest Amount to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose). The Interest Amount or portion thereof not Transferred pursuant to this Paragraph will constitute Posted Collateral in the form of Cash and will be subject to the security interest granted under Paragraph 2.

Paragraph 7. Events of Default

For purposes of Section 5(a)(iii)(1) of this Agreement, an Event of Default will exist with respect to a party if:

- (i) that party fails (or fails to cause its Custodian) to make, when due, any Transfer of Eligible Collateral, Posted Collateral or the Interest Amount, as applicable, required to be made by it and that failure continues for two Local Business Days after notice of that failure is given to that party;
- (ii) that party fails to comply with any restriction or prohibition specified in this Annex with respect to any of the rights specified in Paragraph 6(c) and that failure continues for five Local Business Days after notice of that failure is given to that party; or
- (iii) that party fails to comply with or perform any agreement or obligation other than those specified in Paragraphs 7(i) and 7(ii) and that failure continues for 30 days after notice of that failure is given to that party.

Paragraph 8. Certain Rights and Remedies

(a) ***Secured Party's Rights and Remedies.*** If at any time (1) an Event of Default or Specified Condition with respect to the Pledgor has occurred and is continuing or (2) an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Pledgor, then, unless the Pledgor has paid in full all of its Obligations that are then due, the Secured Party may exercise one or more of the following rights and remedies:

- (i) all rights and remedies available to a secured party under applicable law with respect to Posted Collateral held by the Secured Party;
- (ii) any other rights and remedies available to the Secured Party under the terms of Other Posted Support, if any;
- (iii) the right to Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and
- (iv) the right to liquidate any Posted Collateral held by the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required under applicable law, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor (with the Secured Party having the right to purchase any or all of the Posted Collateral to be sold) and to apply the proceeds (or the Cash equivalent thereof) from the liquidation of the Posted Collateral to any amounts payable by the Pledgor with respect to any Obligations in that order as the Secured Party may elect.

Each party acknowledges and agrees that Posted Collateral in the form of securities may decline speedily in value and is of a type customarily sold on a recognized market, and, accordingly, the Pledgor is not entitled to prior notice of any sale of that Posted Collateral by the Secured Party, except any notice that is required under applicable law and cannot be waived.

(b) ***Pledgor's Rights and Remedies.*** If at any time an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then (except in the case of an Early Termination Date relating to less than all Transactions (or Swap Transactions) where the Secured Party has paid in full all of its obligations that are then due under Section 6(e) of this Agreement):

- (i) the Pledgor may exercise all rights and remedies available to a Pledgor under applicable law with respect to Posted Collateral held by the Secured Party;
- (ii) the Pledgor may exercise any other rights and remedies available to the Pledgor under the terms of Other Posted Support, if any;
- (iii) the Secured Party will be obligated immediately to Transfer all Posted Collateral and the Interest Amount to the Pledgor; and
- (iv) to the extent that Posted Collateral or the Interest Amount is not so Transferred pursuant to (iii) above, the Pledgor may:

(A) Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and

(B) to the extent that the Pledgor does not Set-off under (iv)(A) above, withhold payment of any remaining amounts payable by the Pledgor with respect to any Obligations, up to the Value of any remaining Posted Collateral held by the Secured Party, until that Posted Collateral is Transferred to the Pledgor.

(c) **Deficiencies and Excess Proceeds.** The Secured Party will Transfer to the Pledgor any proceeds and Posted Credit Support remaining after liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b) after satisfaction in full of all amounts payable by the Pledgor with respect to any Obligations; the Pledgor in all events will remain liable for any amounts remaining unpaid after any liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b).

(d) **Final Returns.** When no amounts are or thereafter may become payable by the Pledgor with respect to any Obligations (except for any potential liability under Section 2(d) of this Agreement), the Secured Party will Transfer to the Pledgor all Posted Credit Support and the Interest Amount, if any.

Paragraph 9. Representations

Each party represents to the other party (which representation will be deemed to be repeated as of each date on which it, as the Pledgor, Transfers Eligible Collateral) that:

(i) it has the power to grant a security interest in and lien on any Eligible Collateral it Transfers as the Pledgor and has taken all necessary actions to authorize the granting of that security interest and lien;

(ii) it is the sole owner of or otherwise has the right to Transfer all Eligible Collateral it Transfers to the Secured Party hereunder, free and clear of any security interest, lien, encumbrance or other restrictions other than the security interest and lien granted under Paragraph 2;

(iii) upon the Transfer of any Eligible Collateral to the Secured Party under the terms of this Annex, the Secured Party will have a valid and perfected first priority security interest therein (assuming that any central clearing corporation or any third-party financial intermediary or other entity not within the control of the Pledgor involved in the Transfer of that Eligible Collateral gives the notices and takes the action required of it under applicable law for perfection of that interest); and

(iv) the performance by it of its obligations under this Annex will not result in the creation of any security interest, lien or other encumbrance on any Posted Collateral other than the security interest and lien granted under Paragraph 2.

Paragraph 10. Expenses

(a) **General.** Except as otherwise provided in Paragraphs 10(b) and 10(c), each party will pay its own costs and expenses in connection with performing its obligations under this Annex and neither party will be liable for any costs and expenses incurred by the other party in connection herewith.

(b) **Posted Credit Support.** The Pledgor will promptly pay when due all taxes, assessments or charges of any nature that are imposed with respect to Posted Credit support held by the Secured Party upon

becoming aware of the same, regardless of whether any portion of that Posted Credit Support is subsequently disposed of under Paragraph 6(c), except for those taxes, assessments and charges that result from the exercise of the Secured Party's rights under Paragraph 6(c).

(c) **Liquidation/Application of Posted Credit Support.** All reasonable costs and expenses incurred by or on behalf of the Secured Party or the Pledgor in connection with the liquidation and/or application of any Posted Credit Support under Paragraph 8 will be payable, on demand and pursuant to the Expenses Section of this Agreement, by the Defaulting Party or, if there is no Defaulting Party, equally by the parties.

Paragraph 11. Miscellaneous

(a) **Default Interest.** A Secured Party that fails to make, when due, any Transfer of Posted Collateral or the Interest Amount will be obliged to pay the Pledgor (to the extent permitted under applicable law) an amount equal to interest at the Default Rate multiplied by the Value of the items of property that were required to be Transferred, from (and including) the date that the Posted Collateral or Interest Amount was required to be Transferred to (but excluding) the date of Transfer of that Posted Collateral or Interest Amount. This interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(b) **Further Assurances.** Promptly following a demand made by a party, the other party will execute, deliver, file and record any financing statement, specific assignment or other document and take any other action that may be necessary or desirable and reasonably requested by that party to create, preserve, perfect or validate any security interest or lien granted under Paragraph 2, to enable that party to exercise or enforce its rights under this Annex with respect to Posted Credit Support or an Interest Amount or to effect or document a release of a security interest on Posted Collateral or an Interest Amount.

(c) **Further Protection.** The Pledgor will promptly give notice to the Secured Party of, and defend against, any suit, action, proceeding or lien that involves Posted Credit Support Transferred by the Pledgor or that could adversely affect the security interest and lien granted by it under Paragraph 2, unless that suit, action, proceeding or lien results from the exercise of the Secured Party's rights under Paragraph 6(c).

(d) **Good Faith and Commercially Reasonable Manner.** Performance of all obligations under this Annex, including, but not limited to, all calculations, valuations and determinations made by either party, will be made in good faith and in a commercially reasonable manner.

(e) **Demands and Notices.** All demands and notices given by a party under this Annex will be made as specified in the Notices Section of this Agreement, except as otherwise provided in Paragraph 13.

(f) **Specifications of Certain Matters.** Anything referred to in this Annex as being specified in Paragraph 13 also may be specified in one or more Confirmations or other documents and this Annex will be construed accordingly.

Paragraph 12. Definitions

As used in this Annex:—

“**Cash**” means the lawful currency of the United States of America.

“**Credit Support Amount**” has the meaning specified in Paragraph 3.

“**Custodian**” has the meaning specified in Paragraphs 6(b)(i) and 13.

“Delivery Amount” has the meaning specified in Paragraph 3(a).

“Disputing Party” has the meaning specified in Paragraph 5.

“Distributions” means, with respect to Posted Collateral other than Cash, all principal, interest and other payments and distributions of cash or other property with respect thereto, regardless of whether the Secured Party has disposed of that Posted Collateral under Paragraph 6(c). Distributions will not include any item of property acquired by the Secured Party upon any disposition or liquidation of Posted Collateral or, with respect to any Posted Collateral in the form of Cash, any distributions on that collateral, unless otherwise specified herein.

“Eligible Collateral” means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

“Eligible Credit Support” means Eligible Collateral and Other Eligible Support.

“Exposure” means for any Valuation Date or other date for which Exposure is calculated and subject to Paragraph 5 in the case of a dispute, the amount, if any, that would be payable to a party that is the Secured Party by the other party (expressed as a positive number) or by a party that is the Secured Party to the other party (expressed as a negative number) pursuant to Section 6(e)(ii)(2)(A) of this Agreement as if all Transactions (or Swap Transactions) were being terminated as of the relevant Valuation Time; *provided* that Market Quotation will be determined by the Valuation Agent using its estimates at mid-market of the amounts that would be paid for Replacement Transactions (as that term is defined in the definition of “Market Quotation”).

“Independent Amount” means, with respect to party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

“Interest Amount” means, with respect to an Interest Period, the aggregate sum of the amounts of interest calculated for each day in that Interest Period on the principal amount of Posted Collateral in the form of Cash held by the Secured Party on that day, determined by the Secured Party for each such day as follows:

- (x) the amount of Cash on that day; multiplied by
- (y) the Interest Rate in effect for that day; divided by
- (z) 360.

“Interest Period” means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred (or, if no Interest Amount has yet been Transferred, the Local Business Day on which Posted Collateral in the form of Cash was Transferred to or received by the Secured Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

“Interest Rate” means the rate specified in Paragraph 13.

“Local Business Day,” unless otherwise specified in Paragraph 13, has the meaning specified in the Definitions Section of this Agreement, except that references to a payment in clause (b) thereof will be deemed to include a Transfer under this Annex.

“Minimum Transfer Amount” means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

“Notification Time” has the meaning specified in Paragraph 13.

“Obligations” means, with respect to a party, all present and future obligations of that party under this Agreement and any additional obligations specified for that party in Paragraph 13.

“Other Eligible Support” means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

“Other Posted Support” means all Other Eligible Support Transferred to the Secured Party that remains in effect for the benefit of that Secured Party.

“Pledgor” means either party, when that party (i) receives a demand for or is required to Transfer Eligible Credit Support under Paragraph 3(a) or (ii) has Transferred Eligible Credit Support under Paragraph 3(a).

“Posted Collateral” means all Eligible Collateral, other property, Distributions, and all proceeds thereof that have been Transferred to or received by the Secured Party under this Annex and not Transferred to the Pledgor pursuant to Paragraph 3(b), 4(d)(ii) or 6(d)(i) or released by the Secured Party under Paragraph 8. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(d)(ii) will constitute Posted Collateral in the form of Cash.

“Posted Credit Support” means Posted Collateral and Other Posted Support.

“Recalculation Date” means the Valuation Date that gives rise to the dispute under Paragraph 5; *provided, however,* that if a subsequent Valuation Date occurs under Paragraph 3 prior to the resolution of the dispute, then the “Recalculation Date” means the most recent Valuation Date under Paragraph 3.

“Resolution Time” has the meaning specified in Paragraph 13.

“Return Amount” has the meaning specified in Paragraph 3(b).

“Secured Party” means either party, when that party (i) makes a demand for or is entitled to receive Eligible Credit Support under Paragraph 3(a) or (ii) holds or is deemed to hold Posted Credit Support.

“Specified Condition” means, with respect to a party, any event specified as such for that party in Paragraph 13.

“Substitute Credit Support” has the meaning specified in Paragraph 4(d)(i).

“Substitution Date” has the meaning specified in Paragraph 4(d)(ii).

“Threshold” means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

“Transfer” means, with respect to any Eligible Credit Support, Posted Credit Support or Interest Amount, and in accordance with the instructions of the Secured Party, Pledgor or Custodian, as applicable:

- (i) in the case of Cash, payment or delivery by wire transfer into one or more bank accounts specified by the recipient;
- (ii) in the case of certificated securities that cannot be paid or delivered by book-entry, payment or delivery in appropriate physical form to the recipient or its account accompanied by any duly

executed instruments of transfer, assignments in blank, transfer tax stamps and any other documents necessary to constitute a legally valid transfer to the recipient;

(iii) in the case of securities that can be paid or delivered in book-entry, the giving of written instruments to the relevant depository institution or other entity specified by the recipient, together with a written copy thereof to the recipient, sufficient if complied with to result in a legally effective transfer of the relevant interest to the recipient; and

(iv) in the case of Other Eligible Support or Other Posted Support, as specified in Paragraph 13.

“**Valuation Agent**” has the meaning specified in Paragraph 13.

“**Valuation Date**” means each date specified in or otherwise determined pursuant to Paragraph 13.

“**Valuation Percentage**” means, for any item of Eligible Collateral, the percentage specified in Paragraph 13.

“**Valuation Time**” has the meaning specified in Paragraph 13.

“**Value**” means for any Valuation Date or other date for which Value is calculated, and subject to Paragraph 5 in the case of a dispute, with respect to:

- (i) Eligible Collateral or Posted Collateral that is:
 - (A) Cash, the amount thereof; and
 - (B) a security, the bid price obtained by the Valuation Agent multiplied by the applicable Valuation Percentage, if any;
- (ii) Posted Collateral that consists of items that are not specified as Eligible Collateral, zero; and
- (iii) Other Eligible Support and Other Posted Support, as specified in Paragraph 13.

Paragraph 13. Elections and Variables

(a) **Security Interest for “Obligations”.** The term “Obligations” as used in this Annex includes the following additional obligations: with respect to Party A: None and with respect to Party B: None.

(b) **Credit Support Obligations.**

(i) **Delivery Amount, Return Amount and Credit Support Amount; Addition to Paragraph 3.**

(A) “**Delivery Amount**” has the meaning specified in Paragraph 3(a).

(B) “**Return Amount**” has the meaning specified in Paragraph 3(b).

(C) “**Credit Support Amount**” has the meaning specified in Paragraph 3.

(ii) **Eligible Collateral.** The following items will qualify as “**Eligible Collateral**” for Party A and Party B:

		<u>Valuation Percentage</u>
(A)	Cash	100%
(B)	Treasury Securities having a remaining maturity of:	
	Not more than 1 year	99%
	More than 1 years but not more than 5 years	98%
	More than 5 years but not more than 10 years	97%
	More than 10 years	96%
(C)	Any other item agreed upon in writing from time to time by the parties	As agreed by the parties

(iii) **Other Eligible Support.** There shall be no “Other Eligible Support” for either party for purposes of this Annex.

(iv) **Thresholds.**

(A) **“Independent Amount”** shall mean with respect to Party A: None and with respect to Party B: None.

(B) **“Threshold”** means:

(i) with respect to Party A, at any time the amounts determined on the basis of the lowest of the Credit Ratings set forth in the table below; provided, however, that if (i) Party A has no Credit Rating, or (ii) an Event of Default has occurred and is continuing with respect to Party A, Party A’s Threshold shall be U.S.\$0; and

(ii) with respect to Party B, infinite.

<u>CREDIT RATING (S&P / Moody’s/Fitch)</u>	<u>THRESHOLD Party A</u>
A+/A1/A+ and above	Infinite
A/A2/A	US\$25,000,000
A-/A3/A-	US\$10,000,000
BBB+/Baa1/BBB+ and below	Zero

“Credit Rating” means, with respect to Party A, the rating assigned by S&P, Moody’s and Fitch to [Party A’s] [Party A’s Credit Support Provider’s] long term, senior, unsecured and unenhanced indebtedness.

(D) **“Minimum Transfer Amount”** means, with respect to Party A and with respect to Party B, U.S.\$250,000, provided, however, that if an Event of Default has occurred and is continuing with respect to Party A or with respect to Party B, the Minimum Transfer Amount with respect to such party shall be U.S. \$0.

(E) **Rounding.** The Delivery Amount and the Return Amount will be rounded up and down to the nearest integral multiple of \$10,000, respectively.

(c) **Valuation and Timing.**

(i) **“Valuation Agent”** means, for purposes of Paragraphs 3 and 5, the party making the demand under Paragraph 3, and, for purposes of Paragraphs 4(d)(ii) and 6(d), the Secured Party.

(ii) **“Valuation Date”** means each Local Business Day.

(iii) **“Valuation Time”** means the close of business on the Local Business Day before the Valuation Date or date of calculation, as applicable; provided that the calculations of Value and Exposure will be made as of approximately the same time on the same day.

(iv) **“Notification Time”** means 1:00 p.m., New York time on a Local Business Day for purposes of Paragraph 4(c) and it means 2:00 p.m., New York time on a Local Business Day for all other purposes..

(d) **Conditions Precedent and Secured Party’s Rights and Remedies.** The following Termination Event will be a “Specified Condition” with respect to Party A or Party B: Illegality, Credit Event Upon Merger and Additional Termination Event.

(e) **Substitution.**

(i) **“Substitution Date”** has the meaning specified in Paragraph 4(d)(ii).

(ii) **Consent.** If specified here as applicable, then Pledgor must obtain the Secured Party's consent for any substitution pursuant to Paragraph 4(d): N/A

(f) **Dispute Resolution.**

(i) **“Resolution Time”** means 1:00 p.m., New York time, on the Local Business Day following the date on which the notice of the dispute is given under Paragraph 5.

(ii) **Value.** For the purpose of Paragraphs 5(i)(C) and 5(ii), the Value of Posted Credit Support of the type described in Paragraph 13(b)(ii)(B) (referred to herein as "Government Obligations") will equal the Valuation Percentage multiplied by the sum of (A) either (1) the mean of the high bid and low asked prices quoted on such date by any principal market maker for such Government Obligations, which market maker shall be selected by the Disputing Party in good faith and in a commercially reasonable manner, or (2) if no quotations are available from a principal market maker for such date, the mean of such high bid and low asked prices as of the day next preceding such date, on which such quotations were available, and (B) accrued interest on such Government Obligations (except to the extent included in the applicable price referred to in clause (A) above).

(iii) **Alternative.** The provisions of Paragraph 5 will apply.

(g) **Holding and Using Posted Collateral.**

(i) **Eligibility to Hold Posted Collateral; Custodians.** Party B and its Custodian will be entitled to hold Posted Collateral pursuant to Paragraph 6(b); *provided* that the following conditions applicable to it are satisfied:

- (A) Party B is not a Defaulting Party.
- (B) Posted Collateral may be held only in the following jurisdictions: the United States of America.
- (C) Party B or its Custodian, as applicable, is a bank or trust company located in the United States of America having total assets of at least USD 10,000,000,000 with a long term, senior, unsecured, unenhanced debt rating of at least “BBB+” from S&P and “Baa1” from Moody’s

Initially, the **Custodian** for Party B is to be provided by Party B.

(ii) **Use of Posted Collateral.** The provisions of Paragraph 6(c) will not apply to Party A and will not apply to Party B.

(h) **Distributions and Interest Amount.**

(i) **Interest Rate.** The *“Interest Rate”* for each day will be the per annum rate actually earned on the Posted Collateral in the form of Cash in the account being used to hold Posted Collateral in the form of Cash. The Interest Amount will be calculated without compounding.

(ii) **Transfer of Interest Amount.** The Transfer of the Interest Amount will be made by the third Local Business Day of each calendar month and on any Local Business Day that Posted Collateral in the form of Cash is Transferred to the Pledgor pursuant to Paragraph 3(b).

(iii) **Alternative to Interest Amount.** The provisions of Paragraph 6(d)(ii) will apply.

(i) **Additional Representations.** Party B: None, Party A: None; provided, however, if Party A is a U.S. bank or thrift institution subject to the Federal Deposit Insurance Act, as amended, Party A shall make the following representation to Party B:

The necessary action to authorize referred to in Section 3(a)(ii) of this Agreement includes all authorizations required under the Federal Deposit Insurance Act as amended (including amendments effected by the Financial Institutions Reform, Recovery and Enforcement Act of 1989) and under any agreement, writ, decree or order entered into with Party A’s supervisory authorities; and at all times during the term of this Agreement, Party A will continuously include and maintain as part of its official written books and records this Agreement, any Credit Support Document to which it is a party and all other exhibits, supplements and attachments hereto and documents incorporated by reference herein, including all Confirmations, and evidence of all necessary authorizations. This Agreement, any Credit Support Document to which Party A is a party, each Confirmation, and any other documentation relating to this Agreement to which it is a party or that it is required to deliver will be executed and delivered by a duly appointed or elected and authorized officer of Party A of the level of vice-president or higher. Party A and Party B agree that each Transaction and the Agreement are a “swap agreement” and a “qualified financial contract” and that the Agreement is a “master agreement”, for purposes of Section 11(e)(8) of the Federal Deposit Insurance Act or any successor provisions.

(j) **Other Eligible Support and Other Posted Support.**

(i) **“Value”** shall have no meaning with respect to Other Eligible Support.

- (ii) **“Transfer”** shall have no meaning with respect to Other Eligible Support.
- (k) **Demands and Notices.** All demands, specifications and notices made by a party to this Annex will be made pursuant to the Notices Section of this Agreement.
- (l) **Addresses for Transfers.** Addresses for Transfers of Collateral for each party shall be supplied on or before the date of initial Transfer hereunder.
- (m) **Other Provisions.**
 - (i) **Agreement as to Single Secured Party and Pledgor.** Notwithstanding anything to the contrary in the Agreement, this Annex, Paragraph 1(b) or Paragraph 2 or the definitions in Paragraph 12, (a) the term “Secured Party” as used in this Annex means only Party B, (b) the term “Pledgor” as used in this Annex means only Party A, (c) only Party A makes the pledge and grant in Paragraph 2, the acknowledgment in the final sentence of Paragraph 8(a) and the representations in Paragraph 9 and (d) only Party A will be required to make Transfers of Eligible Credit Support hereunder.
 - (ii) **Scope of Agreement.** The entire text of this Annex preceding this Paragraph 13 is intended by the parties to be a verbatim transcription of the printed terms of the form of Credit Support Annex (Bilateral Form) (ISDA Agreements Subject to New York Law Only) published by ISDA in 1994. If the text of this Annex preceding this Paragraph 13 is different in any respect from those printed terms, the differences shall be disregarded and treated as inadvertent errors or omissions or additions, and the text of this Annex preceding this Paragraph 13 shall be deemed corrected to include those printed terms verbatim.
 - (iii) **Paragraph 12. Definitions.** Paragraph 12 of the Credit Support Annex is hereby amended as follows:

The definition of "**Local Business Day**" is hereby amended by inserting the following in lieu thereof: "**Local Business Day** means a day on which commercial banks in New York City and San Francisco are open for business (including dealings in foreign exchange and foreign currency deposits)"

The following definitions are added:

“Treasury Securities” means U.S. Dollar-denominated senior debt securities of the United States of America issued by the U.S. Treasury Department and backed by the full faith and credit of the United States of America.

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

[SWAP DEALER]

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name:
Title:
Date:

By: _____
Name: Sara Gigliotti
Title: Chief Financial Officer
Date:

DRAFT

EXHIBIT B to Schedule

[Form of Guarantee of Credit Support Provider of Party A, if applicable]

DRAFT

DRAFT CONFIRMATION
[___/___/14]

Rate Cap Transaction

Transbay Joint Powers Authority
201 Mission St., Ste. 2100
San Francisco, CA 94105

Re: Rate Cap Transaction (Reference Number: [_____])

Ladies and Gentlemen:

The purpose of this Confirmation is to confirm the terms and conditions of the transaction entered into between us on the Trade Date specified below (the "Transaction"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below.

The definitions and provisions contained in the 2006 ISDA Definitions (the "Definitions") as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms part of, and is subject to, the ISDA Master Agreement dated as of [____], as amended and supplemented from time to time (the "Agreement") between [CAP DEALER] and Transbay Joint Powers Authority (the "Counterparty"). All provisions contained in the Agreement govern this Confirmation except as expressly modified below.
2. The terms of the particular Transaction to which this Confirmation relates – which is a rate cap - are as follows:

Notional Amount: USD \$_____

Trade Date: [_____]

Effective Date: [_____]

Termination Date: [_____]

Floating Amounts:

Floating Rate Payer: [CAP DEALER]

Cap Rate: [____]%

Floating Rate Payment Dates: [_____]

Floating Rate for initial Calculation Period: [____]% per annum

Floating Rate Option: [USD-LIBOR-ICE]

Designated Maturity: [3 month]

Floating Rate Day Count Fraction: [Actual /360]

Floating Rate Reset Dates:	The first day of each Floating Rate Payer Calculation Period
Business Days:	New York
Calculation Agent:	As specified in the Agreement
Compounding:	Inapplicable

Fixed Amounts:

Fixed Rate Payer:	Counterparty
Fixed Rate Payer Payment Dates:	[_____]
Fixed Amount:	USD [_____]

3. **Optional Termination.** Counterparty may, on any Business Day (the “Optional Market Termination Date”), terminate and cash settle this Transaction, in whole or in part, by providing at least five (5) Business Days’ prior written notice to [CAP DEALER]. [INSERT ADDITIONAL LANGUAGE REGARDING CALCULATION OF AMOUNT DUE AT TIME OF EARLY TERMINATION]

4. Account Details

Payments to [CAP DEALER] :

Account for payments in USD: *[account information]*

Payments to Counterparty:

Account for payments in USD: [please provide]

5. Office and address for notices in connection with this Rate Cap Transaction:

(a) Counterparty:

Transbay Joint Powers Authority
[to be provided]

(b) [CAP DEALER]: TBD

6. Documents to be delivered:

Each party shall deliver to the other, at the time of its execution of this Confirmation, evidence of the specimen signature and incumbency of each person who is executing the Confirmation on the party’s behalf, unless such evidence has previously been supplied in connection with this Agreement and remains true and in effect.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation and returning it to us.

Yours sincerely,

[CAP DEALER]

By: _____
Name:
Title:

Confirmed as of the date first
above written:
TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name: Sara Gigliotti
Title: Chief Financial Officer

DRAFT

**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, 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:

Authorized by Agency Resolution No. adopted _____, 2014

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

Oversight Board Resolution No. adopted _____, 2014

By: _____
Name: Tiffany Bohee
Title: Executive Director

APPROVED AS TO FORM:

By: _____
James B Morales
General Counsel

TJPA:

Authorized by TJPA Resolution No. adopted _____, 2014

TRANSBAY JOINT POWERS AUTHORITY, a Joint Powers Agency

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

DRAFT

EXHIBIT ____
DEED OF TRUST

DRAFT

EXHIBIT ____
NEGATIVE PLEDGE

DRAFT

EXHIBIT ____
SUBORDINATION
(Deed of Trust)

DRAFT

EXHIBIT ____
SUBORDINATION
(Negative Pledge)

DRAFT

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: _____

DRAFT

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)

DRAFT

EXHIBIT A

LEGAL DESCRIPTION

[To be attached.]

DRAFT

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. 2006I224839 (the “**Declaration of Restrictions**”), which include the Transbay Affordable Housing Obligation. In the event of any sale or transfer of the Property, the purchaser or purchasers and their successors and assigns, and the Property, shall continue to be subject to all of the conditions, restrictions and covenants provided in the Declaration of Restrictions; and, consistent with its enforceable obligations under the Redevelopment Dissolution Law, Agency retains full authority to determine the infrastructure, affordable housing, and open space requirements that apply to any development on the Property to meet the requirements of the Transbay Affordable Housing Obligation and implement the Redevelopment Plan.

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

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

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

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

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

If to Borrower:

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

With a copy to Borrower's Legal Counsel:

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

If to Collateral Agent:

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

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

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

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

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

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

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

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

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

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

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

[Signature page to follow]

DRAFT

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.]

DRAFT

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. 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 include a restriction on Agency exercising the Option for the Property except in connection with a disposition to a third party 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). Borrower and the Agency confirm that Borrower and the Agency have conducted their own due diligence to determine that it is reasonably likely that the third party sale of the Property, 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.

G. 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,¹ (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 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.

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

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. 2006I224839 (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, 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.]

DRAFT

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 include a restriction on Agency exercising the Option for Redevelopment Block 4 except in connection with a disposition to a third party 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). Borrower and the Agency confirm that Borrower 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 Redevelopment Block 4 Mortgage (as defined in Section 6 below) and the other Redevelopment Block 4 Mortgage Deliverables (as defined in Section 6 below), this Subordination, all of Collateral Agent's right, title and interest hereunder, and the Instrument shall terminate ("**Termination**"); provided, however, that notwithstanding any Termination or delivery of a Redevelopment Block 4 Mortgage or any other Redevelopment Block 4 Mortgage Deliverables, (A) 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, (B) Agency shall continue to 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 Redevelopment Block 4 Mortgage, and (C) 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, 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, 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 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, (i) 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 and (ii) Borrower shall provide Collateral Agent, as security for the Obligations, a First Priority Mortgage 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 this Subordination, 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**”). Such First Priority Mortgage on Redevelopment Block 4 shall be subject to the matters set forth in Section 8 below.

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.

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]

DRAFT

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.]

DRAFT

**FIRST AMENDMENT TO
AGREEMENT FOR QUITCLAIM OF INTEREST IN
75 NATOMA STREET AND 546 HOWARD STREET**

The parties to this First Amendment to Agreement for Quitclaim of Interest in 75 Natoma Street and 546 Howard Street (this “First Amendment”) are the Transbay Joint Powers Authority, a joint powers agency created under California Government Code Sections 6500 et seq. (the “TJPA”) and the Metropolitan Transportation Commission, an agency created pursuant to Government Code Sections 66500 et seq. (“MTC”) (collectively, the “Parties”).

RECITALS

A. The TJPA required acquisition of Assessor’s Block 3721, Lot 031 in San Francisco, California, also known as 75 Natoma Street and Assessor’s Block 3721, Lot 016 in San Francisco, California, also known as 546 Howard Street (collectively, the “Property”) for construction of the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Plan Project (the “Transbay Project”); and

B. In April 2009, MTC provided \$5,080,644.57 to the TJPA for the acquisition of the Property under a Regional Measure 2 grant; and

C. As a condition of providing the funding, the Parties entered into that certain Agreement for Quitclaim of Interest in 75 Natoma Street and 546 Howard Street dated as of March 24, 2009 (the “Agreement”); and

D. Pursuant to the Agreement, the TJPA deposited a Quitclaim Deed for the Property into an escrow account held by the Escrow Officer (the “Master Escrow”) and to be recorded only on the satisfaction of the terms and conditions of the Agreement; and

E. To obtain necessary cash flow funding for the Transbay Project, the TJPA intends to close a \$171 million bridge loan (the “Bridge Loan”) from Goldman Sachs Bank USA (“Goldman”). To perfect the security package for the Bridge Loan, Goldman requires a deed of trust on the Property in favor of Goldman or its designee. Certain amendments to the Agreement are required to provide this first priority interest in the Property; and

F. At the closing of the Bridge Loan, TJPA will deposit into the trust account set up for land sales proceeds to pay for capital costs associated with construction of the Transbay Project, as further described in Section 1 hereof (“Trust Account”) an amount equal to all of the Bridge Loan proceeds, less 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 Project.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to amend the Agreement as follows (initially capitalized terms are as defined in the Agreement, unless otherwise noted):

1) At the closing of the Bridge Loan (the “Closing”), the TJPA shall deposit at least \$5,080,644.57, which is an amount equal to MTC’s April 2009 grant of funds to the TJPA for the acquisition of the Property (the “Proceeds Deposit”) into the Trust Account established under that certain Cooperative Agreement among the TJPA, State of California, acting by and through its Department of Transportation, and the City and County of San Francisco, effective July 11, 2003 (the “Cooperative Agreement”), which funds shall only be used for paying Capital Costs (as that term is defined in the Cooperative Agreement) associated with the Transbay Project.

2) Upon delivery of the Proceeds Deposit into the Trust Account, subject to Paragraph 3 below, the TJPA’s obligations and duties under the Agreement shall be fully-released, including without limitation, any obligation of the TJPA to convey to the MTC any or all of the Property upon the occurrence of a Triggering Event (which is defined in the Agreement as either (a) the TJPA abandons the Transbay Project by a vote of its Board of Directors prior to commencement of “actual passenger bus service,” as that term is described in Exhibit B to the Cooperative Agreement, or (b) the State of California files written notice of intent to exercise its power of termination to take title to the Transbay Terminal building for failure to construct a facility by the “Project Completion Date,” as set forth in the Cooperative Agreement).

3) If after the TJPA redeems the Bridge Loan and after Goldman reconveys the deed of trust the Property has not yet been conveyed to a third party for development, the TJPA’s obligations and duties under the Agreement to convey to the MTC any or all of the Property upon the occurrence of a Triggering Event shall be reinstated.

4) The Escrow Officer’s obligations under the Agreement and the Master Escrow Instructions to hold the previously-deposited Quitclaim Deed in the Master Escrow Account shall be fully-released, provided that the Escrow Officer first and promptly shall have destroyed (and provided evidence of such destruction to the TJPA) and not recorded the previously-deposited Quitclaim Deed upon the occurrence of any of the following: (a) joint written instruction from the TJPA and MTC, affirming that TJPA has redeemed the Bridge Loan, Goldman has reconveyed the deed of trust, and the Property has been conveyed to a third party for development, or (b) joint written instruction from TJPA and MTC, affirming that the lenders under the Bridge Loan have exercised their rights under the deed of trust recorded against the Property, or (c) joint written instruction from TJPA and MTC, affirming that the Property has been conveyed to a third party for development.

5) The foregoing provisions shall be binding on the TJPA and its successors and assigns, and inure to the benefit of the MTC and its respective successors and assigns.

6) Except to the extent specifically amended hereby, the Agreement shall remain in full force and effect and unmodified.

7) This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Each counterpart may be delivered by facsimile or electronic mail transmission.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of _____, 2014.

The Transbay Joint Powers Authority,
a joint powers agency created under
California Government Code Sections 6500 et seq.

By: _____
Maria Ayerdi-Kaplan
Executive Director

Approved as to form

By: _____
Deborah Miller
Legal Counsel

Metropolitan Transportation Commission, an
agency created pursuant to Government Code
Sections 66500 et seq.

By: _____
Steve Heminger
Executive Director

Approved as to form

By: _____
Adrienne D. Weil
General Counsel

ESCROW INSTRUCTIONS RECEIVED, READ AND APPROVED.

CHICAGO TITLE COMPANY

By: _____

Name: _____

Its: Escrow Officer

Date: _____

DRAFT

**SECOND AMENDMENT TO
COLLATERAL AGENCY AND ACCOUNT AGREEMENT**

By and Among

U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent,

TRANSBAY JOINT POWERS AUTHORITY, as Borrower, and

**THE UNITED STATES DEPARTMENT OF TRANSPORTATION,
acting through the Federal Highway Administrator,
as the TIFIA Lender**

DATED AS OF _____, 2014

**SECOND AMENDMENT TO
COLLATERAL AGENCY AND ACCOUNT AGREEMENT**

THIS SECOND AMENDMENT TO COLLATERAL AGENCY AND ACCOUNT AGREEMENT, dated as of _____, 2014 (this "Amendment"), amending and supplementing the COLLATERAL AGENCY AND ACCOUNT AGREEMENT, dated as of January 1, 2010, by and among U.S. BANK NATIONAL ASSOCIATION, a national banking association, as successor Collateral Agent (the "Collateral Agent"), TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created pursuant to 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 California Government Code Section 6500 et seq., with an address of 201 Mission Street, Suite 2100, San Francisco, California 94105 (the "Borrower"), and the UNITED STATES DEPARTMENT OF TRANSPORTATION ("USDOT"), an agency of the United States of America, acting by and through the Federal Highway Administrator, with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the "TIFIA Lender"), as amended and supplemented by the AMENDMENT TO COLLATERAL AGENCY AND ACCOUNT AGREEMENT, dated as of May 8, 2014 and executed on June 3, 2014, by and among the Collateral Agent, the Borrower and the TIFIA Lender (the Collateral Agency and Account Agreement as amended and supplemented by such Amendment being herein referred to as the "Original Collateral Agreement," and the Original Collateral Agreement, as amended by this Amendment, being herein referred to as the "Agreement"), is made by and among the Collateral Agent, the Borrower and the TIFIA Lender.

RECITALS:

WHEREAS, the Collateral Agent, the Borrower, and the TIFIA Lender have agreed to amend certain terms of the Original Collateral Agreement as provided herein, to secure certain additional Permitted Debt.

NOW, THEREFORE, the premises being as stated above, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged to be adequate, it is hereby mutually agreed by and among the Collateral Agent, the Borrower and the TIFIA Lender as follows:

ARTICLE I

AUTHORITY; DEFINITIONS

Section 1.1 Authority for Amendment. This Amendment amends and supplements the Original Collateral Agreement and is entered into in accordance with Section 32 of the Original Collateral Agreement.

Section 1.2 Definitions. All capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Original Collateral Agreement, as amended and supplemented by this Amendment.

Section 1.3 Construction of Certain Terms. All references in the Original Collateral Agreement to “this Agreement”, or words of similar import and the terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any other similar terms as used in the Original Collateral Agreement shall be deemed to refer to the Original Collateral Agreement, as amended and supplemented by this Amendment.

ARTICLE II

AMENDMENTS

Section 2.1 Amendments to Definitions.

(a) The following definitions are hereby added to Section 1 of the Original Collateral Agreement:

“**Additional Permitted Debt**” means all Permitted Debt other than the TIFIA Loan, Parity Permitted Debt and Subordinate Permitted Debt.

“**Additional Permitted Debt Holders**” means the holders of or lenders under, as the case may be, the obligations constituting Additional Permitted Debt.

“**Class**” means any group of Permitted Debt Holders that, collectively, hold a single series, tranche or other identifiable category of Permitted Debt issued by the Borrower under a single credit agreement, loan agreement, note purchase agreement, indenture or other evidence of indebtedness.

“**Counterpart**” means a Counterpart to this Agreement in the form of Exhibit F hereto.

“**Parity Permitted Debt Holders**” means the holders of or lenders under, as the case may be, the obligations constituting Parity Permitted Debt.

“**Parity Permitted Debt Payment Date**” means, with respect to any Parity Permitted Debt, any date on which any installment of principal, interest or other amount is due and payable by the Borrower with respect to such Parity Permitted Debt.

“**Permitted Debt Holder Representative**” means any agent, trustee or other representative appointed by a Class of Permitted Debt Holders to act on their behalf pursuant to the terms of the documents relating to the Permitted Debt held by such Class of Permitted Debt Holders.

“**Permitted Debt Holders**” means the Parity Permitted Debt Holders, the Subordinate Permitted Debt Holders and the Additional Permitted Debt Holders.

“**Subordinate Permitted Debt Holders**” means the holders of or lenders under, as the case may be, the obligations constituting Subordinate Permitted Debt.

(b) Section 1 of the Original Collateral Agreement is hereby amended by deleting clause (f) in the definition of “**Permitted Investments**” and substituting therefor the following:

“(f) any other investment which may from time to time be expressly approved in writing by each Class of Permitted Debt Holders.”

Section 2.2 Amendments to Section 2. Section 2 of the Original Collateral Agreement is hereby amended by deleting such section in its entirety and substituting therefor the following:

“2. Purpose. The Borrower, the TIFIA Lender and the Permitted Debt Holders desire to establish a collateral agent arrangement in accordance with the laws of the State of California for the deposit and investment of Net Tax Increment Revenues and Annual Capital Contributions in collateral accounts, together with the establishment of and investment of funds held in all of the accounts hereunder, for the purposes set forth herein, including, the payment of the TIFIA Debt Service and the approved disbursements to the Borrower. This Agreement relates to and is hereby made a part of the Borrower’s financing of the Transbay Transit Center Program pursuant to the Cooperative Agreement and the TIF Pledge Agreement. Except as otherwise defined herein, all terms defined in the Cooperative Agreement and TIF Agreement shall have the same meaning for the purposes of this Agreement as in the Cooperative Agreement and TIF Agreement.”

Section 2.3 Amendments to Section 3. Section 3 of the Original Collateral Agreement is hereby amended by deleting such section in its entirety and substituting therefor the following:

“3. Appointment.

(a) U.S. Bank National Association is hereby appointed as the collateral agent for the benefit of the TIFIA Lender and the Permitted Debt Holders with respect to the Lien on the Pledged Revenues.

(b) The Collateral Agent accepts such appointment and agrees to act as the Collateral Agent in accordance herewith.

(c) Each of the TIFIA Lender, the Borrower and the Permitted Debt Holders hereby authorizes and directs the Collateral Agent to act in strict accordance with the terms of this Agreement.”

Section 2.4 Amendments to Section 5. Subsections (a) through (c) of Section 5 of the Original Collateral Agreement are hereby amended by deleting such subsections in their entirety and substituting therefor the following:

“(a) The Borrower has irrevocably instructed the Agency and AC Transit to make all payments of Net Tax Increment Revenues and Annual Capital Contributions, respectively, to the Collateral Agent. Upon receipt, the Collateral Agent shall immediately deposit (i) all Net Tax Increment Revenues into the Net Tax Increment Revenues Account, together with any investment earnings thereon and (ii) all Annual Capital Contributions into the Annual Capital Contributions Account, together with any investment earnings thereon.

(b) The Collateral Agent shall make the following withdrawals, transfers and payments from the Accounts in the amounts, at the times and for the purposes specified below and in the following order of priority (it being agreed that no amount shall be withdrawn on any date pursuant to any clause below until amounts sufficient as of that date for all purposes specified under the prior clauses shall have been withdrawn or set aside):

First, on each date on which the following shall be payable, the fees, administrative costs and other expenses of the Collateral Agent, the TIFIA Lender, the Permitted Debt Holder Representatives and the Permitted Debt Holders, which the Collateral Agent shall pay to the appropriate party;

Second, (i) on each Semi-Annual Payment Date, to the TIFIA Debt Service Account the interest portion of TIFIA Debt Service which the Collateral Agent shall immediately pay to the TIFIA Lender, and (ii) on each Parity Permitted Debt Payment Date, to the Parity Permitted Debt Service Account (including the subaccounts, if any, established therein as directed by the Borrower) the interest portion of Parity Permitted Debt that is due and payable on such Parity Permitted Debt Payment Date, which the Collateral Agent shall immediately pay to the Parity Permitted Debt Holders; provided, that in the event the available moneys are insufficient therefor, the Collateral Agent shall deposit pro rata amounts into the TIFIA Debt Service Account and the Parity Permitted Debt Service Account (including the subaccounts, if any, established therein as directed by the Borrower);

Third, (i) on each Semi-Annual Payment Date, to the TIFIA Debt Service Account the principal portion of TIFIA Debt Service which the Collateral Agent shall immediately pay to the TIFIA Lender, and (ii) on each Parity Permitted Debt Payment Date, to the Parity Permitted Debt Service Account (including the subaccounts, if any, established therein as directed by the Borrower) the principal portion of Parity Permitted Debt that is due and payable on such Parity Permitted Debt Payment Date, which the Collateral Agent shall immediately pay to the Parity Permitted Debt Holders; provided, that in the event the available moneys are insufficient therefor, the Collateral Agent shall deposit pro rata amounts into the TIFIA Debt Service Account and the Parity Permitted Debt Service Account (including the subaccounts, if any, established therein as directed by the Borrower);

Fourth, prior to the Debt Service Payment Commencement Date, (i) the Borrower may request that the Collateral Agent deposit into the Debt Service Reserve Account such amounts as the Borrower may from time to time request; provided that, as of the Debt Service Payment Commencement Date, the amount on deposit in the Debt Service Reserve Account must be not less than the Debt Service Reserve Required Balance, and (ii) the Borrower may request that the Collateral Agent deposit into the Parity Permitted Debt Service Reserve Account (including the subaccounts, if any, established therein as directed by the Borrower) an amount necessary so that the balance therein is equal to the debt service reserve fund requirement established for such Parity Permitted Debt;

Fifth, on and after the Debt Service Payment Commencement Date, (i) on each Semi-Annual Payment Date, to the Debt Service Reserve Account and (ii) on each Parity Permitted Debt Payment Date, to the Parity Permitted Debt Service Reserve Account (including the subaccounts, if any, established therein as directed by the Borrower) in an amount necessary so that the balance therein is equal to the Debt Service Reserve Required Balance and the debt service reserve fund requirement established for such Parity Permitted Debt, respectively; provided, that in the event the available moneys are insufficient therefor, the Collateral Agent shall deposit pro rata amounts into the Debt Service Reserve Account and the Parity Permitted Debt Service Reserve Account (including the subaccounts, if any, established therein as directed by the Borrower);

Sixth, on each Semi-Annual Payment Date, to the Subordinate Permitted Debt Service Account (including the subaccounts, if any, established therein as directed by the Borrower) the interest portion of Subordinate Permitted Debt which the Collateral Agent shall immediately pay to the holders of the Subordinate Permitted Debt;

Seventh, on each Semi-Annual Payment Date, to the Subordinate Permitted Debt Service Account (including the subaccounts, if any, established therein as directed by the Borrower) the principal portion of Subordinate Permitted Debt which the Collateral Agent shall immediately pay to the holders of the Subordinate Permitted Debt;

Eighth, on each Semi-Annual Payment Date, to the Subordinate Permitted Debt Service Reserve Account (including any subaccounts therein) an amount necessary so that the balance therein is equal to the debt service reserve fund requirement established for such Subordinate Permitted Debt;

Ninth, on each Semi-Annual Payment Date, to the Capital Replacement Reserve Account, an amount necessary so that the balance therein equals the amount for Capital Repairs set forth in the then current Financial Plan, less the aggregate amount previously disbursed for such Capital Repairs;

Tenth, on each Semi-Annual Payment Date, to the Additional Permitted Debt Account such amounts as may be directed by the Borrower to pay debt service on Permitted Debt that is not either Parity Permitted Debt or Subordinate Permitted Debt;

Eleventh, on any date at the direction of the Borrower, any voluntary prepayments by the Borrower of the TIFIA Loan which the Collateral Agent shall immediately pay to

the TIFIA Lender, and of any Parity Permitted Debt which the Collateral Agent shall immediately pay to the holders of the Parity Permitted Debt, on a pro rata basis; provided that at the time of such voluntary prepayment there is on deposit in the Debt Service Reserve Account the Debt Service Reserve Required Balance and in the Parity Permitted Debt Service Reserve Account the required debt service reserve fund amounts, and there is on deposit in the Capital Replacement Reserve Account the amount required by the terms of the Collateral Agency Agreement;

Twelfth, on any date at the direction of the Borrower, any voluntary prepayments by the Borrower of Subordinate Permitted Debt; provided that at the time of such voluntary prepayment there is on deposit in the Debt Service Reserve Account the Debt Service Reserve Required Balance and in the Parity Permitted Debt Service Reserve Account the required debt service reserve fund amounts, and there is on deposit in the Capital Replacement Reserve Account the amount required by the terms of the Collateral Agency Agreement; and

Thirteenth, on each Semi-Annual Payment Date, to the Surplus Revenue Account. the amount of any remainder in the Net Tax Increment Revenues Account and the Annual Capital Contributions Account, to be disbursed in accordance with (c) below.

(c) (i) Prior to Substantial Completion, Annual Capital Contributions and investment earnings thereon, shall be applied prior to Net Tax Increment Revenues to make the payments required by (a) First through Twelfth above. Any Pledged Revenues not needed for such payments shall be deposited into the Surplus Revenue Account. Funds in the Surplus Revenue Account shall be used to pay Project Costs.

(ii) From and after Substantial Completion, until the fifth anniversary of the date of final completion of Phase 2, Annual Capital Contributions and investment earnings thereon shall be applied prior to Net Tax Increment Revenues to make the payments required by (a) First through Twelfth above. Any Pledged Revenues not needed for such payments shall be deposited into the Surplus Revenue Account. Provided the Borrower has provided evidence acceptable to the TIFIA Lender that construction has commenced on Phase 2, Pledged Revenues deposited into the Surplus Revenue Account shall be applied to pay costs to complete the design and construction for Phase 2. In the event the Borrower has not delivered satisfactory evidence to the TIFIA Lender of the commencement of construction on Phase 2 prior to the second anniversary of Substantial Completion, then amounts deposited to the Surplus Fund shall be applied as follows: (A) 50% shall be applied to prepay the TIFIA Loan or, with consent of the TIFIA Lender, to make prepayments on Permitted Debt, and (B) 50% shall be distributed to the Borrower to be used for any lawful purpose, as otherwise permitted by the TIFIA Loan Agreement. At such time as the Borrower delivers satisfactory evidence of the commencement of construction of Phase 2 to the TIFIA Lender, the Borrower shall no longer be obligated to prepay the TIFIA Loan as provided in this subsection (ii).

(iii) From the fifth anniversary of the date of final completion of Phase 2, Net Tax Increment Revenues and investment earnings thereon shall be applied prior to Annual Capital Contributions to make the payments required by (a) First through Twelfth above. Any Pledged Revenues not needed for such payments shall be deposited into the Surplus Revenue Account.

Net Tax Increment Revenues deposited into the Surplus Revenue Account shall be applied as follows: (A) 50% shall be applied to prepay the TIFIA Loan or, with consent of the TIFIA Lender, to make prepayments on Permitted Debt, and (B) 50% shall be distributed to the Borrower to be used for any lawful purpose, as otherwise permitted by the TIFIA Loan Agreement and any Annual Capital Contributions deposited into the Surplus Revenue Account shall be remitted to AC Transit.

(iv) In the event a deficiency exists in the TIFIA Debt Service Account, the Parity Permitted Debt Service Account (or any subaccount therein), the Subordinate Permitted Debt Service Account (or any subaccount therein) or the Additional Permitted Debt Account (or any subaccount therein) to pay the debt service relating to the TIFIA Loan or any other Permitted Debt at the times and in the manner required by the respective documents governing the TIFIA Loan or such other Permitted Debt, the Collateral Agent shall transfer the amount of such deficiency to, as applicable, the TIFIA Debt Service Account, the Parity Permitted Debt Service Account (or the applicable subaccount therein), the Subordinate Permitted Debt Service Account (or the applicable subaccount therein) or the Additional Permitted Debt Account (or the applicable subaccount therein) from the following accounts in the following order:

first, from amounts on deposit in the Debt Service Reserve Account for any deficiency with respect to the TIFIA Loan until such deficiency is paid in full, from amounts on deposit in the Parity Permitted Debt Service Reserve Account (including the applicable subaccounts therein) for any deficiency with respect to the related Parity Permitted Debt until such deficiency is paid in full, from amounts on deposit in the Subordinate Permitted Debt Service Reserve Account (including the applicable subaccounts therein) for any deficiency with respect to the related Subordinate Permitted Debt until such deficiency is paid in full, and from amounts on deposit in any debt service reserve subaccount established in the Additional Permitted Debt Account for any deficiency with respect to the related Additional Permitted Debt until such deficiency is paid in full;

then, from amounts on deposit in the Capital Replacement Reserve Account in the following order of priority until all such deficiencies are paid in full: (1) for any deficiency with respect to the TIFIA Loan and any deficiency with respect to the Parity Permitted Debt, pro rata, (2) for any deficiency with respect to Subordinate Permitted Debt, pro rata, and (3) for any deficiency with respect to Additional Permitted Debt, pro rata; and

lastly, from amounts on deposit in the Surplus Revenue Account in the following priority until all such deficiencies are paid in full: (1) for any deficiency with respect to the TIFIA Loan and any deficiency with respect to the Parity Permitted Debt, pro rata, (2) Subordinate Permitted Debt, and (3) Additional Permitted Debt.

(v) In the event a deficiency exists in the Capital Replacement Reserve Account to pay the specified Capital Repairs at the times and in the amounts identified in the then

current Financial Plan, the Collateral Agent shall transfer the amount of such deficiency from amounts on deposit in the Surplus Revenue Account.

(vi) The Collateral Agent shall disburse amounts from the Capital Replacement Reserve Account to, or at the direction of the Borrower, upon (A) a certificate signed by an officer of the Borrower stating that the amounts requisitioned are necessary and appropriate to pay or reimburse the Borrower for Capital Repairs identified in the then current Financial Plan or (B) the written approval of the TIFIA Lender in the exercise of its absolute discretion.

(vii) Moneys in the Surplus Revenue Account that are disbursed to the Borrower shall be used to pay for the costs associated with the construction and design of the new Transbay Transit Center. Payment shall be made from the Surplus Revenue Account upon presentation to the Collateral Agent of evidence that the TIFIA Lender has approved such disbursement and one or more properly executed original Payment Request and Acceptance Certificates, a form of which is attached hereto as Exhibit A, executed by the Borrower, for which payment is requested. Authorized signatories for the Payment Request and Acceptance Certificates are listed in Exhibit B, attached hereto.”

Section 2.5 Amendments to Section 5(e). Subsection (e) of Section 5 of the Original Collateral Agreement is hereby amended by adding at the end thereof the following:

“Payments to the Permitted Debt Holders shall be made by wire transfer in immediately available funds in accordance with the provisions of the documents relating to the Permitted Debt, or as otherwise provided in writing by the Permitted Debt Holders. If any Class of Permitted Debt Holders has appointed a Permitted Debt Holder Representative to represent such Permitted Debt Holders pursuant to the terms of the documents relating to the Permitted Debt held by such Permitted Debt Holders, all payments for the account of such Class of Permitted Debt Holders under this Agreement shall be made to such Permitted Debt Holder Representative, for further distribution to such Class of Permitted Debt Holders pursuant to the terms of such documents.”

Section 2.6 Amendments to Add New Section 5(f). The following new subsection (f) is hereby added to Section 5 of the Original Collateral Agreement:

“(f) Upon the payment in full of all obligations owing by the Borrower with respect to any Parity Permitted Debt, any funds remaining in the Parity Permitted Debt Service Reserve Account (or in the applicable subaccount therein) shall be transferred by the Collateral Agent to the Surplus Revenue Account or as the Borrower shall otherwise direct the Collateral Agent.”

Section 2.7 Amendments to Section 6. Section 6 of the Original Collateral Agreement is hereby amended by adding at the end thereof the following:

“The Borrower, the TIFIA Lender and the Permitted Debt Holders authorize the Collateral Agent to liquidate any Permitted Investments held in any of the Accounts (including any of the subaccounts therein) to the extent necessary to make the payments or inter-Account transfers prescribed by this Agreement from time to time.”

Section 2.8 Amendments to Section 7. Section 7 of the Original Collateral Agreement is hereby amended by deleting such section in its entirety and substituting therefor the following.

“The Collateral Agent shall furnish monthly statements to the Borrower and, upon written request, to the TIFIA Lender and any Permitted Debt Holder at the address specified in the Section entitled “Notices to the Parties,” cut off as of the end of each calendar month, no later than the fifth day of the following calendar month. The Collateral Agent shall also furnish statements of the Borrower investments marked to market, no less than monthly.”

Section 2.9 Amendments to Section 9. Section 9 of the Original Collateral Agreement is hereby amended by deleting such section in its entirety and substituting therefor the following.

“This Agreement shall terminate upon the payment in full of the TIFIA Loan and the other Permitted Debt, as well as all other sums owed to the TIFIA Lender and the other Permitted Debt Holders under the TIFIA Loan Agreement and the documents governing the Permitted Debt. Upon termination, any amount remaining in all Accounts and subaccounts hereunder shall immediately be paid to the Borrower or its assignees.”

Section 2.10 Amendments to Section 10. Section 10 of the Original Collateral Agreement is hereby amended by deleting such section in its entirety and substituting therefor the following:

“10. Resignation. The Collateral Agent may at any time resign by giving at least thirty (30) days written notice to the Borrower, the TIFIA Lender and the other Permitted Debt Holders, but such resignation shall not take effect until the appointment of a successor Collateral Agent. In the event of any resignation of the Collateral Agent, a successor Collateral Agent shall be appointed by an instrument in writing executed by the Collateral Agent, the Borrower, the TIFIA Lender and each other Class of Permitted Debt Holders. Such successor Collateral Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to the Borrower, the TIFIA Lender and the other Permitted Debt Holders. Thereupon such successor Collateral Agent shall, without any further act or deed, be fully vested with all the trust, powers, rights, duties and obligations of the Collateral Agent hereunder and the predecessor Collateral Agent shall deliver all moneys and securities held by it hereunder to such successor Collateral Agent.”

Section 2.11 Amendments to Section 11. Section 11 of the Original Collateral Agreement is hereby amended by deleting such section in its entirety and substituting therefor the following:

“11. Assignment. The services to be performed by the Collateral Agent are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Collateral Agent unless first approved by the Borrower, the TIFIA Lender and each Class of Permitted Debt Holders by written instrument executed and approved in the same manner as this Agreement.”

Section 2.12 Amendments to Section 16. Section 16 of the Original Collateral Agreement is hereby amended by deleting such section in its entirety and substituting therefor the following:

“16. Audit and Inspection of Records. An independent accounting firm retained by the Borrower shall conduct an annual audit covering all business transactions related to the Accounts. The Collateral Agent agrees to maintain and make available to the Borrower and its auditor, during regular business hours, accurate books and accounting records relating to its work under this Agreement. The Collateral Agent will permit the Borrower, the TIFIA Lender and the Permitted Debt Holders to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all deposits, payments, invoices, records and other data related to all other matters covered by this Agreement. The Collateral Agent shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any governmental agency having an interest in the subject of this Agreement shall have the same rights conferred upon the Borrower and the TIFIA Lender by this Section 16.”

Section 2.13 Amendments to Section 17. Section 17 of the Original Collateral Agreement is hereby amended by deleting such section in its entirety and substituting therefor the following:

“17. Notices to the Parties. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail, or fax, and shall be addressed as follows:

To TIFIA Lender:

TIFIA Joint Program Office (HCFT-1)
Federal Highway Administration
Room E64-301
1200 New Jersey Avenue, SE
Washington, DC 20590
Attention: Director TIFIA Joint Program Office

with copies to: United States Department of Transportation
Federal Transit Administration
Regional Office 9
201 Mission Street, Suite 1650
Attention: Administrator
Telephone: (415) 744-3133
Facsimile: (415) 744-2726

United States Department of Transportation
Federal Transit Administration
Regional Office 7
901 Locust St, Ste. 404
Kansas City, MO 64106
Attention: Paula L. Schwach, Esq.
Telephone: (816) 329-3935
Facsimile: (816) 329-3923

To Borrower: Ms. Maria Ayerdi-Kaplan, Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
(415) 597-4615 fax
(415) 597-4620 phone
MAyerdi@TransbayCenter.org

To Collateral Agent: Andrew Fung
U.S. Bank National Association
One California Street, Suite 1000
Mail Code – SF-CA-SFCT
San Francisco, CA 94111
Direct Dial: 415-677-3593
Fax No: 415-677-3769
andrew.fung@usbank.com

Written communications to any other Permitted Debt Holder shall addressed to such Permitted Debt Holder (or to the applicable Permitted Debt Holder Representative, if such Permitted Debt Holder is in a Class of Permitted Debt Holders represented by a Permitted Debt Holder Representative) set forth in the Counterpart signed by such Permitted Debt Holder or Permitted Debt Holder Representative.

Any notice of default must be sent by registered mail.”

Section 2.14 Amendments to Section 32. Section 32 of the Original Collateral Agreement is hereby amended by deleting such section in its entirety and substituting therefor the following.

“32. Amendments. This Agreement may not be amended except by a written instrument executed by the Collateral Agent, the Borrower, the TIFIA Lender and each Class of Permitted Debt Holders.”

Section 2.15 Amendments to Add New Sections 35 and 36. The following new Sections 35 and 36 are hereby added to the Original Collateral Agreement:

“35. Representation of Permitted Debt Holders by Permitted Debt Holder Representative. If any Class of Permitted Debt Holders has appointed a Permitted Debt Holder Representative to represent such Class of Permitted Debt Holders pursuant to the terms of the documents relating to the Permitted Debt held by such Class of Permitted Debt Holders, such Permitted Debt Holder Representative shall be entitled, in the name and on behalf of such Class of Permitted Debt Holders, to exercise all of the rights and remedies of such Class of Permitted Debt Holders under this Agreement. Without limitation of the foregoing, to the extent this Agreement requires or permits any approval, consent or other action to be given or taken by any Class of Permitted Debt Holders, then such approval, consent or other action may be given or taken by the Permitted Debt Holder Representative acting on behalf of such Class of Permitted Debt Holders, and none of the Collateral Agent, the Borrower, the TIFIA Lender or any other Permitted Debt Holder shall be required to investigate or verify whether such Permitted Debt Holder Representative is in fact authorized by the Class of Permitted Debt Holders for whom such Permitted Debt Holder Representative purports to be acting in giving or taking such approval, consent or other action (such authorization, for purposes of this Agreement, to be conclusively established by the giving or taking of such approval, consent or other action by such Permitted Debt Holder Representative).

36. Additional Permitted Debt Holders. Any Permitted Debt Holder (or any Permitted Debt Holder Representative acting on behalf of any Class of Permitted Debt Holders) may become a party to this Agreement upon the execution and delivery to the Collateral Agent and the Borrower of a Counterpart by such Permitted Debt Holder (or such Permitted Debt Holder Representative) and the acknowledgment and acceptance of such Counterpart by the Collateral Agent and the Borrower. Upon execution and delivery to the Collateral Agent and the Borrower of a Counterpart by a Permitted Debt Holder (or any Permitted Debt Holder Representative acting on behalf of any Class of Permitted Debt Holders) and the acknowledgment and acceptance of such Counterpart by the Collateral Agent and the Borrower, such Permitted Debt Holder (or such Permitted Debt Holder Representative) shall be as fully a party to this Agreement as if such Permitted Debt Holder (or such Permitted Debt Holder Representative) were an original signatory to this Agreement.

Section 2.16 Amendments to Add New Exhibit F. A new Exhibit F is hereby added to the Original Collateral Agreement in the form attached hereto as Attachment 1.

ARTICLE III

MISCELLANEOUS

Section 3.1 Governing Law. This Amendment shall be construed in accordance with the laws of the State of California.

Section 3.2 Severability. In case any provision in or obligation under this Amendment 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.

Section 3.3 Original Collateral Agreement to Remain in Effect. Save and except as expressly amended and supplemented by this Amendment, the Original Collateral Agreement is hereby in all respects ratified and confirmed, and the terms, provisions and conditions thereof shall be, and remain, in full force and effect, and this Amendment and all its terms, provisions and conditions shall be deemed to be part of the Original Collateral Agreement.

Section 3.4 Successors and Assigns. This Amendment shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the TIFIA Lender. Each Permitted Debt Holder that is not currently a party to the Agreement may become a party to the Agreement and be entitled to the benefits hereof by filing, at the time of the execution and delivery of the Permitted Debt, a written notice to the Collateral Agent that includes the name and address of the Permitted Debt Holder and the documents governing the Permitted Debt, together with written direction from the Borrower of any additional subaccounts required to be established in connection with Section 4 hereof.

Section 3.5 Counterparts. This Amendment and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate 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; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

Section 3.6 Effectiveness. This Amendment shall take effect upon its execution and delivery by each party hereto. This Amendment shall terminate upon the first disbursement of TIFIA Loan proceeds under the TIFIA Loan Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of _____, 2014.

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

TRANSBAY JOINT POWERS AUTHORITY

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

**UNITED STATES DEPARTMENT OF
TRANSPORTATION**, acting by and through the
Federal Highway Administrator

By: _____
Name: Gregory G. Nadeau
Title: Deputy Administrator

Attachment 1

Exhibit F

Form of Counterpart to Collateral Agency and Account Agreement

IN WITNESS WHEREOF, the undersigned has caused this Counterpart dated as of [_____, 20__] (this “**Counterpart**”) to the Collateral Agency and Account Agreement dated as of January 1, 2010 (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, the “**Agreement**”), to be duly executed and delivered by its duly authorized officer. Upon execution and delivery of this Counterpart to the Collateral Agent and the Borrower and the acknowledgment and acceptance of such Counterpart by the Collateral Agent and the Borrower, the undersigned shall be a [Permitted Debt Holder] [Permitted Debt Holder Representative] under the Agreement and shall be as fully a party to the Agreement as if such [Permitted Debt Holder] [Permitted Debt Holder Representative] were an original signatory to the Agreement.

[Name of Permitted Debt Holder or Permitted Debt Holder Representative]

By _____
Name _____
Title _____

Notice Address:

ACKNOWLEDGED AND ACCEPTED:

U.S. BANK NATIONAL ASSOCIATION,
as Collateral Agent

By _____
Name _____
Title _____

TRANSBAY JOINT POWERS AUTHORITY,
as Borrower

By _____
Name _____
Title _____

FACILITY COLLATERAL AGENCY AND ACCOUNT AGREEMENT

By and Among

**U.S. BANK NATIONAL ASSOCIATION,
as the Facility Collateral Agent**

**TRANSBAY JOINT POWERS AUTHORITY,
as the Borrower**

and

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

Dated as of [•], 2014

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FACILITY COLLATERAL AGENCY AND ACCOUNT AGREEMENT

This Facility Collateral Agency and Account Agreement (this “**Agreement**”) is made and entered into as of [●], 2014, by and among U.S. Bank National Association, as the depository and collateral agent under this Agreement (together with its successors and assigns in such capacity, the “**Facility Collateral Agent**”), 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 California Government Code Section 6500 et seq. (the “**Borrower**”), and Goldman Sachs Bank USA, as administrative agent for the Lenders (as defined in the below-described Credit Agreement) (together with its successors and assigns in such capacity, the “**Administrative Agent**”) and as collateral agent for the Secured Parties (as defined in the below-described Credit Agreement) (together with its successors and assigns in such capacity, the “**Collateral Agent**”).

RECITALS:

WHEREAS, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1 hereof;

WHEREAS, 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 (the “**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 up to \$171,000,000 upon the terms and subject to the conditions set forth in the Credit Agreement; and

WHEREAS, the parties hereto desire to establish a depository and collateral agency arrangement for the deposit of certain funds to, the investment of such funds while held in and the disbursement of such funds from the Capitalized Interest Account, the Expense Reserve Account and the Lockbox Account;

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

In consideration of the mutual covenants and agreements herein set forth, the parties hereto do hereby covenant and agree as follows:

1. Definitions.

(a) The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

“**Accounts**” means the Capitalized Interest Account, the Expense Reserve Account and the Lockbox Account (including any subaccounts therein).

“**Agreement**” has the meaning provided in the preamble hereto.

“**Borrower**” has the meaning provided in the preamble hereto.

“**Borrower Net Hedging Payment**” means, for any Interest Rate Agreement entered into by the Borrower and a Lender Counterparty with respect to interest on the Loans, any scheduled payment, early termination amount or other settlement amount owing by Borrower to such Lender Counterparty under such Interest Rate Agreement, after giving effect to any netting arrangements under such Interest Rate Agreement.

“**Borrower Net Hedging Payment Date**” means any date on which a Borrower Net Hedging Payment is payable by the Borrower to a Lender Counterparty.

“**Business Day**” means 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 such state are authorized or required by law or other governmental action to close.

“**Capitalized Interest Account**” has the meaning provided in Section 4(a) hereof.

“**Collateral Agent**” has the meaning provided in the preamble hereto.

“**Credit Agreement**” has the meaning provided in the recitals hereto.

“**Expense Reserve Account**” has the meaning provided in Section 4(b) hereof.

“**Facility Collateral Agent**” has the meaning provided 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 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 (d) 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.

“**Lender Counterparty Net Hedging Payment**” means, for any Interest Rate Agreement entered into by the Borrower and a Lender Counterparty with respect to interest on the Loans, any scheduled payment, early termination amount or other settlement amount owing by such Lender Counterparty to the Borrower under such Interest Rate Agreement, after giving effect to any netting arrangements under such Interest Rate Agreement.

“Lender Counterparty Net Hedging Payment Date” means any date on which a Lender Counterparty Net Hedging Payment is payable by such Lender Counterparty to the Borrower.

“Lockbox Account” has the meaning provided in Section 4(c) hereof.

“Nationally Recognized Rating Agency” means Standard & Poor’s Rating Group, Moody’s Investors Service, Inc., Fitch Ratings or any other nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission.

“Net Insurance Proceeds Subaccount” has the meaning provided in Section 4(d) hereof.

“Net Insurance Proceeds Release Conditions” has the meaning provided in Section 5(b)(iii)(2) hereof.

“Permitted Investments” means:

- (i) Government Obligations;
 - (ii) certificates of deposit where the certificates are collaterally secured by securities of the type described in item (i) 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;
 - (iii) repurchase agreements when collateralized by securities of the type described in item (i) 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;
 - (iv) money market funds that invest solely in obligations of the United States, its agencies and instrumentalities, and having a rating by S&P of AAAm-G or AAA-m or if rated by Moody’s having a rating of Aaa;
 - (v) collateralized 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 two (2) highest rating categories for comparable types of obligations by any National Recognized Rating Agency; and
 - (vi) any other investment which may from time to time be expressly approved in writing by the Collateral Agent.
- (b) Other capitalized terms used and not otherwise defined herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the meanings set forth in the Credit Agreement.

2. Purpose. The Borrower, the Facility Collateral Agent, the Administrative Agent and the Collateral Agent desire to establish a depository and collateral agency arrangement in accordance for the deposit of certain funds to, the investment of such funds in and the disbursement of such funds from the Capitalized Interest Account, the Expense Reserve Account and the Lockbox Account.

3. Appointment.

(a) U.S. Bank National Association is hereby appointed as the depository and collateral agent for the benefit of the Collateral Agent and the Secured Parties with respect to the Lien on the Accounts.

(b) U.S. Bank National Association hereby accepts such appointment and agrees to act as the Facility Collateral Agent in accordance herewith.

(c) Each of the Borrower, the Administrative Agent and the Collateral Agent hereby directs the Facility Collateral Agent to act in strict accordance with the terms of this Agreement.

4. Establishment of Accounts. There are hereby established in the custody of the Facility Collateral Agent the following accounts to be held and administered by the Facility Collateral Agent for the benefit of the Collateral Agent and the Secured Parties accordance with this Agreement:

(a) an account entitled “Transbay Joint Powers Authority – Capitalized Interest Account” (the “**Capitalized Account**”);

(b) an account entitled “Transbay Joint Powers Authority – Expense Reserve Account” (the “**Expense Reserve Account**”);

(c) an account entitled “Transbay Joint Powers Authority – Lockbox Account” (the “**Lockbox Account**”); and

(d) a subaccount of the Lockbox Account entitled “Transbay Joint Powers Authority – Net Insurance Proceeds Subaccount” (the “**Net Insurance Proceeds Subaccount**”).

5. Deposits of Funds to Accounts; Disbursement of Funds from Accounts.

(a) Deposits of Funds to Accounts.

(i) Deposits to Capitalized Interest Account.

(1) On the Closing Date, pursuant to Section 2.1(b)(ii)(B) of the Credit Agreement, the Administrative Agent shall disburse a portion of the proceeds of the Loans equal to the Capitalized Interest Required Amount to the Facility Collateral Agent, and the Facility Collateral Agent shall deposit such proceeds of the Loans in the Capitalized Interest Account.

(2) On each Lender Counterparty Net Hedging Payment Date, each Lender Counterparty that has entered into an Interest Rate Agreement with the Borrower with respect to interest on the Loans shall, pursuant to the payment instructions set forth in such Interest Rate Agreement, deliver to the Facility Collateral Agent the Lender Counterparty Net Hedging Payment due to the Borrower under such Interest Rate Agreement on such Lender Counterparty Net Hedging Payment Date, and the Facility Collateral Agent shall deposit such Lender Counterparty Net Hedging Payment in the Capitalized Interest Account.

(3) If, at any time, the balance of the Capitalized Interest Account (based on the marked-to-market value of any investments therein) is less than the Capitalized Interest Required Amount, the Borrower shall immediately deliver to the Facility Collateral Agent funds in an amount no less than such deficiency, and the Facility Collateral Agent will deposit such funds in the Capitalized Interest Account.

(ii) Deposits to Expense Reserve Account. On the Closing Date, pursuant to Section 2.1(b)(ii)(C) of the Credit Agreement, the Administrative Agent shall disburse a portion of the proceeds of the Loans equal to the Expense Reserve Required Amount to the Facility Collateral Agent, and the Facility Collateral Agent shall deposit such proceeds of the Loans in the Expense Reserve Account.

(iii) Deposits to Lockbox Account. From and after the Closing Date, if the Borrower receives (or shall be entitled to receive) any Lockbox Account Proceeds, pursuant to Section 2.11(b)(i) of the Credit Agreement, the Borrower shall deliver (or shall cause to be delivered) such Lockbox Account Proceeds directly to the Facility Collateral Agent, and the Facility Collateral Agent shall deposit such Lockbox Account Proceeds in the Lockbox Account or, if such Lockbox Account Proceeds constitute casualty insurance proceeds for any Specified Real Property, in the Net Insurance Proceeds Subaccount. The Borrower will notify the Administrative Agent and the Collateral Agent in writing upon the Borrower delivering (or causing to be delivered) any Lockbox Account Proceeds to the Facility Collateral Agent.

(b) Disbursements of Funds from Accounts.

(i) Disbursements from Capitalized Interest Account.

(1) On each Interest Payment Date, the Facility Collateral Agent shall withdraw from the Capitalized Interest Account and pay to the Administrative Agent, for the account of the Lenders, the total amount of accrued interest on the Loans that is due and payable by the Borrower pursuant to Section 2.5 of the Credit Agreement on such Interest Payment Date. No later than 4:00 p.m. (New York City time) on the Business Day prior to each Interest Payment Date, the Administrative Agent shall notify the Facility Collateral Agent in writing of the amount of accrued interest on the Loans that is due and payable by the Borrower pursuant to Section 2.5 of the Credit Agreement on such Interest Payment Date.

(2) On any date that Loans are prepaid in whole or in part, (x) the Facility Collateral Agent shall withdraw from the Capitalized Interest Account and pay to the Administrative Agent, for the account of the Lenders (A) the total amount of accrued interest on the principal amount of the Loans being prepaid that is due and payable by the Borrower

pursuant to Section 2.5 of the Credit Agreement on such date plus (B) the Make-Whole Premium, if any, that is due and payable by the Borrower pursuant to Section 2.12(b) of the Credit Agreement on such date and (y) so long as no Default or Event of Default has occurred and is continuing, the Facility Collateral Agent shall withdraw from the Capitalized Interest Account and pay to the Borrower an additional amount of funds from the Capitalized Interest Account such that the amount remaining in the Capitalized Interest Account (based on the marked-to-market value of any investments therein) after giving effect to (I) the withdrawals under clause (x) and this clause (y) and (II) the prepayment of the Loans on such date is no less than the Capitalized Interest Required Amount. No later than 4:00 p.m. (New York City time) on the Business Day prior to the date of prepayment, the Administrative Agent shall notify the Facility Collateral Agent in writing of (I) the total amount of accrued interest on the principal amount of the Loans being prepaid that is due and payable by the Borrower pursuant to Section 2.5 of the Credit Agreement on the date of prepayment, (II) the Make-Whole Premium, if any, that is due and payable by the Borrower pursuant to Section 2.12(b) of the Credit Agreement on the date of prepayment and (III) the amount, if any, that is to be paid to the Borrower from the Capitalized Interest Account pursuant to subclause (y) above on the date of prepayment.

(3) On each Borrower Net Hedging Payment Date, the Facility Collateral Agent shall withdraw from the Capitalized Interest Account and pay to the Lender Counterparty entitled thereto the Borrower Net Hedging Payment that is due and payable by the Borrower to such Lender Counterparty pursuant to the applicable Interest Rate Agreement on such Borrower Net Hedging Payment Date. No later than 4:00 p.m. (New York City time) on the Business Day prior to each Borrower Net Hedging Payment Date, the Borrower shall notify the Facility Collateral Agent in writing of the amount of the Borrower Net Hedging Payment that is due and payable by the Borrower pursuant to the applicable Interest Rate Agreement on such Borrower Net Hedging Payment Date.

(ii) Disbursements from Expense Reserve Account.

(1) On each anniversary of the Closing Date, the Facility Collateral Agent shall withdraw from the Expense Reserve Account and pay to the Administrative Agent, for its own account, the amount of the annual administrative agency fee due and payable by the Borrower pursuant to the Fee Letter on such date. No later than 4:00 p.m. (New York City time) on the Business Day prior to each date that the annual administrative agency fee is due and payable by the Borrower pursuant to the Fee Letter, the Administrative Agent shall notify the Facility Collateral Agent in writing of the amount of the annual administrative agency fee that is due and payable by the Borrower pursuant to the Fee Letter on such date.

(2) From time to time after the Closing Date, upon written demand of the Collateral Agent or the Administrative Agent, the Facility Collateral Agent shall withdraw from the Expense Reserve Account and pay to the Administrative Agent or the Collateral Agent, as the case may be, the amount of costs and expenses due and payable by the Borrower to the Administrative Agent, the Collateral Agent or the Lenders pursuant to Section 10.2 of the Credit Agreement.

(iii) Disbursements from Lockbox Account.

(1) From time to time, pursuant to a written instruction given by the Borrower to the Facility Collateral Agent (with a copy to the Administrative Agent), the Facility Collateral Agent shall withdraw from the Lockbox Account and pay to the Administrative Agent such amounts as the Borrower may request in such written instruction to be applied as a voluntary prepayment of the Loans pursuant to Section 2.12 of the Credit Agreement.

(2) From time to time, pursuant to a written instruction given by the Borrower to the Facility Collateral Agent (with a copy to the Administrative Agent), the Facility Collateral Agent shall withdraw from the Net Insurance Proceeds Subaccount and pay to the Borrower such amount of any Net Insurance Proceeds that have been deposited in the Net Insurance Proceeds Subaccount as the Borrower may request in such written instruction to be applied to the repair, restoration or replacement of the applicable assets; provided, however, that the Borrower shall not be permitted to request that Net Insurance Proceeds be withdrawn from the Net Insurance Proceeds Subaccount unless (x) no Default or Event of Default has occurred and is continuing and (y) such Net Insurance Proceeds are applied to the repair, restoration or replacement of the applicable assets no more than one year following the date of deposit of such Net Insurance Proceeds in the Net Insurance Proceeds Subaccount (each of the foregoing conditions, the “**Net Insurance Proceeds Release Conditions**”). Any written instruction given by the Borrower to the Facility Collateral Agent under this subclause (2) for the withdrawal of Net Insurance Proceeds from the Net Insurance Proceeds Subaccount shall contain or be accompanied by a certificate from an Authorized Officer of the Borrower certifying that each of the Net Insurance Proceeds Release Conditions is satisfied at the time of and after giving effect to the withdrawal of such Net Insurance Proceeds from the Net Insurance Proceeds Subaccount.

(3) From time to time after the Closing Date, upon written demand of the Collateral Agent or the Administrative Agent, the Facility Collateral Agent shall withdraw from the Lockbox Account and pay to the Administrative Agent or the Collateral Agent, as the case may be, the amount of Obligations that are due and payable and that have not otherwise been paid by the Borrower or from the Capitalized Interest Account or Expense Reserve Account; provided, that (x) the Administrative Agent may only make a demand upon the Facility Collateral Agent to withdraw funds from the Lockbox Account to pay accrued interest on the Loans or any Borrower Net Hedging Payment to the extent that funds are not available in the Capitalized Interest Account to pay such amounts and (y) the Administrative Agent and the Collateral Agent may only make a demand upon the Facility Collateral Agent to withdraw funds from the Lockbox Account to pay the annual administrative agency fee due and payable by the Borrower pursuant to the Fee Letter or to pay costs and expenses due and payable by the Borrower to the Administrative Agent, the Collateral Agent or the Lenders pursuant to Section 10.2 of the Credit Agreement to the extent that funds are not available in the Expense Reserve Account to pay such amounts.

(iv) Disbursements from Accounts Following Acceleration. If the maturity of the Obligations shall have been accelerated pursuant to Section 8.1 of the Credit Agreement, all available amounts in the Accounts shall, upon the written direction of the Collateral Agent to the Facility Collateral Agent, be applied in the manner set forth in Section 8.2 of the Credit Agreement

(v) Coordination with TIFIA Collateral Agency Agreement During Event of Default. If an Event of Default has occurred and is continuing, amounts on deposit in the Debt Service Reserve Account, the Capital Replacement Reserve Account (as defined in the TIFIA Collateral Agency Agreement) and the Surplus Revenue Account ((as defined in the TIFIA Collateral Agency Agreement) shall be transferred to the subaccount in the Parity Permitted Debt Service Account established for the Obligations and applied to pay any Obligations then due and payable in accordance with the TIFIA Collateral Agency Agreement before amounts are withdrawn from the Accounts and used to pay Obligations under this Agreement.

6. Investments. Funds held by the Facility Collateral Agent in the Accounts hereunder shall be invested and reinvested by the Facility Collateral Agent solely in Permitted Investments (i) as directed by the Borrower, so long as no Event of Default has occurred and is continuing and the Collateral Agent has not notified the Facility Collateral Agent in writing that the Borrower is no longer permitted to direct the investment of funds in the Accounts or (ii) as directed by the Collateral Agent if an Event of Default has occurred and is continuing and the Collateral Agent has notified the Facility Collateral Agent in writing that the Borrower is no longer permitted to direct the investment of funds in the Accounts. Such investments shall be held by the Facility Collateral Agent in the Account for which the investment is made and interest earned thereon will be deposited to such Account. Any loss or expense incurred from an investment will be borne by the Account for which the investment is made. In computing for any purpose hereunder the amount in any Account on any date, obligations so purchased shall be valued at the lower of cost or par, exclusive of accrued interest. The Facility Collateral Agent is hereby authorized to execute purchases and sales of investments through the facilities of its own trading or capital markets operations. The Facility Collateral Agent understands and acknowledges that any investments and reinvestments shall be made after giving full consideration to the time at which funds are required to be available for payments hereunder and shall be structured to obtain the highest yield practicable giving due regard to the safety of such funds and the dates upon which such funds are required to be available for the uses and purposes described in this Agreement. The Facility Collateral Agent shall not invest any moneys held hereunder in Permitted Investments offered by or through the Facility Collateral Agent or any of its affiliates unless (i) the Facility Collateral Agent determines such investment is consistent with the investment requirements contained herein, (ii) all fees charged are reasonable and (iii) each of the Borrower, the Administrative Agent and the Collateral Agent consents in writing to the specific investment at issue. Each of the Borrower, the Administrative Agent and the Collateral Agent authorizes the Facility Collateral Agent to liquidate any Permitted Investments held in any of the Accounts to the extent necessary to make the payments transfers prescribed by this Agreement from time to time.

7. Statements. The Facility Collateral Agent shall furnish monthly statements to the Borrower, the Administrative Agent and the Collateral Agent at the address specified in the Section entitled "Notices to the Parties," cut off as of the end of each calendar month, no later than the fifth day of the following calendar month. The Facility Collateral Agent shall also furnish statements to the Borrower, the Administrative Agent of the investments held in the Accounts marked to market, no less frequently than monthly.

8. Compensation. The Facility Collateral Agent's fees shall be paid in accordance with the Fee Schedule attached hereto as Exhibit A. The Facility Collateral Agent shall submit

invoices to the Borrower at the address specified in the Section entitled “Notices to the Parties.” Fees shall not be deducted from amounts on deposit in any of the Accounts. The Borrower shall submit payment to the Facility Collateral Agent at the address specified in the Section entitled “Notices to the Parties.”

9. Termination. This Agreement shall terminate upon the payment in full of the Obligations. Upon termination, any amount remaining in all Accounts and shall immediately be paid to the Borrower or as the Borrower otherwise directs.

10. Resignation. The Facility Collateral Agent may at any time resign by giving at least thirty (30) days written notice to the Borrower and the Collateral Agent, but such resignation shall not take effect until the appointment of a successor Facility Collateral Agent. In the event of any resignation of the Facility Collateral Agent, a successor Facility Collateral Agent shall be appointed by an instrument in writing executed by the Facility Collateral Agent, the Borrower, the Administrative Agent and the Collateral Agent. Such successor Facility Collateral Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to the Borrower, the Administrative Agent and the Collateral Agent. Thereupon such successor Facility Collateral Agent shall, without any further act or deed, be fully vested with all the trust, powers, rights, duties and obligations of the Facility Collateral Agent hereunder and the predecessor Facility Collateral Agent shall deliver all moneys and securities held by it hereunder to such successor Facility Collateral Agent.

11. Assignment. The services to be performed by the Facility Collateral Agent are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Facility Collateral Agent unless first approved by the Borrower, the Administrative Agent and the Collateral Agent by written instrument executed and approved in the same manner as this Agreement.

12. **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 THE BORROWER, THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN.**

13. **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, EACH PARTY, 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 SUCH PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 18; (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER SUCH PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) AGREES THAT EACH OTHER PARTY RETAINS THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST SUCH PARTY 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.

14. 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 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 14 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.

15. Liability of the Facility Collateral Agent. The Facility Collateral Agent incurs no liability to make any disbursements pursuant to this Agreement except from funds held in the Accounts.

16. Consequential Damages. The Facility Collateral Agent shall be liable for consequential damages (including without limitation lost profits, losses or expenses) in the event of the Facility Collateral Agent's failure to carry out its duties pursuant to this Agreement.

17. Audit and Inspection of Records. An independent accounting firm retained by the Borrower shall conduct an annual audit covering all business transactions related to the Accounts. The Facility Collateral Agent agrees to maintain and make available to the Borrower and its auditor, during regular business hours, accurate books and accounting records relating to its work under this Agreement. The Facility Collateral Agent will permit the Borrower, the Administrative Agent and the Collateral Agent to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all deposits, payments, invoices, records and other data related to all other matters covered by this Agreement. The Facility Collateral Agent shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

18. Notices to the Parties. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail, or fax, and shall be addressed as follows:

To Borrower:

Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
Attn: Maria Ayerdi-Kaplan, Executive Director
(415) 597-4615 fax
(415) 597-4620 phone
MAyerdi@TransbayCenter.org

To Facility Collateral Agent:

U.S. Bank National Association, as Facility Collateral Agent
One California Street, Suite 1000
Mail Code – SF-CA-SFCT
San Francisco, CA 94111
Attn: Andrew Fung
(415) 677-3769 fax
(415) 677-3593 phone
andrew.fung@usbank.com

To Administrative Agent:

Goldman Sachs Bank USA, as Administrative Agent
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[]
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Attn: []
[] fax
[] phone
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To Collateral Agent:

Goldman Sachs Bank USA, as Collateral Agent
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Attn: []
[] fax
[] phone
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Any party may change its notice information from time to time by written notice to the other parties given in the manner prescribed by this Section 18.

19. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

20. Merger of Prior Agreements. The parties to this Agreement intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

21. Interpretation of This Agreement. The article, section and other headings of this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of

the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

22. 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). For purposes of this Agreement, reasonable attorneys' fees of the Borrower's attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Borrower attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Borrower attorney's law firm. The term "Attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "Costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney. Notwithstanding the foregoing, Borrower shall be required to reimburse the Administrative Agent and the Collateral Agent for their fees and expenses in the manner prescribed by Section 10.2 of the Credit Agreement.

23. Conflicts of Interest. Through its execution of this Agreement, the Facility Collateral Agent acknowledges that it is familiar with the provisions of the Conflict of Interest Code of the Borrower; Section 15.103 of the San Francisco City Charter; Article III, Chapter 2 of San Francisco's Campaign and Governmental Conduct Code; and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions, and agrees that if the Facility Collateral Agent becomes aware of any such fact during the term of this Agreement, the Facility Collateral Agent shall immediately notify the Borrower.

24. Non-Liability of Borrower Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no Board member, officer, employee or agent of the Borrower shall be personally liable to the Facility Collateral Agent, the Administrative Agent, the Collateral Agent or any of their successors and assigns, in the event of any default or breach by Borrower or for any amount which may become due to the Facility Collateral Agent, the Administrative Agent, the Collateral Agent or any of their successors and assigns, or for any obligation of the Borrower under this Agreement.

25. Limitations on Contributions. Through execution of this Agreement, the Facility Collateral Agent acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the Borrower for the rendition of personal services, for the furnishing of any material, supplies or equipment, or for the sale or lease of any land or building, from making any campaign contribution to (1) a Borrower elective officer if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Facility Collateral Agent acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Facility Collateral Agent further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Facility Collateral Agent's board of directors; the Facility Collateral Agent's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Facility Collateral Agent; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Facility Collateral Agent. Additionally, the Facility Collateral Agent acknowledges that the Facility Collateral Agent must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

26. Equal Employment Opportunity/Non-Discrimination.

(a) The Facility Collateral Agent Shall Not Discriminate. In the performance of this Agreement, the Facility Collateral Agent agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any Borrower employee working with, or applicant for employment with the Collateral Agent in any of the Facility Collateral Agent's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social, or other establishments or organizations operated by the Facility Collateral Agent.

(b) Subcontracts. The Facility Collateral Agent shall incorporate by reference in all subcontracts made in fulfillment of its obligations hereunder the provisions of Section 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. The Facility Collateral Agent's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Non-Discrimination in Benefits. The Facility Collateral Agent does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the Borrower or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and

retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) HRC Form. The Facility Collateral Agent shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form HRC-12B-101) with supporting documentation and file the form with the Borrower Contracts Compliance Manager.

(e) Incorporation of Administrative Code Provisions by Reference. Solely for purposes of binding the Facility Collateral Agent, the provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Facility Collateral Agent shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Facility Collateral Agent understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Facility Collateral Agent and/or deducted from any payments due the Facility Collateral Agent; provided, however, that such penalty shall not be set off against the payment of rental or other amounts under any lease or other contract related to bonds, certificates of participation or other debt obligations of the Facility Collateral Agent.

27. Compliance With Americans With Disabilities Act. Without limiting any other provisions of this Agreement, the Facility Collateral Agent shall provide the services specified in this Agreement in a manner that complies with the Americans with Disabilities Act (ADA) Title 24, and any and all other applicable federal, state and local disability rights legislation. The Facility Collateral Agent agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Facility Collateral Agent, its employees, agents or assigns shall constitute a material breach of this Agreement.

28. Resource Conservation. Solely for purposes of binding the Facility Collateral Agent, Chapter 21A of the San Francisco Administrative Code (“**Resource Conservation**”) is incorporated herein by reference. Failure by the Facility Collateral Agent to comply with any of the requirements of Chapter 21A shall be deemed a material breach of this Agreement. In the event the Facility Collateral Agent fails to comply in good faith with any of the provisions of Chapter 21A, the Collateral Agent shall be liable for liquidated damages in an amount equal to the Collateral Agent’s net profit under the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. The Facility Collateral Agent acknowledges and agrees that liquidated damages assessed shall be payable to the Borrower upon demand and may be set off against any moneys due to the Facility Collateral Agent from any agreement with the Borrower; provided, however, that such damages shall not be set off against the payment of any obligations of the Borrower under Section 5 of this Agreement.

29. Tropical Hardwood Ban. Pursuant to San Francisco Administrative Code Section 121.5(b), the Borrower urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product or any virgin redwood or virgin redwood product.

30. MacBride Principles—Northern Ireland. The Borrower urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The Borrower urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

31. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

32. Amendment. This Agreement may not be amended except by a written instrument executed by the Borrower, the Facility Collateral Agent, the Administrative Agent and the Collateral Agent.

33. Counterparts. This Agreement may be executed in several counterparts, each one of which shall constitute an original and all collectively shall constitute but one instrument.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, The Borrower, the Facility Collateral Agent, the Administrative Agent and the Collateral Agent have caused this Agreement to be executed by their duly authorized representatives.

Transbay Joint Powers Authority

U.S. Bank National Association,
as the Facility Collateral Agent

Name: Maria Ayerdi-Kaplan
Title: Executive Director

Name:
Title:

Goldman Sachs Bank USA,
as the Administrative Agent and the Collateral Agent

By: _____
Name:
Title:

DRAFT

EXHIBIT A
Fee Schedule

[Facility Collateral Agent to Provide]

DRAFT

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

**SECOND AMENDMENT TO
TIFIA LOAN AGREEMENT**

FOR UP TO \$171,000,000

With

TRANSBAY JOINT POWERS AUTHORITY

For the

TRANSBAY TRANSIT CENTER PROJECT

(TIFIA 2008-CA-01007A)

DATED AS OF _____, 2014

SECOND AMENDMENT TO TIFIA LOAN AGREEMENT

THIS SECOND AMENDMENT TO TIFIA LOAN AGREEMENT, dated as of _____, 2014 (this "Second Amendment"), amending and supplementing the TIFIA LOAN AGREEMENT, dated as of January 1, 2010 (the "Original Loan Agreement" and, as amended and supplemented by the First Amendment to TIFIA Loan Agreement dated as of May 8, 2014 (the "First Amendment") and by this Second Amendment, the "Agreement"), by and between TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created pursuant to 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 California Government Code Section 6500 et seq., with an address of 201 Mission Street, Suite 2100, San Francisco, California 94105 (the "Borrower"), and the UNITED STATES DEPARTMENT OF TRANSPORTATION ("USDOT"), an agency of the United States of America, acting by and through the Federal Highway Administrator, with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the "TIFIA Lender"), is made by and between the Borrower and the TIFIA Lender.

RECITALS:

WHEREAS, the Congress of the United States of America has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health, and welfare of the people of the United States and, in furtherance thereof, has enacted the Transportation Infrastructure Finance and Innovation Act of 1998 ("TIFIA"), §1501 *et seq.* of Public Law 105-178 (as amended by the Public Law 105-26, Public Law 109-59 and Public Law 112-141) (the "Act"), codified as 23 U.S.C. §601 *et seq.*;

WHEREAS, Section 603 of the Act authorizes the TIFIA Lender to enter into agreements with one or more obligors to make secured loans;

WHEREAS, the TIFIA Lender previously entered into the Original Loan Agreement to provide a secured loan to the Borrower pursuant to the Act, in a principal amount up to \$171,000,000 (excluding capitalized interest) for the purpose of funding certain Eligible Project Costs of the Transbay Transit Center Project ("TIFIA Loan"); and

WHEREAS, the Borrower and the TIFIA Lender have previously agreed to certain amendments as provided in the First Amendment; and

WHEREAS, the Borrower and the TIFIA Lender have agreed to further amend certain terms of the Original Loan Agreement as provided herein, to address certain requests of the Borrower to facilitate an interim borrowing by the Borrower, all in connection with the TIFIA Loan.

NOW, THEREFORE, the premises being as stated above, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged to be adequate, it is hereby mutually agreed by and between the Borrower and the TIFIA Lender as follows:

ARTICLE I

AUTHORITY; DEFINITIONS

Section 1.1 **Authority for Second Amendment.** This Second Amendment amends and supplements the Original Loan Agreement and is entered into in accordance with Section 29 of the Original Loan Agreement.

Section 1.2 **Definitions.** All capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Original Loan Agreement, as amended and supplemented by this Second Amendment.

Section 1.3 **Construction of Certain Terms.** All references in the Original Loan Agreement to “this Agreement”, or words of similar import and the terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any other similar terms as used in the Original Loan Agreement shall be deemed to refer to the Original Loan Agreement, as amended and supplemented by this Second Amendment.

ARTICLE II

AMENDMENTS

Section 2.1 **Amendments to Definitions.**

(a) The definition of “Permitted Liens” contained in Section 1 of the Original Loan Agreement is hereby deleted in its entirety and the following definition is substituted:

“**Permitted Liens**” means:

- (a) Liens imposed pursuant to the Security Documents;
- (b) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 16(t);
- (c) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 16(t);
- (d) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, and other social security laws or regulations;
- (e) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(f) judgment liens in respect of judgments that do not constitute an Event of Default under Section 19(a)(vii);

(g) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not (i) secure any monetary obligations, (ii) materially detract from the value of the affected property, (iii) interfere with the ordinary conduct of business of the Borrower or (iv) materially affect the Pledged Revenues;

(h) purchase money security interests in real property, improvements thereto or equipment hereafter acquired (or, in the case of improvements, constructed) by the Borrower, provided that (i) such security interests secure indebtedness for borrowed money permitted by Section 16(a), (ii) such security interests are incurred, and the indebtedness secured thereby is created, within 90 days after such acquisition (or construction), (iii) the indebtedness secured thereby does not exceed the fair market value of such real property, improvements or equipment at the time of such acquisition (or construction) and (iv) such security interests do not apply to any other property or assets (other than accessions to such real property, improvements or equipment) of the Borrower;

(i) the mortgage granted on the State-owned Parcel designated as Parcel F as described as such in the Cooperative Agreement and securing the Borrower's obligations under the Interim Financing; and

(j) the agreement pledging the proceeds from the sale of the State-owned Parcel designated as Block 4, as described as such in the Cooperative Agreement and securing the Borrower's obligations under the Interim Financing.

(b) The following definitions are added to Section 1 of the Original Loan Agreement:

“Interim Financing” means indebtedness of the Borrower described in subparagraph (c) of the definition of Permitted Debt.

“Second Amendment” means the Second Amendment to TIFIA Loan Agreement dated as of _____, 2014 by and between the Borrower and the TIFIA Lender.

Section 2.2 **Amendment to Section 4 (b).** The first paragraph in Section 4(a) is hereby amended and restated as follows:

In addition to other conditions set forth herein, the initial TIFIA Loan disbursement shall be subject to the following conditions:

(i) the Borrower shall have provided evidence acceptable to the TIFIA Lender that (A) land sales of State-owned Parcels have closed with the amount of the gross sales proceeds aggregating not less than \$429 million or (B) an allocation of alternative committed funding for the Project acceptable to the TIFIA Lender, in either case, together with

the amount of the gross proceeds of land sales of State-owned Parcels, aggregates not less than \$429 million;

(ii) the Borrower shall have provided evidence acceptable to the TIFIA Lender's reasonable satisfaction that arranged financing has been secured for the development of all State-owned Parcels that have been sold. Such evidence may include signed financing, equity contribution or grant agreements or other similar agreements or instruments, and shall be accompanied by certifications from the Borrower that all conditions precedent to effectiveness of each such agreement and transactions contemplated thereby have been satisfied;

(iii) the TIFIA Lender has received a Concord Group Updated Report in form and substance reasonably acceptable to the TIFIA Lender;

(iv) the TIFIA Lender has received an updated Base Case Financial Model (which includes a Seifel Updated Report and a Sperry Capital Report) and a URS Updated Report, each in form and substance reasonably acceptable to the TIFIA Lender;

(v) the Borrower shall have provided evidence acceptable to the TIFIA Lender, within 30 days prior to the date of submission of the initial Requisition, of the assignment by a Nationally Recognized Rating Agency of an Investment Grade Rating to the TIFIA Loan; and

(vi) the Borrower shall have provided evidence satisfactory to the TIFIA Lender that prior to, or simultaneously with, the disbursement of funds, the Permitted Liens securing the Interim Financing shall be or have been released.

Section 2.3 **Further Amendment to Section 4.** A new subparagraph (c) is hereby added to follow subparagraph (b) of Section 4:

(c) The Borrower anticipates that it will draw down all of the proceeds of the TIFIA Loan to reimburse Eligible Project Costs for the purpose of paying or defeasing all or a portion of Interim Financing. The Borrower shall deliver to the TIFIA Lender on or before the tenth day of the month commencing _____, 2014 and on or before the tenth day of each month thereafter, or if any such date is not a Business Day, on the next succeeding Business Day, a certificate from the Borrower's Authorized Representative which shall include the following:

- (1) The amount of Eligible Project Costs financed from the proceeds of the Interim Financing for the preceding month;
- (2) Supporting documentation to verify that such proceeds were expended for Eligible Project Costs;

(3) Certifications from the Borrower's Authorized Representative that:

- (a) The proceeds were expended for Eligible Project Costs; and
- (b) No Event of Default has occurred and is continuing or, if there is such an Event of Default at the time when such certificate is delivered, the certificate shall specify all the actions that the Borrower is taking to remedy such Event of Default.

The information to be provided as described above is intended to document Eligible Project Costs in connection with the reimbursement of Eligible Project Costs for the purpose of paying the Interim Financing.

The TIFIA Lender shall review each such certificate for compliance with TIFIA disbursement requirements. Within fourteen (14) Business Days of receipt of each such certificate, the TIFIA Lender shall deliver a notice to the Borrower, confirming the Eligible Project Costs set forth in the applicable certificate that have been approved and the cumulative amount of Eligible Project Costs approved as of the notice date. Such approved amounts of Eligible Project Costs will be disbursed, in whole or in part, at such time as the Borrower submits a requisition for disbursement of TIFIA Loan Proceeds in accordance with the procedures of **Exhibit D** and upon satisfaction of the conditions precedent to disbursement as set forth herein.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.1 **Representations and Warranties.** The Borrower represents and warrants to the TIFIA Lender that, after giving effect to this Second Amendment (a) the representations and warranties set forth in Section 14 of the Original Loan Agreement are true and correct on the date hereof as if made on and as of the date hereof (except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date), (b) the representations and warranties set forth in each of the other Security Documents are true and correct in all material respects on the date hereof as if made on and as of the date hereof (except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date), and (c) no Event of Default has occurred and is continuing or will occur as a result of the execution, delivery and performance by the Borrower of this Second Amendment.

ARTICLE IV

MISCELLANEOUS

Section 4.1 **Governing Law.** This Second Amendment shall be governed by the federal laws of the United States if and to the extent such federal laws are applicable and the internal laws of the State of California if and to the extent such federal laws are not applicable.

Section 4.2 **Severability.** In case any provision in or obligation under this Second Amendment 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.

Section 4.3 **Original Loan Agreement to Remain in Effect.** Save and except as expressly amended and supplemented by this Second Amendment, the Original Loan Agreement, as amended by the First Amendment, is hereby in all respects ratified and confirmed, and the terms, provisions and conditions thereof shall be, and remain, in full force and effect, and this Second Amendment and all its terms, provisions and conditions shall be deemed to be part of the Original Loan Agreement.

Section 4.4 **Successors and Assigns.** This Second Amendment shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the TIFIA Lender.

Section 4.5 **Counterparts.** This Second Amendment and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate 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; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

Section 4.6 **Effectiveness.** This Second Amendment shall take effect upon its execution and delivery by each party hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of _____, 2014.

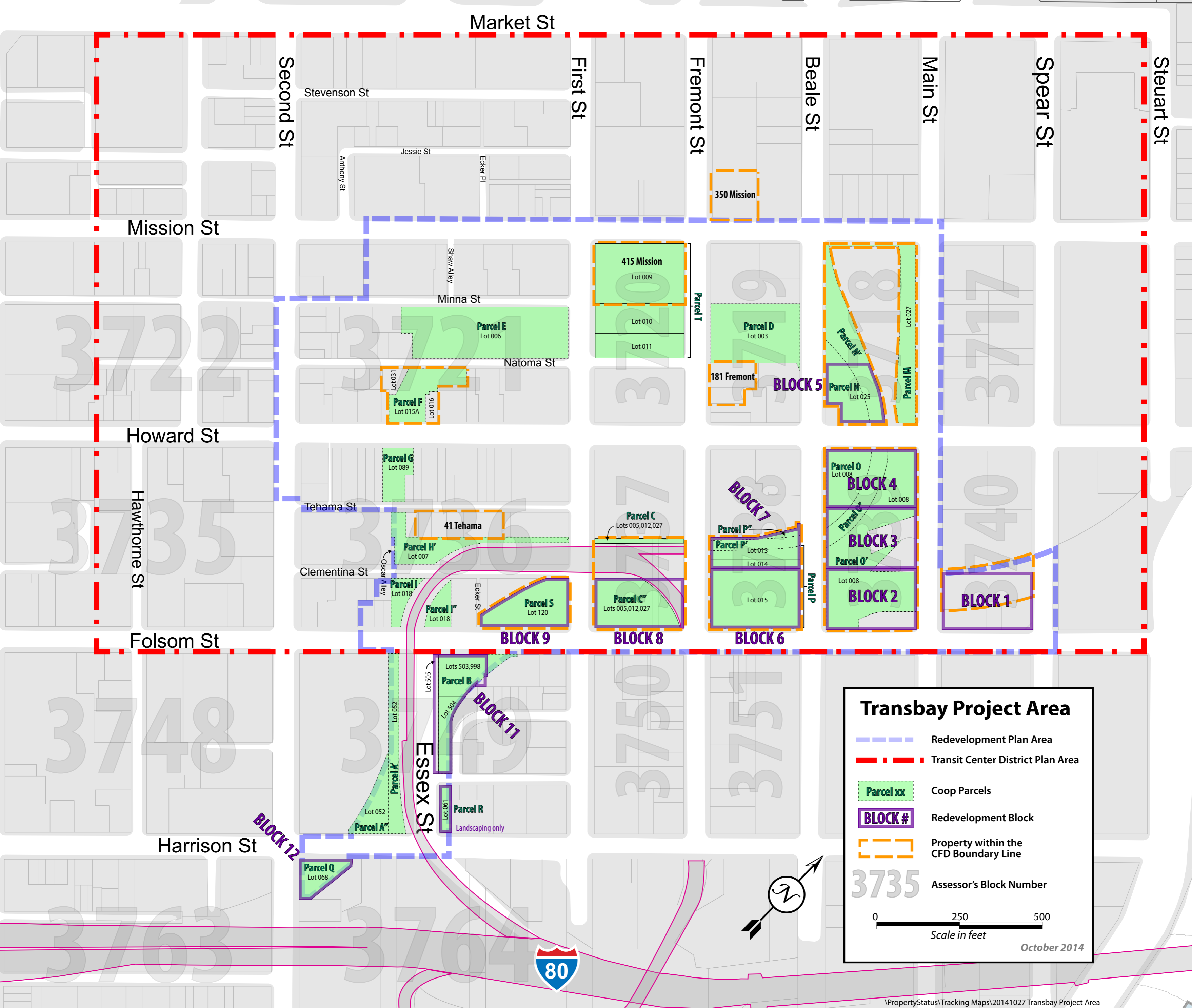
TRANSBAY JOINT POWERS AUTHORITY

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

**UNITED STATES DEPARTMENT OF
TRANSPORTATION**, acting by and through the
Federal Highway Administrator

By: _____
Name: Gregory G. Nadeau
Title: Deputy Administrator

DRAFT



Market St

Second St

First St

Fremont St

Beale St

Main St

Spear St

Stuart St

Stevenson St

Jessie St

Ecker Pl

Anthony St

350 Mission

Mission St

Minna St

Parcel E
Lot 006

415 Mission
Lot 009

Lot 010

Lot 011

Parcel D
Lot 003

181 Fremont

BLOCK 5

Parcel N
Lot 025

Parcel M

Howard St

Parcel G
Lot 089

Tehama St

41 Tehama

Parcel C
Lots 005,012,027

BLOCK 7

Parcel O
Lot 008

BLOCK 4

Hawthorne St

Parcel H
Lot 007

Clementina St

Parcel I
Lot 018

Parcel J
Lot 018

Parcel S
Lot 120

Parcel C
Lots 005,012,027

Parcel P
Lot 013

Parcel P
Lot 014

Parcel O
Lot 008

BLOCK 3

Parcel O
Lot 008

BLOCK 2

BLOCK 1

Folsom St

BLOCK 9

BLOCK 8

BLOCK 6

Parcel B
Lots 503,998

Parcel R
Landscaping only

Essex St

Parcel A
Lot 052

Parcel R
Landscaping only

BLOCK 11

Harrison St

BLOCK 12

Parcel Q
Lot 068

Transbay Project Area

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

0 250 500
Scale in feet

October 2014

