

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 10-2021

AUTHORIZING A PREDEVELOPMENT LOAN AGREEMENT IN AN AMOUNT NOT TO EXCEED \$3,500,000, WITH TRANSBAY 2 FAMILY, L.P., A CALIFORNIA LIMITED PARTNERSHIP, FOR THE DEVELOPMENT OF APPROXIMATELY 101 AFFORDABLE FAMILY RENTAL HOUSING UNITS (INCLUDING ONE MANAGER'S UNIT), A RETAIL SPACE, AND A CHILD CARE FACILITY AT TRANSBAY BLOCK 2 EAST, AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; PROVIDING NOTICE THAT THIS ACTION IS WITHIN THE SCOPE OF THE TRANSBAY REDEVELOPMENT PROJECT APPROVED UNDER THE TRANSBAY TERMINAL/CALTRAIN DOWNTOWN EXTENSION/REDEVELOPMENT PROJECT FINAL ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT ("FINAL EIS/EIR"), A PROGRAM EIR, AND IS ADEQUATELY DESCRIBED IN THE FINAL EIS/EIR FOR PURPOSES OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; TRANSBAY REDEVELOPMENT PROJECT AREA

WHEREAS, In furtherance of the objectives of the Community Redevelopment Law of the State of California ("CRL"), the Redevelopment Agency of the City and County of San Francisco (the "Former Agency") undertook a program to redevelop and revitalize blighted areas in San Francisco and in connection therewith adopted a redevelopment project area known as the Transbay Redevelopment Project Area (the "Project Area"); and,

WHEREAS, The Board of Supervisors of the City and County of San Francisco ("Board of Supervisors") approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005, and by Ordinance No. 99-06, adopted on May 9, 2006, filed in the Office of the Recorder of the City and County of San Francisco ("Official Records") as Document No. 2006-I224836, as amended by Ordinance No. 84-15 (June 18, 2015) as Document No. 2015-K135871, and as amended by Ordinance No. 62-16 (April 19, 2016) as Document No. 2016-K333253, and as it may be amended from time to time ("Redevelopment Plan"); and,

WHEREAS, The Redevelopment Plan establishes the land use controls that the Successor Agency applies in the Project Area. The Redevelopment Plan divides the Project Area into two subareas: Zone One in which the Redevelopment Plan and the Development Controls and Design Guidelines for the Transbay Redevelopment Project (2005) ("Development Controls") define land uses, and Zone Two in which the San Francisco Planning Code applies; and,

WHEREAS, In 2003, the Transbay Joint Powers Authority (“TJPA”), the City and County of San Francisco (“City”), and the State of California (“State”), entered into a Cooperative Agreement setting forth the process for the transfer of certain State-owned parcels in the Project Area to the City and the TJPA. Also in 2003, the California Legislature enacted Assembly Bill No. 812 (Statutes 2003, chapter 99), codified at Cal. Public Resources Code § 5027.1 (“Transbay Affordable Housing Obligation”), which requires that thirty-five percent (35%) of new housing developed in the Project Area shall be affordable to low- and moderate-income households. In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (“Implementation Agreement”) which incorporates the Transbay Affordable Housing Obligation and requires the Successor Agency to prepare and sell certain formerly State-owned parcels and to construct and fund new infrastructure improvements (such as parks and streetscapes) and to meet affordable housing obligations; and,

WHEREAS, On February 1, 2012, the State of California dissolved all redevelopment agencies including the Former Agency, by operation of law pursuant to California Health and Safety Code Section 34170 et seq. (“Redevelopment Dissolution Law”). Under the authority of the Redevelopment Dissolution Law and San Francisco Ordinance No. 215-12 (October 4, 2012) (establishing the Successor Agency Commission (“Commission”) and delegating to it state authority under the Redevelopment Dissolution Law), the Successor Agency is administering the enforceable obligations of the Former Agency. The Redevelopment Plan, Development Controls (defined below), and other relevant Project Area documents remain in effect and Successor Agency retains all affordable housing obligations in the Project Area; and,

WHEREAS, Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are “in compliance with an enforceable obligation that existed prior to June 28, 2011.” Cal. Health & Safety Code § 34177.5(a). On April 15, 2013, the California Department of Finance (“DOF”) finally and conclusively determined that the Implementation Agreement and its incorporation of the Transbay Affordable Housing Obligation are continuing enforceable obligations of the Successor Agency under Redevelopment Dissolution Law. DOF has confirmed that “any sale, transfer, or conveyance of property related to [the Transbay Final and Conclusive Determination] is authorized.” Email from Justyn Howard, Assistant Program Budget Manager, DOF, to Tiffany Bohee, Executive Director, Successor Agency (September 10, 2013, 09:17 am); and,

WHEREAS, On June 22, 2020, OCII issued a Housing Development Request for Proposals (the “RFP”) to develop, own, and operate mixed-use affordable rental family and senior housing, including units set-aside for formerly homeless family and senior households at Transbay Block 2 East and West (the “Site”). In addition, the RFP asked respondents to consider an approach for rezoning to increase the building height on the Site; and,

WHEREAS, An evaluation panel comprised of OCII staff, City staff, and a member of the Transbay Citizens Advisory Committee recommended the proposal from the team led by Mercy Housing California (“Mercy”) and Chinatown Community Development Center (“CCDC”) to develop the Site. The proposal from Mercy and CCDC included, among other things, a comprehensive design that activated the ground floor with retail and child care space, thoroughly assessed financial feasibility of developing the Site, and emphasized services specific to the populations to be served. The proposal stated that Mercy and CCDC will enter into a joint venture to develop Transbay Block 2, with [Mercy] being the lead developer and the point of communication for the development team with OCII, and CCDC will be the co-developer.” Mercy will develop, own, and operate a mixed-use rental housing project serving low-income families and formerly homeless families (the “Project”) on the eastern portion of the Site (the “Block 2E Site”), while CCDC will develop, own, and operate a mixed-use housing project serving low-income seniors and formerly homeless seniors (the “Senior Project”) on the western portion of the Site (the “Block 2W Site”). In addition, Mercy’s role would include overall site coordination, and the initial lease-up and ongoing management of commercial spaces in both the Project and the Senior Project; and,

WHEREAS, The preliminary development program for the Project currently consists of 101 total housing units, including one manager’s unit, that will be comprised of 36 one-bedroom units, 36 two-bedroom units, and 29 three-bedroom units. Affordable units will be provided at a range of income levels, and 20% of the units will be set-aside to serve formerly homeless families, subsidized by the San Francisco Local Operating Subsidy Program. The Project will include resident serving amenities as well as space for a childcare center, and ground floor retail. The total number of units in the Project may increase as Mercy will study different massing and financing scenarios to maximize affordable housing at various heights; and,

WHEREAS, Mercy has formed a single-purpose entity, Transbay 2 Family, L.P., a California limited partnership (“Developer”), to undertake construction and financing of the Family Project and CCDC has formed a single-purpose entity, Transbay 2 Senior, L.P., a California limited partnership, to undertake construction and financing of the Senior Project (together, the “Co-Developers”); and,

WHEREAS, On January 11, 2021, in accordance with the Option Agreement by and between the City, the TJPA, and the Former Agency (Jan. 31, 2008) and the Agreement for Purchase and Sale of Real Estate by and between the TJPA and Successor Agency, the TJPA conveyed to OCII real property including the Site. OCII and Co-Developers will undertake a merger and re-subdivision of this real property that will result in a single parcel for ground lease and development of the Project on the Site as identified in the Redevelopment Plan and in accordance with OCII’s enforceable obligations under the Implementation Agreement; and,

WHEREAS, Mercy and CCDC have executed and provided to OCII a Joint Development Agreement dated as of March 30, 2021 that clearly defines the roles and responsibilities of the two parties in developing the Block 2 Site; and,

- WHEREAS, The Citywide Affordable Housing Loan Committee reviewed OCII staff's evaluation of the request for funding at its meeting on February 19, 2021, and recommended that OCII authorize a predevelopment loan with the Developer in an amount not to exceed \$3,500,000 subject to certain terms and conditions; and,
- WHEREAS, The Oversight Board of the City and County of San Francisco approved, by Oversight Board Resolution No. 2-2020 (Jan. 27, 2020), the expenditure of \$3,500,000 in the Recognized Obligation Payment Schedule for July 1, 2020 to June 30, 2021 ("ROPS"). Subsequently, the California Department of Finance approved the ROPS with this expenditure; and,
- WHEREAS, The Developer desires to enter into and execute a loan agreement and promissory note (the "Predevelopment Loan"), a copy of which, in substantially final form, are attached hereto. The Predevelopment Loan will provide funding in an amount not to exceed \$3,500,000 for predevelopment work associated with the construction of the Project; and,
- WHEREAS, OCII's remaining discretionary approvals for the Project include review of design documents and approval of permanent financing and ground lease agreement with the Developer; and,
- WHEREAS, Under Redevelopment Dissolution Law, OCII must transfer completed affordable housing assets to the Mayor's Office of Housing and Community Development ("MOHCD") as the Housing Successor designated under Board of Supervisors Resolution No. 11-12 (January 26, 2012) and Section 34176 of the California Health and Safety Code. Upon completion of the Block 2 Project, OCII will transfer the affordable housing loan agreements, assets, and Ground Leases to MOHCD.
- WHEREAS, On April 20, 2004, the Commission of the Former Redevelopment Agency of the City and County of San Francisco ("Former Agency Commission") adopted Resolution No. 45-2004, certifying the Final Environmental Impact Statement/Environmental Impact Report (the "FEIS/EIR") for the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project, which included the Redevelopment Plan. On January 25, 2005 the Former Agency Commission adopted Resolution No. 11-2005, adopting findings under the California Environmental Quality Act ("CEQA"), a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program in connection with the adoption of the Redevelopment Plan. The Board of Supervisors and the City Planning Commission adopted similar findings; and,
- WHEREAS, The FEIS/EIR includes by reference a number of addenda. A total of eight addenda to the FEIS/EIR were adopted between June 2, 2006 and January 19, 2016; and,

WHEREAS, The FEIS/EIR is a program environmental impact report (“EIR”) under CEQA Guidelines Section 15168 and a redevelopment plan EIR under CEQA Guidelines Section 15180. The FEIS/EIR is also a project EIR under CEQA Guidelines Section 15161 for certain structures and facilities. The FEIS/EIR analyzed the development of residential, retail and public open space uses including new streets, on the Transbay Blocks 2, 3, and 4, in accordance with the Redevelopment Plan and the Transbay Redevelopment Project Area Design for Development document. The FEIS/EIR contemplated the Former Redevelopment Agency’s disposition of the publicly-owned Transbay Blocks 2, 3, and 4 for the development of private and public uses, including residential and retail uses on Blocks 2 and 4, the extensions of Clementina and Tehama Streets, and a public open space on Block 3; and,

WHEREAS, OCII staff has reviewed the Predevelopment Loan and finds that the proposed action to develop affordable housing on the Site is an Implementing Action within the scope of the project analyzed in the FEIS/EIR and subsequent addenda and that therefore no additional environmental review is required pursuant to California Public Resources Code Section 21166 and Sections 15162, 15163, 15168, and 15180 of the CEQA Guidelines; and,

WHEREAS, OCII staff, in making the necessary findings for the Implementing Action contemplated herein, considered and reviewed the FEIS/EIR and addenda, has made documents related to the Implementing Action, the FEIS/EIR, and addenda available for review by the Commission and the public, and these files are part of the record before the Commission; and,

WHEREAS, The FEIS/EIR findings and statement of overriding considerations adopted in accordance with CEQA by the Former Agency Commission by Resolution No. 11-2005 dated January 25, 2005 were and remain adequate, accurate and objective and are incorporated herein by reference as applicable to the Implementing Action; now therefore, be it

RESOLVED, The Commission finds and determines that authorizing the Executive Director to execute the Predevelopment Loan for the development of the Site is an Implementing Action within the scope of the project analyzed in the FEIS/EIR and addenda and require no additional environmental review pursuant to California Public Resources Code Section 21166 and State CEQA Guidelines Sections 15180, 15168, 15162 and 15163 for the following reasons:

1. The Implementing Action is within the scope of the project analyzed in the FEIS/EIR and addenda and no major revisions are required due to the involvement of new significant environmental effects or a substantial increase in the severity of significant effects previously identified in the FEIS/EIR; and,
2. No substantial changes have occurred with respect to the circumstances under which the project analyzed in the FEIS/EIR and addenda was undertaken that would require major revisions to the FEIS/EIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the FEIS/EIR; and,

3. No new information of substantial importance to the project analyzed in the FEIS/EIR and addenda has become available which would indicate that (a) the Implementing Action will have significant effects not discussed in the FEIS/EIR; (b) significant environmental effects will be substantially more severe; (c) mitigation measures or alternatives found not feasible which would reduce one or more significant effects have become feasible; or (d) mitigation measures or alternatives which are considerably different from those in the FEIS/EIR will substantially reduce one or more significant effects on the environment, and, be it further

RESOLVED, That the Commission authorizes the Executive Director to: (i) enter into the Predevelopment Loan with the Developer, substantially in the form of the document approved by legal counsel for OCII; (ii) to make expenditures consistent with Redevelopment Dissolution Law; and (iii) to enter into any and all ancillary documents or to take any additional actions, including updating insurance requirements, necessary to consummate the transaction contemplated by this Resolution.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of April 6, 2021.

Commission Secretary

Exhibit 1: Predevelopment Loan Agreement – Block 2 East (Family Project)

LOAN AGREEMENT

By and Between

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND
COUNTY OF SAN FRANCISCO**

and

Transbay 2 Family, L.P., a California Limited Partnership

for

Transbay Block 2 East
\$3,500,000

Dated as of April 6, 2021

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 - DEFINITIONS	3
ARTICLE 2 - FUNDING	8
ARTICLE 3 - TERMS	9
ARTICLE 4 - CLOSING; DISBURSEMENTS	10
ARTICLE 5 - intentionally omitted	
ARTICLE 6 - intentionally omitted	
ARTICLE 7 - intentionally omitted	
ARTICLE 8 - intentionally omitted	
ARTICLE 9 - GOVERNMENTAL REQUIREMENTS	13
ARTICLE 10 - PROJECT MONITORING, REPORTS, BOOKS AND RECORDS	13
ARTICLE 11 - intentionally omitted	
ARTICLE 12 - intentionally omitted	
ARTICLE 13 - intentionally omitted	
ARTICLE 14 - intentionally omitted	
ARTICLE 15 - DEVELOPER FEE	15
ARTICLE 16 - TRANSFERS.....	15
ARTICLE 17 - INSURANCE AND BONDS	16
ARTICLE 18 - GOVERNMENTAL APPROVALS.....	16
ARTICLE 19 - DEFAULT	16
ARTICLE 20 - REPRESENTATIONS AND WARRANTIES	19
ARTICLE 21 - NOTICES	20
ARTICLE 22 - HAZARDOUS SUBSTANCES	21
ARTICLE 23 - INDEMNITY	21
ARTICLE 24 - GENERAL PROVISIONS	22

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EXHIBITS

A	Site Description
B-1	Table of Sources and Uses of Funds
B-2	Intentionally Omitted
B-3	Intentionally Omitted
C	Intentionally Omitted
D	Intentionally Omitted
E	Contract Compliance Policies
F	Insurance Requirements
G	Lobbying/Debarment Certification Form
H	Intentionally Omitted
I	Intentionally Omitted
J	Intentionally Omitted
K	Intentionally Omitted
L	Schedule of Performance
M	OCII Monthly Project Update Form
N	Developer Fee Schedule
O	Assignment of Work Product
P	Consent to Assignment of Work Product
Q	Promissory Note

LOAN AGREEMENT
Transbay Block 2 East
Transbay Redevelopment Project Area

THIS LOAN AGREEMENT ("Agreement") is entered into as of April 6, 2021 by and between the **SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO**, hereafter referred to as the Office of Community Investment and Infrastructure, a public body organized and existing under the laws of the State of California and commonly referred to as the Office of Community Investment and Infrastructure ("**Successor Agency**" or "**OCH**"), and Transbay 2 Family, L.P., a California limited partnership (the "**Borrower**"), whose general partner is Transbay 2 Family LLC, and its authorized successors and assigns.

RECITALS

A. In furtherance of the objectives of the Community Redevelopment Law of the State of California ("**CRL**"), the Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") undertook a program to redevelop and revitalize blighted areas in San Francisco and in connection therewith adopted a redevelopment project area known as the Transbay Redevelopment Project Area (the "**Project Area**").

B. The Board of Supervisors of the City and County of San Francisco ("**Board of Supervisors**") approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005, and by Ordinance No. 99-06, adopted on May 9, 2006, filed in the Office of the Recorder of the City and County of San Francisco ("**Official Records**") as Document No. 2006-I224836, as amended by Ordinance No. 84-15 (June 18, 2015) as Document No. 2015-K135871, and as amended by Ordinance No. 62-16 (April 19, 2016) as Document No. 2016-K333253, and as it may be amended from time to time ("**Redevelopment Plan**").

C. The Redevelopment Plan establishes the land use controls that Successor Agency applies in the Project Area. The Redevelopment Plan divides the Project Area into two subareas: Zone One in which the Redevelopment Plan and the Development Controls and Design Guidelines for the Transbay Redevelopment Project (2005) ("**Development Controls**") define land uses, and Zone Two in which the San Francisco Planning Code applies.

D. In 2003, the Transbay Joint Powers Authority ("**TJPA**"), the City and County of San Francisco ("**City**"), and the State of California ("**State**"), entered into a Cooperative Agreement setting forth the process for the transfer of certain State-owned parcels in the Project Area to the City and the TJPA. Also in 2003, the California Legislature enacted Assembly Bill No. 812 (Statutes 2003, chapter 99), codified at Cal. Public Resources Code § 5027.1 ("**Transbay Affordable Housing Obligation**"), which requires that thirty-five percent (35%) of new housing developed in the Project Area shall be affordable to low- and moderate-income households. In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement ("**Implementation Agreement**") which

incorporates the Transbay Affordable Housing Obligation and requires Successor Agency to prepare and sell certain formerly State-owned parcels and to construct and fund new infrastructure improvements (such as parks and streetscapes) and to meet affordable housing obligations.

E. On February 1, 2012, the State of California dissolved all redevelopment agencies including the Former Agency, by operation of law pursuant to California Health and Safety Code Section 34170 et seq. (“**Redevelopment Dissolution Law**”). Under the authority of the Redevelopment Dissolution Law and San Francisco Ordinance No. 215-12 (October 4, 2012) (establishing the Successor Agency Commission (“**Commission**”) and delegating to it state authority under the Redevelopment Dissolution Law), the Successor Agency is administering the enforceable obligations of the Former Agency. The Redevelopment Plan, Development Controls (defined below), and other relevant Project Area documents remain in effect and Successor Agency retains all affordable housing obligations in the Project Area.

F. Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are “in compliance with an enforceable obligation that existed prior to June 28, 2011.” Cal. Health & Safety Code § 34177.5(a). On April 15, 2013, the California Department of Finance (“**DOF**”) finally and conclusively determined that the Implementation Agreement and its incorporation of the Transbay Affordable Housing Obligation are continuing enforceable obligations of the Successor Agency under Redevelopment Dissolution Law. DOF has confirmed that “any sale, transfer, or conveyance of property related to [the Transbay Final and Conclusive Determination] is authorized.” Email from Justyn Howard, Assistant Program Budget Manager, DOF, to Tiffany Bohee, Executive Director, Successor Agency (September 10, 2013, 09:17 am).

G. On June 22, 2020, OCII issued a Housing Development Request for Proposals (the “**RFP**”) to develop, own, and operate a mixed-use affordable family rental project and a mixed-use affordable senior rental housing project, including units set-aside for formerly homeless family and senior households, on the property commonly known as Transbay Block 2 and identified as Lot 5 on Tentative Transfer Map No. 10327 (approved by San Francisco Public Works Order No. 203553) (the “**Block 2 Site**”).

H. An evaluation panel comprised of OCII staff, City staff, and a member of the Transbay Citizens Advisory Committee recommended the proposal from the team led by Mercy Housing California (“**Mercy**”) and Chinatown Community Development Center (“**CCDC**”) to develop the Block 2 Site. The proposal of Mercy and CCDC included, among other things, a comprehensive design that activates the ground floor with retail and child care space, thoroughly assessed financial feasibility, and emphasized services specific to the future resident populations. The proposal stated that Mercy and CCDC will enter into a joint venture to develop the Block 2 Site, with Mercy being the lead developer and the point of communication for the development team with OCII, and CCDC will be the co-developer. Mercy will be the lead organization to develop, own, and operate the mixed-use rental housing project serving low-income families and formerly homeless families (the “**Project**”) on the eastern portion of the Block 2 Site (as shown

on Exhibit A, the “**Site**”), while CCDC would be the lead organization to develop, own, and operate a mixed-use housing project serving low-income seniors and formerly homeless seniors (the “**Senior Project**”) on the western portion of the Block 2 Site (the “**Block 2W Site**”). In addition, Mercy’s role would include overall site coordination, and the initial lease-up and ongoing management of commercial spaces in both the Project and the Senior Project.

I. The Project will provide development of 101 total housing units (including 100 affordable units at affordability levels specified herein and one manager’s unit), with approximately 20% of units set-aside to serve formerly homeless families, subsidized by the Local Operating Subsidy Program (“**LOSP**”), and will include resident-serving amenities, a child care center, ground floor retail and related ground-level improvements. Affordable units will be provided at a range of income levels and will be comprised of 36 one-bedroom units, 36 two-bedroom units, and 29 three-bedroom units.

J. On January 11, 2021, in accordance with the Option Agreement by and between the City, the TJPA, and the Former Agency (Jan. 31, 2008) and the Agreement for Purchase and Sale of Real Estate by and between the TJPA and Successor Agency, the TJPA conveyed to OCII real property including the Site. OCII and Borrower will undertake a merger and resubdivision of this real property that will result in a single parcel for ground lease and development of the Project on the Site as identified in the Redevelopment Plan and in accordance with OCII’s enforceable obligations under the Implementation Agreement.

K. On February 19, 2021, the Citywide Affordable Housing Loan Committee (the “**Loan Committee**”) reviewed OCII staff’s evaluation of the request for funding and recommended that OCII provide Borrower with a predevelopment loan of funds subject to certain terms and conditions that are included in this Agreement.

L. The Borrower and the developer of the Senior Project have executed and provided to OCII a Joint Development Agreement dated as of March 30, 2021 (“**JDA**”) that defines the roles and responsibilities of the two parties in developing the Block 2 Site.

M. On April 6, 2021, the Commission adopted Resolution No. -2021 authorizing the Executive Director to execute an exclusive negotiations agreement (“**ENA**”) with Borrower and the developer of the Senior Project to pursue predevelopment activities for the development of the Project and the Senior Project on the Block 2 Site. The ENA establishes a series of predevelopment milestones that, if completed, culminate in the execution of options to ground lease and thereafter long-term ground lease agreements (“**Ground Lease**”) for the Site and the Block 2W Site respectively, each subject to a public hearing and consideration by the Commission.

N. Also on April 6, 2021 the Commission adopted Resolution No. -2021 authorizing the Executive Director to execute this Agreement to extend a loan (“**Loan**”) to the Borrower in an initial amount of Three Million Five Hundred Thousand Dollars (\$3,500,000.00) to fund certain costs related to the Project.

O. On January 27, 2020, the Oversight Board of the City and County of San Francisco and the California Department of Finance have approved, by Oversight Board Resolution No. 2-2020, this expenditure in the Recognized Obligation Payment Schedule for July 1, 2020 to June 30, 2021.

P. Under Redevelopment Dissolution Law, OCII must transfer completed affordable housing assets to the Mayor's Office of Housing and Community Development ("MOHCD") as the Housing Successor designated under Board of Supervisors Resolution No. 11-12 (January 26, 2012) and Section 34176 of the California Health and Safety Code. If and when Borrower completes the Project, OCII intends to transfer the affordable housing loan agreement, asset, and Ground Lease to MOHCD.

Q. Borrower shall use the Loan to pay for Predevelopment Activities associated with development of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

ARTICLE 1 DEFINITIONS.

1.1 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings:

"**Accounts**" means all depository accounts, including reserve and trust accounts, required or authorized under this Agreement or otherwise by the OCII in writing. All Accounts must be maintained in accordance with Section 2.3.

"**Agreement**" has the meaning given in the first paragraph hereof.

"**Agreement Date**" means the date written in the first paragraph hereof.

"**Authorizing Resolutions**" means: (a) in the case of a corporation, a certified copy of resolutions adopted by its board of directors; (b) in the case of a partnership (whether general or limited), a certificate signed by all of its general partners; and (c) in the case of a limited liability company, a certified copy of resolutions adopted by its board of directors or members, satisfactory to OCII and evidencing Borrower's authority to execute, deliver and perform the obligations under the OCII Documents to which Borrower is a party or by which it is bound.

"Borrower" means Transbay 2 Family, L.P., a California limited partnership whose general partner is Transbay 2 Family LLC, which consists of Mercy Housing Calwest and Mercy Housing California, and their authorized successors and assigns.

"CFR" means the Code of Federal Regulations.

"Charter Documents" means: (a) in the case of a corporation, its articles of incorporation and bylaws; (b) in the case of a partnership, its partnership agreement and any certificate or statement of partnership; and (c) in the case of a limited liability company, its operating agreement and any LLC certificate or statement. The Charter Documents must be delivered to OCII in their original form and as amended from time to time and be accompanied by a certificate of good standing for Borrower issued by the California Secretary of State and, if Borrower is organized under the laws of a state other than California, a certificate of good standing issued by the Secretary of State of the state of organization, issued no more than ninety (90) days before the Agreement Date.

"City" means the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through MOHCD. Whenever this Agreement provides for a submission to the City or an approval or action by the City, this Agreement refers to submission to or approval or action by MOHCD unless otherwise indicated.

"CNA" means a 20-year capital needs assessment or analysis of replacement reserve requirements.

"Construction/Permanent Loan" has the meaning set forth in Section 3.2.

"CRL" has the meaning set forth in Recital A.

"Developer Fee" has the meaning set forth in Section 15.1.

"Disbursement" means the disbursement of all or a portion of the Funding Amount by OCII as described in Article 4.

"ENA" has the meaning set forth in Recital M.

"Environmental Activity" means any actual, proposed or threatened spill, leak, pumping, discharge, leaching, storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on the Site.

"Environmental Laws" means all present and future federal, state, local and administrative laws, ordinances, statutes, rules and regulations, orders, judgments, decrees, agreements, authorizations, consents, licenses, permits and other governmental restrictions and requirements relating to health and safety, industrial hygiene or the environment or to any Hazardous Substance or Environmental Activity, including the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund" law) (42 U.S.C. §§ 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (42 U.S.C. §§ 6901 *et seq.*); the National Environmental Policy Act of 1969 ("NEPA") (24 CFR §§ 92 and 24 CFR §§ 58); the California Hazardous Substance Account Act (also known as the Carpenter-Presley-Tanner Hazardous Substance Account Law and commonly known as the "California Superfund" law) (Cal. Health & Safety Code §§ 25300 *et seq.*); and the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (Cal. Health & Safety Code §§ 25249.2 *et seq.*); and Sections 25117 and 25140 of the California Health & Safety Code.

"Event of Default" has the meaning set forth in Section 19.1.

"Expenditure Request" means a written request by Borrower for a Disbursement from the Funding Amount, as further described in Section 4.5.

"Funding Amount" has the meaning set forth in Section 2.1.

"GAAP" means generally accepted accounting principles in effect on the date of this Agreement and at the time of any required performance.

"Governmental Agency" means: (a) any government or municipality or political subdivision of any government or municipality; (b) any assessment, improvement, community facility or other special taxing district; (c) any governmental or quasi-governmental agency, authority, board, bureau, commission, corporation, department, instrumentality or public body; or (d) any court, administrative tribunal, arbitrator, public utility or regulatory body.

"Hazardous Substance" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Agency to pose a present or potential hazard to human health or safety or to the environment. Hazardous Substance includes any material or substance listed, defined or otherwise identified as a "hazardous substance," "hazardous waste," "hazardous material," "pollutant," "contaminant," "pesticide" or is listed as a chemical known to cause cancer or reproductive toxicity or is otherwise identified as "hazardous" or "toxic" under any Environmental Law, as well as any asbestos, radioactive materials, polychlorinated biphenyls and any materials containing any of them, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. Materials of a type and quantity normally used in the construction, operation or maintenance of developments similar to the Project will not be deemed "Hazardous Substances" for the purposes of this Agreement if used in compliance with applicable Environmental Laws.

"HCD" means the State of California Department of Housing and Community Development.

"HUD" means the United States Department of Housing and Urban Development acting by and through the Secretary of Housing and Urban Development and any authorized agents.

"**JDA**" has the meaning set forth in Recital L.

"**Laws**" means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or Governmental Agency, including the CRL.

"**Loan**" has the meaning given in Recital N hereof.

"**Loan Closing**" means the date on which all conditions to closing of the loan under Section 4.3 have been met.

"**Loan Committee**" has the meaning set forth in Recital K.

"**Loss**" or "**Losses**" includes any loss, liability, claims, damages, costs, expenses or charges, including reasonable attorneys' fees and costs, arising from all acts or omissions of Borrower or its officers, agents, or employees in rendering services under this Agreement.

"**Maturity Date**" has the meaning set forth in Section 3.2.

"**Median Income**" means area median income as determined by HUD for the San Francisco area, adjusted solely for household size, but not high housing cost area.

"**MOHCD**" has the meaning set forth in Recital P.

"**Note**" means the promissory note executed by Borrower in favor of OCII in the original principal amount of the Funding Amount.

"**OCII**" means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, commonly known as the Office of Community Investment and Infrastructure.

"**OCII Documents**" means this Agreement, the Note, and any other documents executed or, delivered in connection with this Agreement.

"**OCII Monthly Project Update**" has the meaning set forth in Section 10.2.

"**Opinion**" means an opinion of Borrower's California legal counsel, satisfactory to OCII and its legal counsel, that Borrower is a duly formed, validly existing California limited partnership in good standing under the laws of the State of California, has the power and authority to enter into the OCII Documents and will be bound by their terms when executed and delivered, and that addresses any other matters OCII reasonably requests.

"Permitted Exceptions" means liens in favor of OCII, real property taxes and assessments that are not delinquent, and any other liens and encumbrances OCII expressly approves in writing in its escrow instructions.

"Project" means the development described in Recital H. If indicated by the context, "Project" means the Site and the improvements developed on the Site.

"Publication" means any report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, webpage, audio or visual material or other communication for public dissemination, which relates to all or any portion of the Project or is paid for in whole or in part using the Funding Amount.

"Schedule of Performance" means the schedule attached hereto as Exhibit L that sets forth Project tasks and milestones and the contractual deadlines by which they will be completed.

"Site" is defined in Recital H.

"Table" or **"Table of Sources and Uses"** means a table of sources and uses of funds attached hereto as Exhibit B-1, including a line item budget for the use of the Funding Amount, which table may not be adjusted without OCII's prior written approval.

"Tenant" means any residential household in the Project.

"Unit" means a residential rental unit within the Project.

"Work Product" has the meaning set forth in Section 24.21.

1.2 Interpretation. The following rules of construction will apply to this Agreement and the other OCII Documents.

(a) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. The word "include(s)" means "include(s) without limitation" and "include(s) but not limited to," and the word "including" means "including without limitation" and "including but not limited to" as the case may be. No listing of specific instances, items or examples in any way limits the scope or generality of any language in this Agreement. References to days, months and years mean calendar days, months and years unless otherwise specified. References to a party mean the named party and its successors and assigns.

(b) Headings are for convenience only and do not define or limit any terms. References to a specific OCII Document or other document or exhibit mean the document, together with all exhibits and schedules, as supplemented, modified, amended or extended from time to time in accordance with this Agreement. References to Articles, Sections and Exhibits refer to this Agreement unless otherwise stated.

(c) Accounting terms and financial covenants will be determined, and financial information must be prepared, in compliance with GAAP as in effect on the date of performance. References to any Law, specifically or generally, will mean the Law as amended, supplemented or superseded from time to time.

(d) The terms and conditions of this Agreement and the other OCII Documents are the result of arms'-length negotiations between and among sophisticated parties who were represented by counsel, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not apply to the construction and interpretation of the OCII Documents. The language of this Agreement must be construed as a whole according to its fair meaning.

ARTICLE 2 FUNDING.

2.1 Funding Amount. OCII agrees to provide the Loan to Borrower in the maximum principal amount of Three Million Five Hundred Thousand Dollars (\$3,500,000.00) (the "**Funding Amount**") to finance predevelopment costs associated with the Project as further described in Exhibit B-1 ("Predevelopment Activities"). The Funding Amount will be disbursed according to the terms and subject to the conditions set forth in this Agreement.

2.2 Use of Funds. Borrower shall use the Funding Amount solely to finance Predevelopment Activities in accordance with the approved Table of Sources and Uses and all other applicable provisions of this Agreement. Borrower acknowledges that OCII's agreement to make the Loan is based in part on Borrower's agreement to the foregoing limitation on use of Loan funds.

2.3 Accounts; Interest. Each Account to be maintained by Borrower under this Agreement must be held in a bank or savings and loan institution acceptable to OCII as a segregated account that is insured by the Federal Deposit Insurance Corporation or other comparable federal insurance program. With the exception of tenant security deposit trust accounts, any interest earned on funds in any Account must be used for the benefit of the Project.

2.4 Records. Borrower must maintain and provide to OCII upon request records that accurately and fully show the date, amount, purpose and payee of all expenditures from each Account authorized under this Agreement or by OCII in writing and keep all estimates, invoices, receipts and other documents related to expenditures from each Account. In addition, Borrower must provide to OCII promptly following Borrower's receipt, complete copies of all monthly bank statements, together with a reconciliation, for each Account until all funds (including accrued interest) in each Account have been disbursed for eligible uses.

2.5 Conditions to Additional Financing. The OCII may grant or deny any application by Borrower for additional financing for the Project in its sole discretion.

ARTICLE 3 TERMS.

3.1 Evidence of Repayment Obligation. Borrower's repayment obligations with respect to the Funding Amount will be evidenced and governed by the Note, which will govern in the event of any conflicting provision in this Agreement.

3.2 Maturity Date. Except as otherwise provided in Section 3.3, Borrower must repay all amounts owing under the OCII Documents on the date that is the earliest to occur of: (i) the close of construction financing for the Project, or (ii) the date the Borrower and OCII execute a Construction/Permanent Loan (defined in Section 3.2) that does not incorporate the Funding Amount, or (iii) three (3) years from the Agreement Date (the "**Maturity Date**"). Notwithstanding the foregoing, if Borrower's failure to close the construction financing by the Maturity Date is not caused by Borrower's acts or omissions, whether direct or indirect, and if Borrower has acted in good faith and no event has occurred and is continuing that constitutes or with the passage of time would constitute, an Event of Default under any of the OCII Documents, then in such an event, Borrower shall deliver to OCII all of the Work Product, the Note shall be deemed satisfied in full and Borrower shall be deemed to be released from all obligation or liability with respect to this Agreement and the Loan.

3.3 Construction/Permanent Loan. If (i) additional financing for the Project from OCII in the form of a construction and permanent loan is subsequently approved by the Commission (the "**Construction/Permanent Loan**"), (ii) forms of Construction/Permanent Loan documents are executed by OCII and the Borrower, and (iii) all or any portion of the Construction/Permanent Loan is funded; then (a) this Agreement shall be terminated; (b) the Note shall be cancelled, and (c) the outstanding balance of this Loan, including all accrued interest, shall be combined with the Construction/Permanent Loan for purposes of repayment and thereafter shall bear interest and be repaid in accordance with the terms of the Construction/Permanent Loan documents.

3.4 Interest. The outstanding principal balance of the Loan will bear simple interest at a rate of three percent (3%) per annum, as provided in the Note. If a Construction/Permanent Loan for the Project from OCII is subsequently approved by the Commission, the parties acknowledge that the Borrower may request and OCII may approve a reduced interest rate in order to maintain Project feasibility.

3.5 Default Interest Rate. Upon the occurrence of an Event of Default under any OCII Document, the principal balance of the Loan will bear interest at the default interest compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, with such default interest rate commencing as of the date an Event of Default occurs and continuing until such Event of Default is fully cured. In addition, the default interest rate will apply to any amounts to be reimbursed to the OCII under any OCII Document if not paid when due or as otherwise provided in any OCII Document.

3.6 Repayment of Principal and Interest. Subject to Section 3.2 above, the outstanding principal balance of the Loan will be due and payable on the Maturity Date according to the terms set forth in full in the Note.

3.7 Changes In Funding Streams. OCII's agreement to make the Loan on the terms set forth in this Agreement and the Note is based in part on Borrower's projected sources and uses of all activities associated with the Project, as set forth in the Table of Sources and Uses. Borrower covenants to give written notice to the OCII within thirty (30) days of any significant changes in budgeted funding or income set forth in documents previously provided to the OCII. OCII reserves the right to modify, in its reasonable discretion, the terms of this Agreement based upon any new information so provided.

3.8 Additional OCII Approvals. Borrower understands and agrees that neither entry by OCII into this Agreement nor any approvals given by OCII under this Agreement shall be deemed to imply that Borrower will be granted any required approvals from the Commission, or City departments, boards or commissions which have jurisdiction over the Site and/or the Project. By entering into this Agreement, OCII is in no way modifying or limiting the obligations of Borrower to develop the Site in accordance with all local laws. Borrower understands that any development of the Site shall require approvals, authorizations and permits from governmental agencies with jurisdiction over the Site. Notwithstanding anything to the contrary in this Agreement, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the Project, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the "No Project" alternative; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Project.

ARTICLE 4 CLOSING; DISBURSEMENTS.

4.1 Generally. Subject to the terms of this Agreement, OCII will make Disbursements in an aggregate sum not to exceed the Funding Amount to or for the account of Borrower in accordance with this Agreement and the approved line item budget contained in the Table of Sources and Uses. The disbursement schedule may be revised at the request of the Borrower, subject to the written approval of the OCII Executive Director prior to the Loan Closing if needed to ensure the repayment of the Loan complies with applicable financing requirements.

4.2 Closing. In the event Borrower does not satisfy all of the conditions to closing the Loan within a reasonable time, as determined by the OCII in its sole discretion, OCII may declare this Agreement to be null and void.

4.3 Conditions Precedent to Closing. OCII will authorize the close of the Loan upon satisfaction of the conditions in this Section.

(a) Borrower must have delivered to OCII fully executed (and for documents to be recorded, acknowledged) originals of the following documents, in form and substance satisfactory to the OCII: (i) the Note; (ii) this Agreement (in triplicate); (iii) the Opinion; (iv) the Authorizing Resolutions; and (v) any other OCII Documents reasonably requested by OCII.

(b) Borrower must have delivered to OCII Borrower's Charter Documents.

(c) Borrower must have delivered to OCII insurance certificates prior to closing and endorsements within 90 days post closing and before starting work, in addition to, if requested by OCII, copies of policies for all insurance required under Exhibit F of this Agreement.

4.4 Eligible Expenses; First Date of. Predevelopment expenses that are incurred by Borrower beginning November 12, 2020 and that are consistent with Exhibit B-1 and all other applicable terms and conditions of this Agreement are reimbursable to Borrower.

4.5 Disbursements. OCII's obligation to approve any expenditure of Funding Amount after Loan Closing is subject to Borrower's satisfaction of the following conditions precedent.

(a) Borrower must have delivered to OCII an Expenditure Request in form and substance satisfactory to OCII, which must certify that the Project costs covered by the Expenditure Request have been paid or incurred by Borrower, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. Any request from Borrower to reallocate the Funding Amount between the line items or to change the budget limits for a line item from what is shown in the Table of Sources and Uses must be approved as follows: (1) except for funds moved from the contingency line item to another line item, a requested reallocation of the Funding Amount in an amount up to ten percent (10%) of the Funding Amount in the aggregate may be made only with the express written approval of OCII's Housing Manager; and (2) except for funds moved from the contingency line item to another line item, a requested reallocation of the Funding Amount in an amount that exceed ten percent (10%) of the Funding Amount may be made only with the express written approval of the OCII Executive Director. Reallocations of the Funding Amount from contingency line items to other line items shall not require the consent of OCII.

(b) No Event of Default, or event that with notice or the passage of time or both could constitute an Event of Default, may have occurred that remains uncured as of the date of the Expenditure Request.

(c) With respect to any Expenditure Request that covers rehabilitation or construction costs, Borrower must have certified to OCII that the Project complies with the labor standards set forth in Exhibit E, Section 1, if applicable.

4.6 Schedule of Performance. Borrower must perform in accordance with the Schedule of Performance (Exhibit L) and contractual deadlines specified therein. The Schedule of Performance may be modified, upon written request of Borrower, at the sole and reasonable discretion of the OCII Executive Director, who may extend the time of performance for up to six (6) months from the contractual date set forth in the Schedule of Performance. Such extension shall be evidenced by a written amendment thereto. Any amendments to the Schedule of Performance allowing for extensions of performance beyond said six (6) month period will require approval of the Commission in its sole discretion. Notwithstanding the foregoing, in the event the Borrower applies for CDLAC and/or TCAC financing in accordance with the contractual deadlines provided in the Schedule of Performance, but is not awarded financing by CDLAC and/or TCAC, the OCII Executive Director, in her sole and reasonable discretion, may extend the contractual deadlines applicable to items [the loan application deadlines] in the Schedule of Performance to allow Borrower to reapply for up to two additional consecutive cycles of CDLAC/TCAC financing immediately following the cycle initially applied for, and Borrower and OCII shall reasonably extend remaining Schedule of Performance contractual deadlines accordingly.

4.7 Additional Terms and Conditions. During the predevelopment period and as described below, Borrower shall comply with the following additional terms and conditions based on OCII's requirements, the JDA, and/or the Loan Committee's recommendations in reviewing and approving the Project's Loan Evaluation on February 19, 2021.

(a) Borrower will, in coordination with OCII, study massing and financing scenarios at 165', 240', and other design variations as recommended by the design team to balance unit count and financial feasibility on the Site and will submit a combined conceptual design and cost estimate with the Block 2W Site.

(b) Borrower will work closely with the developer of the Senior Project throughout predevelopment and will:

- i. ensure that the design teams for the Project and the Senior Project collaborate and submit a single combined schematic design package, which demonstrates cohesive design between the Site and the Block 2W Site, particularly for the ground floor and mid-block pedestrian mews; and
- ii. use the same general contractor or joint venture for construction and coordinate construction timing between the Project and the Senior Project, either by construction of both sites at the same time or phased development; provided, however, that Borrower may seek approval from OCII to use separate general contractors for the Project and the

Senior Project on the basis that use of one general contractor is infeasible; and provided further that OCII's approval may be given, withheld or conditioned in its sole discretion.

(c) Borrower will cooperate with OCII and the developer of the Senior Project to competitively solicit a general contractor with the intent of creating a joint venture or similar partnership opportunity, to the extent practicable and economically feasible, between a general contractor and an OCII-recognized SBE contractor. Furthermore, Borrower will cooperate and require the general contractor to exercise good faith efforts to select subcontractors who either are SBEs or, if they are not SBEs, are willing to create joint ventures or similar partnership opportunities with SBEs.

(d) Borrower will seek a child care provider through a competitive RFP process. Borrower will coordinate with the selected provider to refine space designs and support the provider, as appropriate, in seeking tenant improvement assistance.

(e) Borrower will work with OCII, MOHCD, and the Department of Homelessness and Supportive Housing ("HSH") to:

- i. finalize the number of permanent supportive units, ensuring consistency with best practice case management ratios;
- ii. review AMI levels for the LOSP-supported units to ensure that the levels of are appropriate to accommodate anticipated tenant needs; and
- iii. refine the services plan and budget.

(f) Borrower will evaluate the need for 24-hour desk coverage for the Project and will explore the potential for shared after hours front desk coverage/security between the Project and the Senior Project to improve efficiency and reduce costs.

(g) Borrower will seek to maximize permanent debt, while maintaining an AMI mix as agreed upon with OCII and ensuring an adequate debt service coverage ratio.

(h) Borrower will closely monitor available funding sources such as the Federal Home Loan Bank Affordable Housing Program, California Department of Housing and Community Development's ("HCD") Affordable Housing and Sustainable Communities ("AHSC") and Infill Infrastructure Grant ("IIG") programs, and others, review regulations, and submit timely applications, as appropriate. If necessary, Borrower will recommend strategies and program modifications for OCII approval to improve the Project's likelihood of securing awards.

(i) Borrower will ensure that commercial spaces are designed in accordance with the specifications established in the MOHCD Commercial Space Underwriting Guidelines where feasible and will provide a commercial financing plan for OCII review and approval.

(j) Borrower will conduct early outreach to local small business organizations, non-profit entrepreneur organizations, and other entities, groups and organizations, as appropriate, to market the retail space on the Block 2 Site. In addition,

Borrower will engage with the San Francisco Office of Economic and Workforce Development regarding the retail space and the availability of the City's small business, legacy business, and other programs to identify and assist potential local business tenants.

(k) Borrower will coordinate with OCII and the developer of the Senior Project to establish project boundaries and secure a subdivision map for the Block 2 Site.

(l) Prior to submittal of a site permit application and subdivision map application, Borrower, in collaboration with the developer of the Senior Project, will recommend for OCII approval, a specific plan for the development of public or common use areas in the Block 2 Site, e.g. the mid-block pedestrian mews, that establishes the lot lines, allocation of development, a mechanism for ensuring public access, and responsibilities for construction and ongoing maintenance and security.

(m) Borrower will provide the RFP for debt and equity providers to OCII for review before it is finalized and released.

(n) Borrower and the developer of the Senior Project will work collaboratively on a community outreach plan, will conduct ongoing outreach to the Transbay community to solicit input, address concerns, and educate community members on various aspects of the Project. Borrower will take the lead in obtaining OCII approval for the community outreach plan.

(o) Borrower shall otherwise promptly and reasonably perform all of its obligations under the JDA.

4.8 Limitations on Approved Expenditures. OCII may refuse to approve any expenditure: (a) during any period in which an event that, with notice or the passage of time or both, would constitute an Event of Default remains uncured; or (b) for disapproved, unauthorized or improperly documented expenses. OCII is not obligated to approve expenditure of the full Funding Amount unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount of all funds disbursed to Borrower under this Agreement exceed the Funding Amount.

ARTICLE 5 INTENTIONALLY OMITTED

ARTICLE 6 INTENTIONALLY OMITTED

ARTICLE 7 INTENTIONALLY OMITTED

ARTICLE 8 INTENTIONALLY OMITTED

ARTICLE 9 GOVERNMENTAL REQUIREMENTS.

9.1 Borrower Compliance. Borrower must comply, and where applicable, require its contractors to comply, with all applicable Laws governing the use of the Funding Amount for the

design, construction, rehabilitation and/or operation of the Project, including without limitation the requirements of the CRL, Redevelopment Dissolution Law, Transbay Redevelopment Plan, and OCII Policies including without limitation those set forth in Exhibit E. Borrower acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement.

ARTICLE 10 PROJECT MONITORING, REPORTS, BOOKS AND RECORDS.

10.1 Generally.

(a) Borrower understands and agrees that it will be monitored by OCII from time to time to ensure that Borrower complies with all terms and conditions in this Agreement and all Laws. Borrower must cooperate with the monitoring by OCII and ensure full access to all information related to the Project as reasonably required by OCII.

(b) Borrower must keep and maintain books, records and other documents relating to the receipt and use of all the Funding Amount. Borrower must maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility and condition of the Project. All financial reports must be prepared and maintained in accordance with GAAP as in effect at the time of performance.

10.2 Monthly Reporting. Commencing on the Agreement Date, Borrower must submit monthly reports (the “**OCII Monthly Project Update**”) describing progress toward developing the Project with respect to obtaining necessary approvals from other City departments, procuring architects, consultants and contractors, changes in scope, cost or schedule and significant milestones achieved in the past month and expected to be achieved in the coming month. The OCII Monthly Project Update must be submitted by email in substantially the form attached hereto as Exhibit M until the Project has finalized its Form 8609.

10.3 Response to Inquiries. At the request of OCII, its agents, employees or attorneys, Borrower must respond promptly and specifically to questions relating to the income, expenditures, assets, liabilities, contracts, operations and condition of the Project, the status of any mortgage encumbering the Project and any other requested information with respect to Borrower or the Project.

10.4 Delivery of Records. At the request of OCII, made through its agents, employees, officers or attorneys, Borrower must provide OCII within a reasonable period of time of no less than sixty (60) days from request therefor with copies of each of the following documents, certified in writing by Borrower to be complete and accurate:

(a) all tax returns filed with the United States Internal Revenue Service, the California Franchise Tax Board and/or the California State Board of Equalization on behalf of Borrower and any general partner or manager of Borrower;

(b) all certified financial statements of Borrower and, if applicable, its general partner or manager, the accuracy of which must be certified by an auditor satisfactory to OCII; and

(c) any other records related to Borrower's ownership structure and the use and occupancy of the Site.

10.5 Access to Other Project Books and Records. In addition to Borrower's obligations under Sections 2.4, 10.1, 10.2, and 10.3, any other obligations to provide reports or maintain records in any OCII Document, Borrower agrees that duly authorized representatives of OCII (which shall include MOHCD staff) will have access to and the right to inspect, copy, audit and examine all books, records and other documents Borrower is required to keep at all reasonable times, following reasonable notice, for the retention period required under Section 10.6.

10.6 Records Retention. Borrower must retain all records required for the periods required under applicable Laws.

ARTICLE 11 INTENTIONALLY OMITTED.

ARTICLE 12 INTENTIONALLY OMITTED.

ARTICLE 13 INTENTIONALLY OMITTED.

ARTICLE 14 INTENTIONALLY OMITTED.

ARTICLE 15 DEVELOPER FEE.

15.1 Amount. A portion of the Funding Amount in the amount of up to Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) shall be available to Borrower as a developer fee for the predevelopment period ("**Cash Developer Fee**"), payable in accordance with the Developer Fee Schedule attached hereto as Exhibit N. If approved by Loan Committee and the Commission, this Cash Developer Fee will be increased to an aggregate amount not to exceed Two Million Two Hundred Thousand and No/100 Dollars (\$2,200,000.00) (net of the anticipated general partner equity contribution portion of the total developer fee) at the time of the execution of a permanent loan (including a Construction/Permanent Loan) agreement for the Project to be consistent with MOHCD policy and to maximize leveraged sources for the Project. The parties acknowledge that the fee and equity amounts may be updated in connection with any gap financing provided by OCII. OCII acknowledges and agrees that the maximum Cash Developer Fee shall be increased to the extent that HCD increases the maximum net cash developer fee allowed under its relevant program guidelines, provided that the updated maximum is less than or equal to the maximum allowed by the then-current MOHCD developer fee policy.

ARTICLE 16 TRANSFERS.

16.1 Non-Assignment. Borrower shall not assign or transfer this Agreement without OCII's prior written consent, which may be given, withheld or conditioned in OCII's sole discretion. For purposes of this Section, an assignment shall also include any dissolution, merger, consolidation or other reorganization, or any issuance, sale, assignment, hypothecation or other transfer of legal or beneficial interests in the Borrower. Any other transfer, assignment, encumbrance or lease without OCII's prior written consent will be voidable and, at OCII's election in its sole discretion, constitute an Event of Default under this Agreement. OCII's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of OCII's rights under this Agreement.

ARTICLE 17 INSURANCE AND BONDS.

17.1 Borrower's Insurance. Subject to approval by OCII's Deputy Director for Finance and Administration of the insurers and policy forms, Borrower must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as set forth in Exhibit F throughout the term of this Agreement at no expense to OCII.

ARTICLE 18 GOVERNMENTAL APPROVALS.

18.1 Compliance. Borrower covenants that it has obtained or will obtain in a timely manner, and thereafter comply with, all federal, state and local governmental approvals required by Law to be obtained for the Project. Subject to Section 23.1, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

ARTICLE 19 DEFAULT.

19.1 Event of Default. Any material breach by Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the OCII Documents that remains uncured upon the expiration of any applicable notice and cure periods contained in any OCII Document will constitute an "**Event of Default**," including the following:

(a) Borrower fails to make any payment required under this Agreement within fifteen (15) days after the date when due; or

(b) Borrower fails to perform or observe any other term, covenant or agreement contained in any OCII Document, and the failure continues for thirty (30) days after Borrower's receipt of written notice from OCII to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any longer period of time deemed necessary by OCII, *provided that* Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(c) Any representation or warranty made by Borrower in any OCII Document proves to have been incorrect in any material respect when made; or

(d) Borrower is in default of its obligations with respect to the Ground Lease, once executed, or any funding obligation (other than the Loan) for the Project, and the default remains uncured following the expiration of any applicable cure periods; or

(e) Borrower ceases to be in good standing and duly qualified under the laws of the jurisdiction of formation and California for any period of more than ten (10) days; or

(f) Borrower ceases to exist in its present form (unless otherwise permitted or approved pursuant to Article 16); or

(g) Borrower assigns or attempts to assign any rights or interest under any OCII Document, whether voluntarily or involuntarily, except as permitted under Section 16.1; or

(h) Borrower voluntarily or involuntarily assigns or attempts to sell, lease, assign, encumber or otherwise transfer all or any portion of the ownership interests in Borrower except as permitted under Article 16; or

(i) Without OCII's prior written consent, Borrower transfers, or authorizes the transfer of, funds in any Account required or authorized under this Agreement; or

(j) intentionally omitted

(k) Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or Borrower applies for or consents to the appointment of any receiver, trustee or similar official for Borrower or for all or any part of its property (or an appointment is made without its consent); or Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, the improvements or any other property of Borrower; or

(l) Any adverse change occurs in the financial condition or operations of Borrower, that materially affects on the Borrower's ability to complete the Project; or

(m) intentionally omitted

(n) intentionally omitted

(o) Borrower is in default of its obligations with respect to any funding obligation (other than the Loan) for the Project, and the default remains uncured following the expiration of any applicable cure periods; or

(p) Borrower is in default of its obligations under any other agreement entered into with OCII or the City, including but not limited to the ENA, and the default remains uncured following the expiration of any applicable cure periods. For the avoidance of doubt, the expiration of the ENA shall not act to relieve Borrower of its obligations under this Agreement unless expressly provided.

19.2 Remedies. Upon the occurrence of an Event of Default by the Borrower, except as otherwise provided in this Agreement, the Borrower shall have thirty (30) days from the receipt of written notice from OCII to cure such default, or, if such default cannot reasonably be cured within such 30-day period, the Borrower shall commence action to cure such failure within such 30-day period and diligently and continuously prosecute such action to completion, but in any event no longer than 90 days from the receipt of written notice from OCII to cure such default. During the pendency of an uncured Event of Default, OCII may exercise, in its sole discretion, any right or remedy available under this Agreement or any other OCII Document or at law or in equity. All of OCII's rights and remedies following an Event of Default are cumulative, including the following:

(a) OCII may declare the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other OCII Documents, immediately due and payable without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which Borrower expressly waives.

(b) OCII may terminate all commitments to make Disbursements, or, without waiving the Event of Default, OCII may determine to make further Disbursements upon terms and conditions satisfactory to OCII in its sole discretion.

(c) OCII may perform any of Borrower's obligations in any manner, in OCII's reasonable discretion.

(d) OCII may terminate this Agreement.

(e) OCII may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this Agreement or for any other remedies or actions necessary or desirable to correct Borrower's noncompliance with this Agreement.

(f) Upon the occurrence of an Event of Default described in Section 19.1(k), the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other OCII Documents, will become due and payable automatically.

(g) All costs, expenses, charges and advances of OCII in exercising its remedies or to protect the Project will be deemed to constitute a portion of the principal balance of the Note, even if it causes the principal balance to exceed the face amount of the Note, unless Borrower reimburses OCII within ten (10) days of OCII's demand for reimbursement.

(h) OCII may acquire any Work Product as described in Section 24.21 of this Agreement.

19.3 Force Majeure. The occurrence of any of the following events shall excuse performance of any obligations of OCII or Borrower to the extent that the events cause enforced delays in the performance of a party's obligations under this Agreement: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes for either; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental actions; civil commotion; fire or other casualty, pandemics and other causes beyond the control of the party obligated to perform. The occurrence of a force majeure event will excuse Borrower's performance only in the event that Borrower has provided notice to OCII within thirty (30) days after the occurrence or commencement of the event or events, and Borrower's performance will be excused for a period ending thirty (30) days after the termination of the event giving rise to the delay.

ARTICLE 20 REPRESENTATIONS AND WARRANTIES.

20.1 Borrower Representations and Warranties. As a further inducement for OCII to enter into this Agreement, Borrower represents and warrants as follows:

(a) The execution, delivery and performance of the OCII Documents will not contravene or constitute a default under or result in a lien upon assets of Borrower under any applicable Law, any Charter Document of Borrower or any instrument binding upon or affecting Borrower, or any contract, agreement, judgment, order, decree or other instrument binding upon or affecting Borrower.

(b) When duly executed, the OCII Documents will constitute the legal, valid and binding obligations of Borrower. Borrower hereby waives any defense to the enforcement of the OCII Documents related to alleged invalidity of the OCII Documents.

(c) No action, suit or proceeding is pending or, to the best of the Borrower's knowledge, threatened that might affect Borrower or the Project adversely in any material respect.

(d) Borrower is not in default under any agreement to which it is a party, including any lease of real property.

(e) No Borrower, nor any of Borrower's principals or Borrower's contractors have been suspended or debarred by the Department of Industrial Relations or any Governmental

Agency, nor has Borrower, any of its principals or its contractors been suspended, disciplined or prohibited from contracting with any Governmental Agency.

(f) All statements and representations made by Borrower in connection with the Loan remain true and correct as of the date of this Agreement.

(g) Borrower agrees to provide notice to OCII in accordance with Section 21.1 of the occurrence of any change or circumstance that: (a) will have an adverse effect on the physical condition or intended use of the Project; (b) causes the Loan to be out of balance; or (c) will have an adverse effect on Borrower's ability to repay the Loan.

ARTICLE 21 NOTICES.

21.1 Written Notice. All notices required by this Agreement must be made in writing and may be communicated by personal delivery, electronic mail (if followed within one (1) business day by first class mail), by nationally recognized courier that obtains receipts, or by United States certified mail, postage prepaid, return receipt requested. Any notice sent by email will be accompanied by a written notice and email notices will not be effective unless accompanied by a written notice. Delivery will be deemed complete as of the earlier of actual receipt (or refusal to accept proper delivery) or five (5) days after mailing, *provided that* any notice that is received after 5 p.m. on any day or on any weekend or holiday will be deemed to have been received on the next succeeding business day. Notices must be addressed as follows:

To OCII: Office of Community Investment and Infrastructure
Successor Agency to the San Francisco Redevelopment Agency
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Executive Director
Email: Sally.Oerth@sfgov.org

To OCII General Counsel: Office of Community Investment and Infrastructure
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Agency General Counsel
Email: james.morales@sfgov.org

To MOHCD: Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Director
Email: Eric.Shaw@sfgov.org

To City Attorney's Office: Deputy City Attorney

San Francisco City Attorney's Office
City Hall, Rm. 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102-4682
Attn: Heidi J. Gewertz
Email: Heidi.Gewertz@sfgov.org

To Borrower: Transbay 2 Family, L.P.
c/o Mercy Housing Calwest
1256 Market Street
San Francisco, CA 94102
Attn: Joe Rosenblum, General Counsel
Email: jrosenblum@mercyhousing.org

or any other address a party designates from time to time by written notice sent to the other party in manner set forth in this Section. For the convenience of the parties, copies of notices may also be given by email.

ARTICLE 22 HAZARDOUS SUBSTANCES.

22.1 Borrower's Representations. Intentionally omitted.

22.2 Covenant. Unless OCII otherwise consents in writing, at all times from and after the date of this Agreement, at its sole expense, Borrower must: (a) comply with all applicable Environmental Laws relating to the Site and the Project, and not engage in or otherwise permit the occurrence of any Environmental Activity in violation of any applicable Environmental Laws or that is not customary and incidental to the intended use of the Site, *provided that* nothing contained in this Section will prevent Borrower from contesting, in good faith and by appropriate proceedings, any interpretation or application of Environmental Laws; and (b) deliver to OCII, promptly following the occurrence of any such event, notice of the discovery by Borrower of any event violating the covenants established in subsection (a), above.

ARTICLE 23 INDEMNITY.

23.1 Borrower's Obligations. To the fullest extent permitted by law, Borrower shall hold harmless, defend at its own expense, and indemnify OCII, the City, and their respective commissioners, officers, agents and employees (individually or collectively, an "**Indemnatee**") against any and all Losses, of every kind, nature and description directly or indirectly arising out of, or connected with Borrower's obligations under this Agreement, except to the extent caused by the willful misconduct or the gross negligence of the Indemnatee. For purposes of this Article, Losses will include, but not be limited to: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the OCII Documents (including those covenants set forth in Article 22 above); (b) any failure of any representation by Borrower to be

correct in all respects when made; (c) injury or death to persons or damage to property or other Losses occurring on or in connection with Borrower's activities pursuant to this Agreement, whether caused by the negligence or any other act or omission of Borrower; (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnatee that relates to or arises out of the OCII Documents, the Loan, the Predevelopment Activities or any transaction contemplated by, or the relationship between Borrower and OCII or Borrower and the City or any action or inaction by OCII or the City under, the OCII Documents; (e) any Environmental Activity directly or indirectly caused by Borrower or any failure of the Borrower to comply with all applicable Environmental Laws relating to the Project or the Site; (f) the occurrence, after the termination of this Agreement, of any Environmental Activity resulting directly or indirectly from any Environmental Activity occurring before the termination of this Agreement; (g) any liability of any nature arising from Borrower's contest of or relating to the application of any Law, including any contest permitted under Sections 9.1, 18.1 and 22.2; or (h) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above. In the event any action or proceeding is brought against an Indemnatee by reason of a claim arising out of any Loss for which Borrower has indemnified the Indemnitees, and upon written notice from Indemnatee, Borrower shall at its sole expense answer and otherwise defend the action or proceeding using counsel approved in writing by the Indemnatee. Each Indemnatee shall have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnatee in connection with the matters covered by this Agreement. The provisions of this Section will survive the repayment of the Loan and/or termination of this Agreement. For purposes of this Section, "Borrower" shall include Borrower, its officers, employees, agents, contractors and/or subcontractors.

23.2 No Limitation. Borrower's obligations under Section 23.1 are not limited by the insurance requirements under this Agreement.

ARTICLE 24 GENERAL PROVISIONS.

24.1 Intentionally Omitted

24.2 No Third Party Beneficiaries other than City. Nothing contained in this Agreement, nor any act of OCII, may be interpreted or construed as creating the relationship of third party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between OCII and Borrower or Borrower's agents, employees or contractors. Notwithstanding the forgoing, OCII and Borrower hereby acknowledge and agree that as the intended assignee of OCII's rights under the OCII Documents, the City is a third party beneficiary under the OCII Documents.

24.3 No Claims by Third Parties. Nothing contained in this Agreement creates or justifies any claim against OCII by any person or entity with respect to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Project. Borrower must include this requirement as a provision in any contracts for the development of the Project.

24.4 Entire Agreement. This Agreement and its Exhibits incorporate the terms of all agreements made by OCII and Borrower with regard to the subject matter of this Agreement. No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto. No oral understandings or agreements not incorporated herein will be binding on OCII or Borrower.

24.5 OCII Obligations. OCII's sole obligation under this Agreement is limited to providing the funds as described in this Agreement, up to the Funding Amount. Under no circumstances, including breach of this Agreement, will OCII be liable to Borrower for any special or consequential damages arising out of actions or failure to act by OCII in connection with any of the OCII Documents.

24.6 Borrower Solely Responsible. Borrower is an independent contractor with the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance contemplated under this Agreement. Borrower is solely responsible for: (a) its own acts and those of its agents, employees and contractors and all matters relating to their performance, including compliance with Social Security, withholding and all other Laws governing these matters and requiring that contractors include in each contract that they will be solely responsible for similar matters relating to their employees; (b) any losses or damages incurred by Borrower, any of its contractors or subcontractors and OCII and its officers, representatives, agents and employees on account of any act, error or omission of Borrower in the performance of this Agreement or any other OCII Document and the development and operation of the Project; and (c) all costs and expenses relating to Borrower's performance of obligations under the OCII Documents, the delivery to OCII of documents, information or items under or in connection with any of the OCII Documents and taxes, fees, costs or other charges payable in connection with the execution, delivery, filing and/or recording of any OCII Document or document required under any OCII Document.

24.7 No Inconsistent Agreements. Borrower warrants that it has not executed and will not execute any other agreement(s) with provisions materially contradictory or in opposition to the provisions of this Agreement.

24.8 Inconsistencies in OCII Documents. In the event of any conflict between the terms of this Agreement and any other OCII Document, the terms of this Agreement control unless otherwise stated; *provided, however*, that any provision in this Agreement in conflict with any Law will be interpreted subject to that Law.

24.9 Governing Law. This Agreement is governed by California law without regard to its choice of law rules.

24.10 Joint and Several Liability. If Borrower consists of more than one person or entity, each is jointly and severally liable to OCII for the faithful performance of this Agreement.

24.11 Successors. Except as otherwise limited herein, the provisions of this Agreement bind and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors and assigns. This provision does not relieve Borrower of its obligation under the OCII Documents to obtain OCII's prior written consent to any assignment or other transfer of Borrower's interests in the Loan, the Site or the ownership interests in Borrower.

24.12 Attorneys' Fees. If any legal action is commenced to enforce any of the terms of this Agreement or rights arising from any party's actions in connection with this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees (including allocated fees of the City Attorney's Office) and costs of suit from the other party, whether incurred in a judicial, arbitration, mediation or bankruptcy proceeding or on appeal. For the purposes of this Agreement and to the extent that the City Attorney's Office represents OCII or the City as the successor to this Agreement, the reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City 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 City Attorney's Office. An award of attorneys' fees and costs will bear interest at the default rate under the Note from the date of the award until paid.

24.13 Severability. The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

24.14 Time. Time is of the essence in this Agreement. Whenever the date on which an action must be performed falls on a Saturday, Sunday or federal holiday, the date for performance will be deemed to be the next succeeding business day.

24.15 Further Assurances. Borrower agrees to: (a) pursue in an effective and continuous manner; (b) use best efforts to achieve; and (c) take all actions reasonably required by OCII from time to time to confirm or otherwise carry out the purpose of this Agreement.

24.16 Binding Covenants. Following the recordation of the Memorandum of Ground Lease, the provisions of the OCII Documents constitute covenants running with the land and will be binding upon Borrower and Borrower's successors and assigns, and all parties having or acquiring any right, title or interest in whatever form, including leasehold interests (other than Tenants and approved commercial tenants), in or to any part of the Site, except that the same will terminate and become void automatically at the expiration of the term of this Agreement. Any

attempt to transfer any right, title or interest in the Site in violation of these covenants will be void.

24.17 Consent. Except as expressly provided otherwise, whenever consent or approval of a party is required in any OCII Document, that party agrees not to withhold or delay its consent or approval unreasonably.

24.18 Counterparts. This Agreement may be executed in any number of counterparts, all of which will constitute but one agreement.

24.19 Borrower's Personnel. The Project shall be implemented only by competent personnel under the direction and supervision of Borrower. Borrower must provide written notice of the replacement of: the manager, executive director, director of housing development, director of property management and/or any equivalent position of either member of the general partner or the manager of the general partner, within thirty (30) days after the effective date of such replacement.

24.20 Borrower's Board of Directors. Borrower or its managing general partner shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in its bylaws and other governing documents, and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Said board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by Borrower of its obligations under this Agreement.

24.21 Ownership of Results. Any interest of Borrower or any sub-borrower, in drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of electronic files, or other documents or Publications prepared by or on behalf of Borrower or any sub-borrower in connection with this Agreement, the implementation of the Project, the services to be performed under this Agreement, or acquired through the use of any Loan proceeds ("**Work Product**"), is hereby pledged to OCII as security for Borrower's obligations under this Agreement and the Note, and upon an Event of Default, subject to all applicable notice and cure periods, shall become the property of and be promptly transmitted by Borrower to OCII. Notwithstanding the foregoing, Borrower may retain and use copies for reference and as documentation of its experience and capabilities. Borrower shall ensure that its architects and engineers execute an assignment of work product generally in the form attached hereto as Exhibit P, prior to or concurrent with execution of this Agreement.

This Agreement constitutes a security agreement under the California Uniform Commercial Code, as it may be amended from time to time, and Borrower authorizes OCII to file any financing statements OCII elects and deems necessary to perfect its security interest in the Work Product.

24.22 Works for Hire. If, in connection with this Agreement or the implementation of the Project, Borrower or any sub-borrower creates artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship or Publications, such creations shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such creations shall be the property of OCII. If it is ever determined that any such creations are not works for hire under applicable law, Borrower hereby assigns all copyrights thereto to OCII, and agrees to provide any material, execute such documents and take such other actions as may be necessary or desirable to effect such assignment. With the prior written approval of OCII, Borrower may retain and use copies of such creations for reference and as documentation of its experience and capabilities. Borrower shall use commercially reasonable efforts to obtain all releases, assignments or other agreements from sub-borrowers or other persons or entities implementing the Project to ensure that OCII obtains the rights set forth in this Section.

24.23 Recourse. OCII's recourse against Borrower following an Event of Default is limited as set forth more specifically in the Note.

24.24 Assignment. OCII and Borrower hereby acknowledge and agree that, effective upon the completion of the Project, as determined by OCII and MOHCD, all of OCII's rights, interests and obligations under this Agreement shall be assigned to MOHCD. OCII and Borrower hereby agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Section 24.24. Upon assignment to MOHCD, all references herein to OCII shall be deemed references to MOHCD.

24.25 Exhibits. The following exhibits are attached to this Agreement and incorporated by reference:

EXHIBITS

A	Site Description
B-1	Table of Sources and Uses of Funds
B-2	Intentionally Omitted
B-3	Intentionally Omitted
C	Intentionally Omitted
D	Intentionally Omitted
E	Contract Compliance Policies
F	Insurance Requirements
G	Lobbying/Debarment Certification Form
H	Intentionally Omitted
I	Intentionally Omitted
J	Intentionally Omitted
K	Intentionally Omitted
L	Schedule of Performance
M	OCII Monthly Project Update Form
N	Developer Fee Schedule

- O Assignment of Work Product
- P Consent to Assignment of Work Product
- Q Promissory Note

[Remainder of page intentionally left blank; signature page to follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at San Francisco, California as of the date first written above.

OCII:

Successor Agency to the Redevelopment
Agency of the City and County of San
Francisco, a public body, organized and
existing under the laws of the State of
California:

By: _____

Sally Oerth
Interim Executive Director

APPROVED AS TO FORM:

James B. Morales
OCII General Counsel

By: _____

BORROWER:

Transbay 2 Family, L.P.,
a California limited partnership

Managing General Partner:

Transbay 2 Family LLC, a California limited
liability company

By: Mercy Housing Calwest, a
California nonprofit public benefit
corporation, its sole member/manager

By: _____

Name:

Title:

EXHIBIT A
Site Description

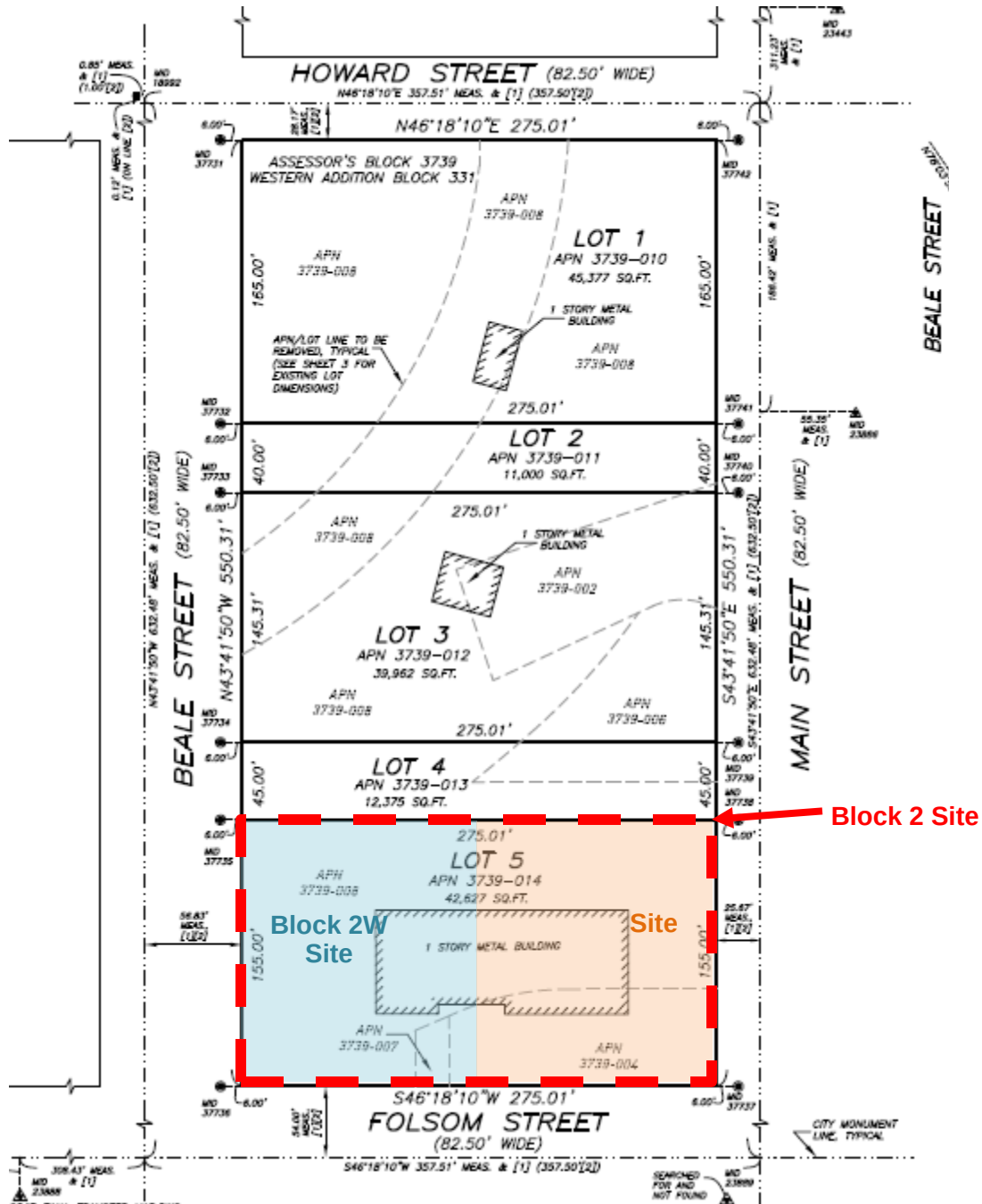


EXHIBIT B-1
Table of Sources and Uses of Funds

Application Date:
Project Name:
Project Address:
Project Sponsor:

9/17/20
Transbay Block 2 Family
Mercy Housing California

Units: 101
Bedrooms: 195
Beds:

LOSP Project

Don't forget to fill in D135:D138!

SOURCES		3,500,000	-	-	-	-	-	Total Sources	3,500,000	Comments
	Name of Sources:	MOHCD/OCII								

USES

ACQUISITION

Acquisition cost or value	0							0	
Legal / Closing costs / Broker's Fee								0	
Holding Costs								0	
Transfer Tax								0	
TOTAL ACQUISITION	0	0	0	0	0	0	0	0	

CONSTRUCTION (HARD COSTS)

Unit Construction/Rehab								0	Include FF&E
Commercial Shell Construction								0	
Demolition								0	
Environmental Remediation								0	
Onsight Improvements/Landscaping								0	
Offsite Improvements								0	
Infrastructure Improvements								0	HOPE SF/OCII costs for streets etc.
Parking								0	
GC Bond Premium/GC Insurance/GC Taxes								0	
GC Overhead & Profit								0	
CG General Conditions								0	
Sub-total Construction Costs	0	0	0	0	0	0	0	0	
Design Contingency (remove at DD)								0	5% up to \$30MM HC, 4% \$30-\$45MM, 3% \$45MM+
Bid Contingency (remove at bid)								0	5% up to \$30MM HC, 4% \$30-\$45MM, 3% \$45MM+
Plan Check Contingency (remove/reduce during Plan Review)								0	4% up to \$30MM HC, 3% \$30-\$45MM, 2% \$45MM+
Hard Cost Construction Contingency								0	5% new construction / 15% rehab
Sub-total Construction Contingencies	0	0	0	0	0	0	0	0	
TOTAL CONSTRUCTION COSTS	0	0	0	0	0	0	0	0	

Construction
line item costs
as a % of hard
costs

SOFT COSTS

Architecture & Design

Architect design fees	1,407,649							1,407,649	per Kennerly breakdown
Design Subconsultants to the Architect (incl. Fees)	800,000							800,000	estimated per Kennerly
Architect Construction Admin								0	
Reimbursables								0	
Additional Services								0	
Sub-total Architect Contract	2,207,649	0	0	0	0	0	0	2,207,649	
Other Third Party design consultants (not included under Architect contract)	30,000							30,000	Green consulting - \$15k, Joint trench - \$15k
Total Architecture & Design	2,237,649	0	0	0	0	0	0	2,237,649	

Engineering & Environmental Studies

Survey	12,500							12,500	assume \$25k total, split between two sites
Geotechnical studies	40,000							40,000	assume \$80k total
Phase I & II Reports	35,000							35,000	assume \$70k total
CEQA / Environmental Review consultants	25,000							25,000	Assumes working within existing DCDG, some funds fo archeological
NEPA / 106 Review								0	
CNA/PNA (rehab only)								0	
Other environmental consultants								0	
Total Engineering & Environmental Studies	112,500	0	0	0	0	0	0	112,500	

Financing Costs

Construction Financing Costs

Construction Loan Origination Fee								0	
Construction Loan Interest								0	
Title & Recording								0	
CDLAC & CDIAC fees								0	
Bond Issuer Fees								0	
Other Bond Cost of Issuance								0	
Other Lender Costs (specify)								0	
Sub-total Const. Financing Costs	0	0	0	0	0	0	0	0	

Permanent Financing Costs

Permanent Loan Origination Fee								0	
Credit Enhance. & Appl. Fee								0	
Title & Recording								0	
Sub-total Perm. Financing Costs	0	0	0	0	0	0	0	0	
Total Financing Costs	0	0	0	0	0	0	0	0	

Legal Costs

Borrower Legal fees	10,000							10,000	
Land Use / CEQA Attorney fees								0	
Tax Credit Counsel								0	
Bond Counsel								0	
Construction Lender Counsel								0	
Permanent Lender Counsel								0	
Other Legal (specify)								0	
Total Legal Costs	10,000	0	0	0	0	0	0	10,000	

Other Development Costs

Appraisal	10,000							10,000	
Market Study	15,000							15,000	
* Insurance								0	
* Property Taxes								0	
* Accounting / Audit								0	
* Organizational Costs								0	
Entitlement / Permit Fees	200,000							200,000	
* Marketing / Rent-up								0	
* Furnishings								0	\$2,000/unit: See MOHCD U/W Guidelines: http://slmohcd.org/documents-reports-and-forms
PGE / Utility Fees	25,000							25,000	application fees
TCAC App / Alloc / Monitor Fees	10,000							10,000	
* Financial Consultant fees	20,000							20,000	
Construction Management fees / Owner's Rep	40,000							40,000	assume \$80k for two buildings, shared meetings for most of the time
Security during Construction								0	
* Relocation								0	
Other (specify)								0	
Other (specify)								0	
Other (specify)								0	
Total Other Development Costs	320,000	0	0	0	0	0	0	320,000	

Total Soft Cost
Contingency
as % of Total
Soft Costs

Soft Cost Contingency

Contingency (Arch, Eng, Fin, Legal & Other Dev)	269,851	0	0	0	0	0	0	269,851	Should be either 10% or 5% of total soft costs.
TOTAL SOFT COSTS	2,950,000	0	0	0	0	0	0	2,950,000	10.1%

RESERVES

* Operating Reserves								0	
Replacement Reserves								0	
* Tenant Improvements Reserves								0	
Other (specify)								0	
Other (specify)								0	
Other (specify)								0	
TOTAL RESERVES	0	0	0	0	0	0	0	0	

DEVELOPER COSTS

Developer Fee - Cash-out Paid at Milestones	550,000							550,000	
Developer Fee - Cash-out At Risk								0	
Commercial Developer Fee								0	
Developer Fee - GP Equity (also show as source)								0	
Developer Fee - Deferred (also show as source)								0	
Development Consultant Fees								0	Need MOHCD approval for this cost, N/A for most projects
Other (specify)								0	
TOTAL DEVELOPER COSTS	550,000	0	0	0	0	0	0	550,000	

TOTAL DEVELOPMENT COST

Development Cost/Unit by Source	34,653	0	0	0	0	0	0	34,653	
Development Cost/Unit as % of TDC by Source	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	

Acquisition Cost/Unit by Source

	0	0	0	0	0	0	0	0	
Construction Cost (inc Const Contingency)/Unit By Source	0	0	0	0	0	0	0	0	
Construction Cost (inc Const Contingency)/SF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	

*Possible non-eligible GO Bond/COP Amount:

City Subsidy/Unit

20,000
34,653

Tax Credit Equity Pricing:

Construction Bond Amount:

Construction Loan Term (in months):

Construction Loan Interest Rate (as %):

Fill in with value or 'N/A' if not applicable.
Fill in with value or 'N/A' if not applicable.
Fill in with value or 'N/A' if not applicable.
Fill in with value or 'N/A' if not applicable.

EXHIBIT B-2
Intentionally Omitted

EXHIBIT B-3
Intentionally Omitted

EXHIBIT C
Intentionally Omitted.

EXHIBIT D
Intentionally Omitted.

EXHIBIT E

1. Equal Opportunity Policies. Borrower shall comply with OCII's Equal Opportunity Policies:

- (i) Small Business Enterprise (SBE) Policy (adopted by Resolution No. 43-2015, July 7, 2015);
- (ii) Prevailing Wage Policy (adopted by Resolution No. 327-1985 Nov. 12, 1985);
- (iii) Nondiscrimination in Contracts and Benefits (adopted by Resolution No. 175-1997);
- (iv) Health Care Accountability Policy (adopted by Resolution No. 168-2001, as amended by Resolution No. 34-2009); and
- (v) Minimum Compensation Policy (adopted by Resolution No. 168-2001, as amended by Resolution No. 34-2009).

Copies of the aforementioned policies are available on the OCII website at <http://sfocii.org/policies-and-procedures>

2. Environmental Review. The Project must meet the requirements of the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 *et seq.*) and implementing regulations, and any other environmental reviews as required by any federal funding sources obtained, including the National Environmental Policy Act ("NEPA").

3. Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of Borrower or OCII who exercises or has exercised any function or responsibilities with respect to activities assisted by the Funding Amount, in whole or in part, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter. In order to carry out the purpose of this Section, Borrower must incorporate, or cause to be incorporated, in all contracts, subcontracts and agreements relating to activities assisted under the Agreement, a provision similar to that of this Section. Borrower will be responsible for obtaining compliance with conflict of interest provisions by the parties with whom it contracts and, in the event of a breach, Borrower must take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

(b) Borrower represents that it is familiar with the provisions of Sections 1090 through 1097 and 87100 *et seq.* of the California Government Code, all of

which relate to prohibited conflicts of interest in connection with government contracts. Borrower certifies that it knows of no facts that constitute a violation of any of these provisions and agrees to notify OCII immediately if Borrower at any time obtains knowledge of facts constituting a violation.

(c) In the event of any violation of the conflict of interest prohibitions, Borrower agrees that OCII may refuse to consider any future application for funding from Borrower or any entity related to Borrower until the violation has been corrected to OCII's satisfaction, in OCII's sole discretion.

4. Disability Access. Borrower must comply with all applicable disability access Laws, including the Americans with Disabilities Act (42 U.S.C. §§ 1201 *et seq.*), Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 *et seq.*). Borrower is responsible for determining which disability access Laws apply to the Project, including those applicable due to the use of the Funding Amount. In addition, before occupancy of the Project, Borrower must provide to OCII a written reasonable accommodations policy that indicates how Borrower will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

5. Lead-Based Paint. Borrower must satisfy the requirements of Chapter 36 of the San Francisco Building Code ("Work Practices for Exterior Lead-Based Paint") and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 *et seq.*) and implementing regulations at 24 CFR part 35. Borrower must also comply with the provisions contained in 17 CCR 36100 *et seq.*, and 8 CCR 1532.1 and all other applicable Laws governing lead-based hazards.

6. Relocation. Borrower must meet any applicable requirements of the California Relocation Assistance Act (Cal. Gov. Code §§ 7260 *et seq.*) and implementing regulations in Title 25, Chapter 6 of the California Administrative Code and similar Laws.

7. Non-Discrimination in OCII Contracts and Benefits Policy.

(a) Borrower May Not Discriminate. In the performance of this Agreement, Borrower 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 City employee working with, or applicant for employment with Borrower, in any of Borrower'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 Borrower.

(b) Non-Discrimination in Benefits. Borrower 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 OCII 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 Agency under state or local law authorizing such registration, subject to the conditions set forth in the Agency's Nondiscrimination in Contracts Policy, adopted by Agency Resolution 175-97, as amended from time to time.

8. Public Disclosure.

(a) Borrower understands and agrees that under the State Public Records Law (Cal. Gov. Code §§ 6250 *et seq.*) and the Agency Public Records Policy, this Agreement and any and all records, information and materials submitted to OCII or the City hereunder are public records subject to public disclosure. Borrower hereby authorizes OCII and the City to disclose any records, information and materials submitted to OCII or the City in connection with this Agreement as required by Law.

9. Limitations on Contributions. Through execution of this Agreement, Borrower 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 Agency for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, 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. Borrower 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. Borrower further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Borrower's board of directors; Borrower's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Borrower; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Borrower. Additionally, Borrower acknowledges that Borrower must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

Finally, Borrower agrees to provide to OCII the names of each member of Borrower's general partners' (or, if applicable, general partners' managing members) board of directors; Borrower's general partners' (or, if applicable, general partners' managing members) chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in

Borrower's general partners (or, if applicable, general partners' managing members); any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Borrower.

EXHIBIT F
Insurance Requirements

Subject to approval by the OCII Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or caused to be maintained, insurance as set forth in this Exhibit F throughout the Compliance Term of this Agreement, or in accordance with the timeframes stated herein, at no expense to OCII. If and when the Borrower and OCII enter into a gap loan agreement or other agreements authorizing or funding the construction of the Project, OCII will adjust these insurance requirements to reflect the risks associated with construction-related activities.

- A. Overview of Coverage Requirements. The following table summarizes required insurance policies and documentation. Please see Section B of this Exhibit F for more detailed descriptions of policy requirements.

Insurance Type	Coverage Amount (Minimum)	Applicable Parties	Endorsement or Certificate Required
Commercial General Liability (see Section B.1)	\$1,000,000 per occurrence/ \$2,000,000 aggregate	Borrower and Borrower's contractors	Additional insured (see Section G)
Automobile Liability (see Section B.2)	\$1,000,000 per occurrence	Borrower and Borrower's contractors	Additional insured (see Section G)
Worker's Compensation and Employer's Liability (see Section B.3)	As per statute for Workers Comp; \$1,000,000 per accident; \$1,000,000 per employee; and in aggregate for bodily injury by disease as respects Employers Liability	Borrower and Borrower's contractors	Waiver of subrogation
Professional Liability (see Section B.4)	\$2,000,000 per claim/ \$2,000,000 aggregate	Borrower if engaged in any eligible design-related activities; and Borrower's design and professional contractors	None
Crime/Dishonesty (see Section B.5)	\$1,000,000 per loss	Borrower	Loss payee endorsement

- B. Minimum Scope and Limits of Insurance. Borrower and/or Borrower's Contractors must maintain insurance with limits no less than:

- 1) Commercial General Liability coverage, under Insurance Services Office occurrence form CG 00 01 or other form approved by OCII, with additional insured endorsement (see Section G). Before the start of demolition/construction if the Site is unoccupied, Borrower and Borrower's Contractors will maintain coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000)

annual aggregate limit. Umbrella or Excess Liability Policy may be used to meet the terms of this section. Borrower should note that the General Liability coverage described herein is applicable only during the predevelopment phase and that OCII will require increased coverage for the Borrower and construction contractors during the construction period.

- 2) Automobile Liability coverage for all owned, non-owned, scheduled, and hired automobiles under Insurance Services Office form number CA 00 01 or other form approved by OCII, with additional insured endorsement (see Section G). If Borrower does not own any automobiles, Borrower must provide OCII a written statement confirming that no automobiles are owned, and OCII will accept an Automobile Insurance policy providing coverage for Symbol 8 (hired autos) and Symbol 9 (non-owned autos), with additional insured endorsement. One Million Dollars (\$1,000,000) per accident for bodily injury and property damage, combined single limit.
- 3) Worker's Compensation and Employer's Liability as required by the State of California. A waiver of subrogation naming OCII is required (also known as "transfer of rights of recovery against others to us"). Employer's Liability coverage must provide limits of One Million Dollars (\$1,000,000) for bodily injury each accident; and not less than One Million Dollars (\$1,000,000) per employee; and One Million Dollars (\$1,000,000) in the annual aggregate for bodily injury by disease. If the Borrower does not have any employees, then evidence of Workers' Compensation and Employers Liability coverage required herein must be provided by either the Project Sponsor(s) or the General Partner of the Partnership, in lieu of such coverage being provided by the Borrower. Additionally, the Borrower must provide a written statement confirming that the Borrower does not have employees.
- 4) Professional Liability (Errors and Omissions) insurance, applicable to the Borrower's licensed design and professional contractors (architects, engineers, surveyors and other eligible consultants) and to the Borrower only if the Borrower or Sponsor has any employees providing design or engineering services. Two Million Dollars (\$2,000,000) for each claim and in the annual aggregate limit covering negligent acts, errors or omissions in connection with professional services to be provided in connection with the Project. If the Professional Liability insurance is "claims made" coverage, these minimum limits shall be maintained for no less than five (5) years beyond completion of the scope of services performed. Any deductible over One Hundred Thousand Dollars (\$100,000) each claim must be reviewed by OCII Risk Management.

Design professionals who utilize the services of subcontractors or consultants to complete work in connection with this project are required to assess the risks associated with such contractors and, with the authorization of the Borrower, determine and verify the appropriate level of coverage provided by the subcontractor or consultant. The design professional and the Borrower shall assume costs and expenses that may be incurred in fulfilling any indemnity obligations as to itself or any subcontractors or consultants for whom the design professional and/or the Borrower are legally liable in the absence of adequate subcontractor or consultant coverage.

- 5) Crime Policy or Fidelity Bond covering Borrower and Developer's officers and employees against dishonesty with respect to the Funding Amount. One Million Dollars (\$1,000,000) each loss, with any deductible not to exceed Ten Thousand Dollars (\$10,000). Borrower must provide an endorsement naming OCII as an additional obligee or loss payee.

- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of those required for policies stated herein must be declared to and approved by OCII. At the option of OCII, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees; or Borrower shall provide a financial guarantee satisfactory to OCII guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- D. Umbrella or Excess Liability Policies. An Umbrella and/or Excess Liability policy(ies) may be used to reach the Commercial General Liability, Workers' Compensation, and/or Automobile Liability coverage limits required herein. The Umbrella/Excess Liability/OCIP policy(ies) must appropriately schedule any such underlying policy(ies).
- E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise approved by OCII's Risk Manager.
- F. General Requirements.
- 1) If the Borrower maintains additional coverages and/or higher limits than the minimums shown in this Exhibit F, OCII requires and shall be entitled to the additional coverage and/or the higher limits maintained by the Borrower.
 - 2) The policies required herein, with the exception of Professional Liability and Workers Compensation, shall be primary insurance and non-contributory as respects to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees shall be in excess of Borrower's insurance and shall not contribute with it.
 - 3) Each insurance policy required herein must be endorsed (if endorsement is available) to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by mail has been given to OCII. Should the insurance carrier not be able to provide such notice, then the responsibility to provide the notice to OCII shall be borne by the policyholder.
 - 4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to OCII, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees.
 - 5) Approval of Borrower's insurance by OCII will not relieve or decrease the liability of Borrower under this Agreement.
 - 6) OCII and its officers, agents and employees will not be liable for any required premium under any policy maintained by Borrower.
 - 7) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than five (5) years after the Compliance Term for general liability insurance.

- G. Verification of Coverage. Borrower must furnish OCII with certificates of insurance and original endorsements evidencing coverage required by this clause. The certificates and applicable endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by OCII before work commences. OCII reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by these specifications at any time. Borrower shall require and verify that its contractors and consultants maintain the required policies as stated herein. Borrower must furnish OCII with copies of certificates and endorsements upon request. All certificates shall include the following:
- 1) Identify the following as the certificate holder:
Successor Agency to the Redevelopment Agency of the City and County of San Francisco
Office of Community Investment and Infrastructure
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
 - 2) Identify the name of the insurance policy holder (Borrower, Developer, or Contractor), the Project name, and the Project address.
 - 3) For policies in which OCII is required to be named as an additional insured, loss payee, dual obligee, or named on a waiver of subrogation, the policy shall name "Office of Community Investment and Infrastructure/Successor Agency to the Redevelopment Agency of the City and County of San Francisco, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees" on the certificate and on the attached endorsement or certificate.
- H. Review. OCII reserves the right to modify the insurance coverage under this Section, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances consistent with OCII's Risk Management Policy. The insurance coverage required under this Section shall be evaluated by OCII for adequacy from time to time. OCII may require Borrower to increase the insurance limits and/or forms of coverage in its reasonable discretion provided that such limits and/or coverage is generally available at commercially reasonable rates.

EXHIBIT G
Lobbying/Debarment Certification Form

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This lobbying certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

3. Neither the undersigned nor its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. The undersigned will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of \$100,000 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities and will obtain the certification of each contractor or subcontractor whose bid is accepted that such contractor or subcontractor is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities.

By:

By:

By: _____

EXHIBIT H
Intentionally Omitted.

EXHIBIT I
Intentionally Omitted

EXHIBIT J

Intentionally Omitted

EXHIBIT K
Intentionally Omitted

EXHIBIT L
Schedule of Performance

No.	Performance Milestone	Estimated or Actual Date ¹	Contractual Deadline
A.	Prop I Noticing (if applicable)	N/A	N/A
1.	Acquisition/Predev Financing Commitment	April 2021	(this request)
2.	Site Acquisition	September 2023	March 2024
3.	Development Team Selection		
a.	Architect	April 2021	Complete
b.	General Contractor	June 2021	December 2021
c.	Owner's Representative	April 2021	October 2021
d.	Property Manager	April 2021	Complete
e.	Service Provider	April 2021	Complete
4.	Design		
a.	Conceptual Design & Cost Estimate	July 2021	January 2022
b.	Submittal of Schematic Design & Cost Estimate	November 2021	May 2022
c.	Submittal of Design Development & Cost Estimate	September 2022	March 2023
d.	Submittal of 50% CD Set & Cost Estimate	January 2023	July 2023
e.	Submittal of Pre-Bid Set & Cost Estimate (75%-80% CDs)	May 2023	November 2023
5.	Environ Review/Land-Use Entitlements		
a.	CEQA Environ Review Submission	N/A	N/A
b.	NEPA Environ Review Submission	N/A	N/A
6.	Permits		
a.	Building / Site Permit Application Submitted	January 2022	July 2022
b.	Subdivision Mapping	September 2022	March 2023
c.	Addendum #1 Submitted	August 2022	February 2023
d.	Addendum #2 Submitted	February 2023	August 2023
7.	Request for Bids Issued	June 2023	December 2023

¹ Estimated Dates are the Borrower's and OCII's best estimate for achieving milestones established herein, which estimates are established for project management purposes, but do not supersede contractual deadlines, which establish deadlines by which Borrower is required to perform under this Agreement.

No.	Performance Milestone	Estimated or Actual Date¹	Contractual Deadline
8.	Service Plan Submission		
a.	Preliminary	September 2021	March 2022
b.	Interim	N/A	N/A
c.	Final	May 2023	November 2023
9.	Additional City Financing		
a.	Predevelopment Financing Application #2	N/A	N/A
b.	Gap Financing Application	February 2023	August 2023
10.	Other Financing		
a.	AHSC/IIG Application	November 2021	November 2022
b.	Construction Financing RFP	January 2023	July 2023
c.	AHP Application	March 2023	March 2024
d.	CDLAC Application	March 2023	September 2023
e.	TCAC Application	March 2023	September 2023
11.	Closing		
a.	Construction Closing	September 2023	March 2024
b.	Permanent Financing Closing	June 2026	December 2026
12.	Construction		
a.	Notice to Proceed	September 2023	March 2024
b.	Temporary Certificate of Occupancy/Cert of Substantial Completion	August 2025	February 2026
13.	Marketing/Rent-up		
a.	Early Outreach Plan Submission	October 2023	April 2024
b.	Marketing Plan Submission	August 2024	February 2025
c.	Commence Marketing	January 2025	July 2026
d.	95% Occupancy	January 2026	July 2026
14.	Cost Certification/8609	December 2026	June 2027
15.	Close Out OCII Loan	December 2026	June 2027

EXHIBIT M
OCII Monthly Project Update Form

OCII MONTHLY PROJECT UPDATE FORM

Please complete this Monthly Project Update and email the Word document to the Project Manager, with a copy to Kim Obstfeld (kimberly.obstfeld@sfgov.org), by the first of each month. Please focus on the relevant sections of project progress, and anticipate approvals that will be needed over the next 2 – 3 months from other departments. Use as much space as you need.

I. THE PURPOSE OF THESE UPDATES IS TO TRACK PROJECT PROGRESS

1. *During the pre-construction*
2. *On non-construction issues during construction, and*
3. *After regular monthly construction meetings have ended*

Project Summary Information

Project:	
Sponsor:	
# Units:	
Target Population:	

1. Monthly Update

Month Covered:	Date of Report:
Completed by:	
Estimated Construction Start Date (if changed from previous update, please explain):	
Estimated Total Development Cost (if changed from previous update, please explain):	
Project's OCII gap commitment (excluding OCII funding committed to date): Expected date when OCII gap funding needed: Month: Year:	
Procurement and bidding (architect, consultants and contractors):	
Entitlements, permits and utilities (Planning /dept., DBI, SFFD, DPW, SFWD, MOD, PG&E and DRE)	
Any changes in the scope, cost, schedule or financing plan? (Attach updated budget and/or schedule, if any, that have occurred since prior month.)	
Significant milestones reached during the past month, and any planned to be reached during the coming month. Also include any projected milestones not reached during the last month and the	

reasons why. (Depending on the phase of the project, please cover efforts to obtain additional financing, relocation, planning, service planning, marketing and rent-up, etc., as applicable for the project.)

FOR OCII STAFF ONLY

Major issues, delays, etc.:

Items for discussion with Director:

EXHIBIT N
Developer Fee Schedule

Developer Fee Disbursement Schedule		
Payment Milestone	% of Project Mgmt Fee	Amount
At close of preconstruction financing	15%	\$165,000
During or at end of predevelopment	35%	\$385,000
At construction closing	20%	\$220,000
During construction/at construction completion	20%	\$220,000
Project close-out	10%	\$110,000
Total Project Management Fee	100%	\$1,100,000
Deferred Fee		\$0
At Risk Fee*		\$1,100,000
Total Cash Developer Fee		<u>\$2,200,000</u>
GP Equity		\$3,000,000
Total Developer Fee		<u>\$5,200,000</u>

* Per MOHCD's Developer Fee Policy, the total Project Management fee will be \$1,100,000. The At Risk Fee will be held back from distribution in order to cover any cost overruns that exceed the contingency amounts held in the Borrower's budget, per MOHCD's Developer Fee Policy.

The parties acknowledge that the fee and equity amounts may be updated in connection with any gap financing provided by OCII.

EXHIBIT O
ASSIGNMENT OF WORK PRODUCT

Assignment of Architects and Engineers Agreement Plans and Specifications

FOR VALUE RECEIVED, **Transbay 2 Family, L.P.**, a California limited partnership (“Borrower”) does hereby sell, assign, pledge, transfer and set over to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California (commonly known as the Office of Community Investment and Infrastructure) (“Agency”) all of its rights, title and interest in and to that certain architect’s agreement (“Agreement”) entered into by and between Borrower and Kennerly Architecture & Planning and any other contracts entered into between Borrower and any licensed design profession or engineer (“Architect” or “Engineer”), and those certain Plans and Specifications and all amendments, modifications, supplements, general conditions and addenda thereto (“Plans”) prepared by the Architects and Engineers for the account of Borrower in connection with the development of approximately 101 units of affordable rental housing at Transbay Block 2 East (“Project”). The Agreement and the Plans are assigned as collateral security for certain indebtedness of Borrower to Agency evidenced by that certain Promissory Note of even date herewith in the principal amount of \$3,500,000.00.

Borrower and Architect or Engineer, by executing the Consent to this assignment, agree that Agency does not assume any of Borrower’s obligations or duties concerning the Agreement and the Plans, including, but not limited to, the obligation to pay for the preparation of the Agreement and the Plans, until and unless Agency shall exercise its right hereunder.

Borrower hereby irrevocably constitutes and appoints Agency as its attorney-in-fact to demand, receive, and enforce Borrower’s rights with respect to the Agreement and the Plans, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of Agency with the same force and effect as Borrower could do if this Assignment had not been made.

Borrower hereby represents and warrants to Agency that no previous assignment of its interest in the Agreement and the Plans has been made, and Borrower agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Agreement and the Plans so long as this Assignment is in effect.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, or successors in interest of the Borrower and Agency.

IN WITNESS WHEREOF, Borrower has caused this Assignment to be executed on _____, 2021.

BORROWER:

By: _____

EXHIBIT P
CONSENT TO ASSIGNMENT OF WORK PRODUCT
Consent to Assignment

FOR VALUE RECEIVED, **Transbay 2 Family, L.P.**, a California limited partnership, ("Borrower") does hereby sell, assign, pledge, transfer and set over to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California (commonly known as the Office of Community Investment and Infrastructure) ("Agency") all of its rights, title and interest in and to that certain architect's agreement ("Agreement") entered into by and between Borrower and Kennerly Architecture & Planning ("Architect") and any other contracts entered into between Borrower and any licensed design professional or engineer ("Architect" or Engineer"), and those certain Plans and Specifications and all amendments, modifications, supplements, general conditions and addenda thereto ("Plans") prepared by the Architect(s), Engineer(s) and others for the account of Borrower in connection with the development of approximately 101 units of affordable rental housing at Transbay Block 2 East ("Project"). The Agreement and the Plans are assigned as collateral security for certain indebtedness of Borrower to Agency evidenced by that certain Promissory Note of even date herewith in the principal amounts of \$3,500,000.00.

The undersigned has prepared the Plans, hereby consents to the above Assignment hereby waives his/her lien rights, if any, for services rendered to date with respect to the Plans. The undersigned also agrees that in the event of a breach by Borrower of any of the terms and conditions of the Agreement or any other agreement entered into with the undersigned in connection with the Plans, that so long as Borrower's interest in the Plans is assigned to Agency, it will give written notice to Agency of such breach. Agency shall have sixty (60) days from the receipt of such notice of default to remedy or cure said default; however, nothing herein shall require the Agency to cure said default, but only gives it the option to do so.

The undersigned also agrees that in the event of default by Borrower under any of the documents or instruments entered into in connection with said Note, the undersigned, at Agency's request, shall continue performance under the Agreement in accordance with the terms hereof, provided that the undersigned shall be reimbursed in accordance with the Agreement for all services rendered on Agency's behalf including all services rendered on Borrower's behalf.

Dated: _____, 2021

ARCHITECT:

Kennerly Architecture & Planning

By: _____

Name: _____

Title: _____

(signatures continue on following page)

ENGINEER:

By: _____

Name: _____

Title: _____

EXHIBIT Q

Promissory Note

PROMISSORY NOTE

Principal Amount: \$3,500,000

San Francisco, CA

Date: April 6, 2021

FOR VALUE RECEIVED, the undersigned, **Transbay 2 Family, L.P.**, a California limited partnership ("Maker"), hereby promises to pay to the order of the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, hereafter referred to as the Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State of California ("OCII", including any successors or assigns), or holder (as the case may be, "Holder"), the principal sum of Three Million Five Hundred Thousand Dollars (\$3,500,000.00) (the "Funding Amount"), or so much of the Funding Amount as may be disbursed from time to time pursuant to the Agreement described in **Section 1** below, together with interest thereon, as provided in this Note.

1. Agreement. This Secured Promissory Note ("Note") is given under the terms of a Loan Agreement by and between Maker and Holder (the "Agreement") dated as of the date set forth above, which Agreement is incorporated herein by reference. Definitions and rules of interpretation set forth in the Agreement apply to this Note. In the event of any inconsistency between the Agreement and this Note, this Note will control.
2. Interest. Interest will accrue on the principal balance outstanding under this Note from time to time at the rate of three percent (3%) per annum, simple interest, from the date of disbursement of funds by Holder through the date of full payment of all amounts owing under the OCII Documents. If a Construction/Permanent Loan for the Project from OCII is subsequently approved by the Commission, the parties acknowledge that the Borrower may request and OCII may approve a reduced interest rate in order to maintain Project feasibility.
3. Default Interest Rate. Upon the occurrence of an Event of Default under any OCII Document, interest will be deemed to have accrued on the outstanding principal balance of the Loan at a compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, commencing on the date on which Maker receives written notice from Holder of the Event of Default through the earlier of: (x) the date on which the Event of Default is cured; or (y) the date on which all amounts due under the OCII Documents are paid to Holder. Maker acknowledges and agrees that the default interest that must be paid in the event of an Event of Default pursuant to this Section represents a reasonable sum considering all the circumstances existing on the date of this Note and represents a fair and reasonable estimate of the costs that will be sustained by Holder if Maker defaults. Maker further agrees that proof of actual damages would be costly and inconvenient and that default interest will be paid without prejudice to Holder's right to collect any other amounts to be paid or to exercise any of its other rights or remedies under any OCII Document.

4. Repayment of Funding Amount. Maker must repay all amounts owing under the OCII Documents in accordance with and subject to Section 3 and Section 3.2 of the Agreement. All Payments will be applied to the following in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan. The unpaid principal balance of the Loan, together with all accrued and unpaid interest and unpaid costs and fees incurred, will be due and payable on the Maturity Date, as such term is defined in the Agreement. Any Payment Date, including the Maturity Date, that falls on a weekend or holiday will be deemed to fall on the next succeeding business day.

If this Note becomes due and payable, and provided no Event of Default under any of the OCII Documents is then continuing or conditions existing that if not corrected in accordance with the notice and cure provisions of the Agreement may result in an Event of Default, the Maker may satisfy this Note in full by either (i) making payment in full; or (ii) delivering to the Holder all of the following: (x) the Work Product, as such term is defined in the Agreement, (y) an absolute and unconditional assignment to the Holder of all of Maker's right, title and interest in and to said Work Product (which assignment shall be in the substantial form of the Assignment of Work Product attached as Exhibit O to the Agreement); and (z) the written consent to such assignment of any architect, engineer or other person or firm that has any right, title or interest in or to the Work Product (which consent shall be in the substantial form of the Consent to Assignment of Work Product attached as Exhibit P to the Agreement).

5. Security. Maker's obligations under this Note are secured by, the pledge of Work Product given in the Assignment of Work Product and the Loan is non-recourse to such Maker, its partner and their members.

6. Terms of Payment.

6.1 All Payments must be made in currency of the United States of America then lawful for payment of public and private debts.

6.2 All Payments must be made payable to Holder and mailed or delivered in person to Holder's office at One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103, or to any other place Holder from time to time designates.

6.3 In no event will Maker be obligated under the terms of this Note to pay interest exceeding the lawful rate. Accordingly, if the payment of any sum by Maker pursuant to the terms of this Note would result in the payment of interest exceeding the amount that Holder may charge legally under applicable state and/or federal law, the amount by which the payment exceeds the amount payable at the lawful interest rate will be deducted automatically from the principal balance owing under this Note.

6.4 Maker waives the right to designate how Payments will be applied pursuant to California Civil Code Sections 1479 and 2822. Holder will have the right in its sole discretion to determine the order and method of application of Payments to obligations under this Note.

6.5 Subject to this Section, Holder will not seek or obtain judgment against Maker for the payment of any amounts due under this Note following a judicial or

nonjudicial foreclosure of the Deed of Trust, or exercise of Holder's rights under the Assignment of Work Product, and Holder's sole recourse against Maker for any default under this Note will be limited to the collateral for the Loan, *provided, however*, that this Section will be deemed void and of no effect if Maker challenges Holder's right to foreclose following an Event of Default in any legal proceeding on the grounds that the OCII Documents are not valid and enforceable under California law. This provision does not limit in any way Holder's right to recover from Maker sums incurred by Holder as a result of Maker's fraud, willful misrepresentation, misapplication of funds (including Loan Funds and Rents (as defined in the Deed of Trust)), waste or negligent or intentional damage to the collateral for the Loan.

6.6 This Note may be prepaid in whole or in part at any time, and from time to time, without penalty provided that notice is given to Holder no later than ninety (90) days prior to prepayment.

7. Default.

7.1 Any of the following will constitute an Event of Default under this Note:

(a) Maker fails to make any Payment required under this Note within ten (10) days of the date it is due; or

(b) the occurrence of any other Event of Default under the Agreement or other instrument securing the obligations of Maker under this Note or under any other agreement between Maker and Holder with respect to the Loan subject to all applicable notice and cure rights.

7.2 Upon the occurrence of any Event of Default, without notice to or demand upon Maker, which are expressly waived by Maker (except for notices or demands otherwise required by applicable laws to the extent not effectively waived by Maker and any notices or demands specified in the OCII Documents), Holder may exercise all rights and remedies available under this Note, the Agreement or otherwise available to Holder at law or in equity. Maker acknowledges and agrees that Holder's remedies include the right to accelerate the Maturity Date by declaring the outstanding principal balance of the Loan, together with all accrued and unpaid interest and unpaid fees and costs incurred, due and payable immediately, in which case, the Maturity Date will be superseded and replaced by the date established by Holder.

8. Waivers.

8.1 Maker expressly agrees that the term of this Note or the date of any payment due hereunder may be extended from time to time with Holder's consent, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Maker.

8.2 No extension of time for any Payment made by agreement by Holder with any person now or hereafter liable for the payment of this Note will operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.

8.3 The obligations of Maker under this Note are absolute, and Maker waives any and all rights to offset, deduct or withhold any Payments or charges due under this Note for any reason whatsoever.

9. Miscellaneous Provisions.

9.1 All notices to Holder or Maker must be given in the manner and at the addresses set forth in the Agreement, or to the addresses Holder and/or Maker hereafter designate in accordance with the Agreement.

9.2 In the event of any legal proceedings arising from the enforcement of or a default under this Note or in any bankruptcy proceeding of Maker, the non-prevailing party promises to pay all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the proceeding, as provided in the Agreement.

9.3 This Note may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.4 This Note is governed by and must be construed in accordance with the laws of the State of California, without regard to the choice of law rules of the State.

9.5 Time is of the essence in the performance of any obligations hereunder.

"MAKER"

Transbay 2 Family, L.P.,
a California limited partnership

Managing General Partner:

Transbay 2 Family LLC, a California limited liability company

By: Mercy Housing Calwest, a California nonprofit public benefit corporation,
its sole member/manager

By: _____

Name:

Title: