

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 25–2023

AUTHORIZING A FIRST AMENDMENT TO THE PREDEVELOPMENT LOAN AGREEMENT WITH TRANSBAY 2 FAMILY, L.P., A CALIFORNIA LIMITED PARTNERSHIP, TO INCREASE THE LOAN AMOUNT BY \$4,500,000, FOR A TOTAL AGGREGATE LOAN AMOUNT OF \$8,000,000 FOR THE DEVELOPMENT OF 184 AFFORDABLE RENTAL HOUSING UNITS (INCLUDING TWO MANAGER’S UNITS), A CHILD CARE FACILITY SPACE, AND RETAIL SPACE AT TRANSBAY BLOCK 2 EAST; AND, PROVIDING NOTICE THAT THIS ACTION IS WITHIN THE SCOPE OF THE TRANSBAY TERMINAL/CALTRAIN DOWNTOWN EXTENSION/REDEVELOPMENT PROJECT FINAL ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT, A PROGRAM EIR, AND IS ADEQUATELY DESCRIBED THEREIN FOR PURPOSES OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; TRANSBAY REDEVELOPMENT PROJECT AREA

WHEREAS, In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 et seq. the “Community Redevelopment Law”), the Redevelopment Agency of the City and County of San Francisco (“Former Agency”) undertook programs for the redevelopment of blighted areas in the City and County of San Francisco (“City”), including the Transbay Redevelopment Project Area (“Project Area”); and,

WHEREAS, The Board of Supervisors of the City and County of San Francisco (“Board of Supervisors”) approved the Redevelopment Plan for the Transbay Redevelopment Project Area by Ordinance No. 124-05 (June 21, 2005) and by Ordinance No. 99-06 (May 9, 2006), as amended by Ordinance No. 84-15 (June 16, 2015), Ordinance No. 62-16 (April 26, 2016) and Ordinance No. 009-23 (January 24, 2023) (“Redevelopment Plan”); and,

WHEREAS, The Redevelopment Plan establishes the land use controls for the Project Area and 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 (“Development Controls”) define land uses, and Zone Two, in which the Planning Code applies. The Successor Agency to the Former Redevelopment Agency of the City and County of San Francisco (“Successor Agency”), commonly known as the Office of Community Investment and Infrastructure (“OCII”), solely administers and enforces land use entitlements for property and projects in Zone One; 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 TJPA. Also in 2003, the California Legislature enacted Assembly Bill No. 812 (Statute 2003, chapter 99), codified at Cal. Public Resources Code § 5027.1, which requires that thirty-five percent (35%) of new housing developed in the Project Area shall be affordable to low- and moderate-income households (the “Transbay Affordable Housing Obligation”). In 2005, the TJPA and 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 funds 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 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 Redevelopment Dissolution Law), the Successor Agency is administering the enforceable obligations of the Former Agency. The Redevelopment Plan, Development Controls, and other relevant Project Area documents remain in effect and the 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 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, 09:17am); and,

WHEREAS, On January 11, 2021, in accordance with the Cooperative Agreement, the TJPA conveyed to Successor Agency certain parcels of land within the Project Area and thereafter, the Board of Supervisors, by Motion M21-098 adopted June 22, 2021, approved Final Transfer Map 10327, which consolidated and resubdivided said parcels for purposes of financing and conveyancing (as said map was recorded on July 1, 2021 in Book 2 of Final Maps at Pages 6 through 8 inclusive of the Official Records, the “Transfer Map”); and,

WHEREAS, In accordance with its obligations under the Redevelopment Plan and the Implementation Agreement, Successor Agency intends to fund the development of affordable housing on Transfer Map Lot 5, being all of Redevelopment Plan Block 2 (“Block 2”) by further subdividing Block 2 into two development parcels of roughly equal size (referred to herein as “Block 2 East” and “Block 2 West,” respectively), ground leasing these parcels to affordable housing developers, and providing a subsidy for development and operation of two affordable housing developments thereon. Successor Agency anticipates that its subsidy will facilitate additional public and private financing necessary to make the development and operation of Block 2 financially feasible; and,

WHEREAS, On April 6, 2021, pursuant to Resolution No. 09-2021, the Successor Agency entered into an exclusive negotiations agreement (“ENA”) with Transbay 2 Family, L.P., a California limited partnership, an affiliate of Mercy Housing California (“Mercy”), and Transbay 2 Senior, L.P., a California limited partnership, an affiliate of Chinatown Community Development Center, Inc. (“CCDC”), as “Co-

Developers” for the demolition of existing improvements and related predevelopment activities on Block 2 (the “Horizontal Project”), and construction, pursuant to a subsequent amended and restated ground lease or leases for vertical development of a mixed-use affordable rental housing project serving families and families experiencing homelessness on Block 2 East to be owned and operated by Mercy (the “Project”), and a separate mixed-use affordable rental housing project serving seniors and senior households experiencing homelessness on Block 2 West to be owned and operated by CCDC (the “Senior Project”), plus a mid-block pedestrian mews and related streetscape improvements (collectively, the “Block 2 Project”). Mercy’s role under the ENA also includes overall site coordination for development of Block 2; and,

WHEREAS, Also on April 6, 2021, pursuant to Resolution No. 10-2021, the Successor Agency entered into a predevelopment Loan Agreement with the Developer that provided funding in an amount of up to \$3,500,000 for predevelopment activities for the Project (“Original Loan”); and,

WHEREAS, The Developer has utilized proceeds from the Original Loan to fund professional services for design and engineering, and related costs, and advanced the Project through entitlement. By Resolution No. 43-2022 (November 1, 2022), the Commission approved the Schematic Design Document for the Project, along with related approval actions including adopting environmental review findings pursuant to CEQA. The approved Project will provide 184 rental housing units that will serve low-income households and families experiencing homelessness, resident-serving amenities, an approximately 6,447 square foot childcare facility, and approximately 1,959 square feet of retail space. At the time of this approval, the Project included one unrestricted manager’s unit. Based on a review of best practices in project management, the Developer subsequently increased the number of manager’s units from one to two; and,

WHEREAS, On January 25, 2023, by Resolution No. 02-2023, the Successor Agency Oversight Board approved an expenditure for funding in an amount of up to \$72,972,179 for affordable housing on Block 2 East, through Item No. 416 of the Recognized Obligation Payment Schedule (“ROPS”) for the period of July 1, 2023 through June 30, 2024. DOF provided final approval of the expenditure through its letter dated April 14, 2023; and,

WHEREAS, The Developer is now requesting additional predevelopment loan funds in an amount not to exceed \$4,500,000 to fund additional predevelopment activities beyond the scope of activities anticipated in the Original Loan. Activities include professional design work by certain construction subcontractors for complex scopes of work such as mechanical, electrical, plumbing, and fire to improve efficiency during the construction period and ensure the accuracy of construction drawings. In addition, the amount includes funds for City fees for construction permits, utility connection fees, additional architectural design work, and other costs for professional contracts associated with development of the Project. OCII staff has reviewed the funding request and found it to be reasonable and consistent with Mayors Office of Housing and Community Development Underwriting Standards and standard practices; and,

WHEREAS, In addition to providing for additional funds, the First Amendment to the Loan Agreement extends the Maturity Date by three (3) months and provides for an additional extension up to nine (9) months to allow the Developer to reapply in two

subsequent competitive application rounds for Low-Income Housing Tax Credits (“LIHTC”) and a tax-exempt bond allocation from the California Debt Limit Allocation Committee (“CDLAC”) should the Project not be awarded funds in its first application in September 2023. The Schedule of Performance is updated to reflect the financing schedule. The loan conditions are also revised to reflect progress on Project development to date, fulfilled conditions are omitted, and conditions are added or revised to incorporate further actions required of the Developer, as approved by the Loan Committee described below; and,

WHEREAS, On August 4, 2023, the Citywide Affordable Housing Loan Committee recommended approval of OCII subsidy for the Project in a total aggregate amount of up to \$72,972,179, which includes the \$4,500,000 in additional predevelopment loan funds covered by the First Amendment, residential gap loan funds, commercial loan funds to construct the commercial spaces, and the funding for the Horizontal Project; and,

WHEREAS, Concurrently with this request, the Developer is seeking a commitment from the Commission (by Resolution No. 24-2023) for permanent gap loan funding for the Project. This commitment is necessary to demonstrate that the Developer has secured local funds for purposes of its September 2023 LIHTC/CDLAC application, a critical financing source for the Project; and,

WHEREAS, Additionally, concurrently with this request, an affiliate of Mercy, Transbay 2 Family LLC, acting in its capacity as the lead party among the Co-Developers to coordinate performance of site preparation work, is seeking Commission authorization (by Resolution No. 26-2023) of a Horizontal Ground Lease with funding in an amount of up to \$2,333,653 to reimburse costs for the Horizontal Project to facilitate the timely development of the Project and Senior Project; and,

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 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 ten addenda to the FEIS/EIR were adopted by the Commission between June 2, 2006 and November 1, 2022. The tenth addendum to the FEIS/EIR, adopted by the Commission by Resolution No. 39-2022 specifically analyzed the environmental effects of the Block 2 Project; and,

WHEREAS, OCII staff has reviewed the First Amendment to the Loan Agreement and has found it to be within the scope of the project analyzed in the FEIS/EIR and its subsequent addenda; and,

WHEREAS, Copies of the FEIS/EIR and supporting documentation is on file with the Commission Secretary and is incorporated into this Resolution by reference; now therefore be it

RESOLVED, That the Commission finds the First Amendment to the Loan Agreement is within the scope of the project analyzed in the FEIS/EIR and requires no additional environmental review pursuant to CEQA Guidelines sections 15180, 15168, 15162, 15163, and 15164 for the following reasons:

- (1) Implementation of the First Amendment to the Loan Agreement does not require major revisions to the FEIS/EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant impacts; and,
- (2) No substantial changes have occurred with respect to the circumstances under which the project analyzed in the FEIS/EIR will be 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 has become available which would indicate that (i) implementation of the First Amendment to the Loan Agreement will have significant effects not discussed in the FEIS/EIR; (ii) significant environmental effects will be substantially more severe; (iii) mitigation measures or alternatives found not feasible, which would reduce one or more significant effects, have become feasible; or (iv) mitigation measure or alternatives, which are considerably different from those in the FEIS/EIR will substantially reduce one or more significant effects on the environment that would change the conclusions set forth in the FEIS/EIR; and be it further

RESOLVED, The Commission authorizes the Executive Director to: (i) enter into the First Amendment to the Loan Agreement with the Developer, substantially in the form of the document attached hereto as Exhibit A; and (ii) to enter into any and all ancillary documents or to take any additional actions necessary to consummate the transaction contemplated by this Resolution.

I hereby certify that the foregoing resolution was adopted by the Successor Agency Commission at its meeting of August 15, 2023.

Commission Secretary

Exhibit A: First Amendment to the Loan Agreement (Transbay Block 2 East)

**FIRST AMENDMENT TO THE LOAN AGREEMENT BETWEEN TRANSBAY 2
FAMILY, L.P. AND THE OFFICE OF COMMUNITY INVESTMENT AND
INFRASTRUCTURE FOR THE TRANSBAY BLOCK 2 EAST PROJECT**

This First Amendment to the Loan Agreement (this “**First Amendment**”) is entered into as of _____, 2023 by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body operating and existing under the laws of the State of California (commonly known as the OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE, or “**OCII**”), and Transbay 2 Family, L.P., a California limited partnership (“**Borrower**”), whose general partner is Transbay 2 Family LLC.

RECITALS

- A. OCII is administering the enforceable obligations of the Former Agency in accordance with the Redevelopment Dissolution Law and San Francisco Ordinance No. 215-12 (October 4, 2012), including the Transbay Affordable Housing Obligation and the Implementation Agreement.
- B. On April 6, 2021 the Commission approved the execution of a predevelopment loan to Borrower in the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000) (the “**Loan**”) to finance Predevelopment Activities associated with a planned mixed-use residential family housing project (the “**Project**”) on the Site. The Loan is evidenced by the following documents: (1) a Loan Agreement dated April 6, 2021 (the “**Agreement**”); and (2) a Promissory Note made by Borrower in an amount of the Loan to the order of OCII dated April 6, 2021 (the “**Original Note**”). All initially capitalized terms used but not defined in this First Amendment have the meanings given to those terms in the Agreement.
- C. The Borrower has requested additional predevelopment loan funds from OCII to finance further Predevelopment Activities, including early design work for certain construction trade subcontracts such as mechanical, electrical, plumbing, and fire, as well as building permit fees, additional architectural design fees, utility connection fees, and other costs for professional contracts associated with development of the Project. OCII staff has reviewed the predevelopment sources and uses budget and estimated permanent sources and uses budget and recommended approval.
- D. The Borrower and OCII now desire to amend the Agreement in accordance with this First Amendment to increase the Loan by \$4,500,000 to a total of \$8,000,000.

AGREEMENT

NOW, THEREFORE, OCII and the Borrower agree as follows:

- 1. Amendments to Agreement. The Agreement is amended as follows. For informational purposes, where applicable, updated language is underlined.

(a) On the cover page, the loan amount of “\$3,500,000” is deleted and replaced with “\$8,000,000”.

(b) Recital I is revised to read as follows: “The Project will provide development of 184 total housing units (including 182 affordable units at affordability levels specified herein and two manager’s units), 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 17 studio units, 76 one-bedroom units, 54 two-bedroom units, and 37 three-bedroom units.”

(c) The following sentence is added to Recital O: “Further, the Oversight Board of the City and County of San Francisco and the California Department of Finance has approved, by Oversight Board Resolution No. 02-2023 (January 25, 2023), this expenditure in the Recognized Obligation Payment Schedule for July 1, 2023 to June 30, 2024.”

(d) In Section 2.1 the phrase “Three Million Five Hundred Thousand Dollars (\$3,500,000)” is deleted and replaced with “Eight Million Dollars (\$8,000,000)”.

(e) The first sentence of Section 3.2 is revised to state: “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 3.3) that does not incorporate the Funding Amount, or (iii) three (3) years and three months from the Agreement Date (and as it may be extended, the “**Maturity Date**”).”

(f) The following sentence is added to Section 3.2: “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 his or her sole discretion, may grant one or more extensions of the Maturity Date for a cumulative period not to exceed nine (9) months to allow Borrower to reapply for up to two additional consecutive cycles of CDLAC/TCAC financing immediately following the cycle initially applied for, provided that any such extension is conditioned upon Borrower submitting reapplications to CDLAC and/or TCAC.”

(g) Section 4.7 is hereby deleted in its entirety and replaced with the following: “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 August 4, 2023.”

- (a) Borrower will work closely with the sponsor of the Senior Project throughout predevelopment and construction and will:
- i. Finalize the parcel map for the overall Block 2 Site.
 - ii. Collaborate on the scope and schedule of site preparation work to ensure that work is complete prior to the Senior Project close of construction financing. Borrower and CCDC shall amend the existing JDA to reflect the site work structure and/or enter into a memorandum of understanding or similar agreement.
 - iii. Identify and implement strategies to improve construction efficiencies and optimize logistics between the Project and Senior Project.
 - iv. Determine and document roles and responsibilities for the shared maintenance of the publicly accessible pedestrian mews and any other shared open space elements, subject to the advance review and approval of OCII.
- (b) Borrower shall continue to refine the commercial capital and operating budgets and, prior to the close of construction financing, Borrower shall:
- i. Submit an updated “**Commercial Space Plan**” that documents further outreach to prospective tenants, describes racial equity efforts and expected outcomes, and outlines plans to achieve community benefits pursuant to the below-referenced Community Commercial Services Agreement. The updated Commercial Space Plan shall include a third-party prepared market study, as well as an analysis of resources available to fund tenant improvements such as, but not limited to, programs from OEWD.
 - ii. Based on findings from the updated Commercial Space Plan and market study as referenced above, provide a recommended tenant improvement allowance responsive to current market conditions and anticipated tenant uses and related improvement cost estimates for OCII review and approval. The final tenant improvement allowance will be included as an attachment to the OCII commercial loan agreement, subject to OCII Commission approval, and approval by the MOHCD Director and OCII Director as part of the Final Financial Plan.
 - iii. Make good faith efforts to secure letters of intent with Community Serving Use tenants (as defined in the MOHCD Commercial Space Underwriting Guidelines).
 - iv. Enter into a “**Community Commercial Services Agreement**” (as referenced in the MOHCD Commercial Space Underwriting Guidelines) or similar agreement to establish the terms and annual community benefit reporting requirements for the commercial spaces.

- v. Subject to OCII review and approval, execute a reciprocal easement agreement or similar document to establish the terms for access to spaces shared between the residential and commercial uses and the allocation of costs and responsibilities.
- vi. Enter into a commercial space loan agreement and ground lease with OCII.
- vii. In collaboration with OCII and MOHCD, explore alternative ownership, construction financing, and leasing structures for the childcare space with the intent of reducing or eliminating the OCII commercial loan for this space.

Following initial lease-up and a period of stabilized commercial occupancy as mutually agreed upon by Borrower, Mercy Commercial California (Mercy's commercial leasing affiliate), and OCII, pursue a permanent commercial loan to reimburse OCII's commercial loan to the extent feasible.

- (c) Borrower shall provide for OCII review and approval: a) the request for proposals and/or solicitation package for equity investors and lenders before it is finalized and distributed; b) all raw financial data from developer or financial consultant prior to selection of equity investors and lenders; c) proposals from all equity investors and lenders; and, d) all letters of intent from financial partners.
- (d) Borrower shall continue to refine income levels for the non-subsidized units and seek to incorporate units at a 50% AMI tier, with the intention of maximizing opportunities for COP holders, to the extent that it aligns with restrictions from other lenders. Any adjustments to AMI tiering will be balanced to ensure that cash flow remains positive for the first 20 years of operation. Final AMI tiering shall be reflected in the Final Financial Plan. In addition, Borrower shall study the potential for permanent debt.
- (e) Borrower shall work with OCII, MOHCD, and HSH to finalize the LOSP budget and secure approval for a LOSP grant agreement in accordance with the timeframe and procedures set forth in the LOSP manual. Any proposed deviation(s) from a pro rata cost split between LOSP and the operating budget are subject to review and approval by OCII and MOHCD, and must be justified by the Sponsor.
- (f) If directed by OCII, MOHCD, and/or HSH, Borrower shall submit an application for Continuum of Care rent and supportive services subsidies for all or a portion of the LOSP units.
- (g) Borrower shall continue to refine the supportive services plan and budget for review and approval by OCII and HSH, and shall work with HSH to finalize a supportive services contract for the Project.
- (h) Borrower, in cooperation with OCII, shall continue to require the general contractor to exercise good faith efforts to select subcontractors who are either SBEs or, if they are not SBEs, are willing to create joint ventures or similar

partnership opportunities with SBEs. In addition, Borrower will work closely with the general contractor and design team to monitor construction costs and identify opportunities for cost savings and efficiencies.

- (i) Borrower shall provide an Early Outreach Plan one month after the start of construction and an initial draft Marketing Plan within 12 months of anticipated TCO, outlining the affirmative steps they will take to market the Project to OCII's preference program participants, including COP holders, Displaced Tenants, and Neighborhood Residents. In addition, the Marketing Plan will describe how the marketing is consistent with the Mayor's Racial Equity Statement and promotion of positive outcomes for African American San Franciscans. Along with the Marketing Plan submittal, Sponsor shall provide a lease-up staffing plan for OCII and MOHCD review.
- (j) Borrower will evaluate scoring criteria for federal Affordable Housing Program ("AHP") and provide a self-score to OCII in 2024 and future rounds as appropriate. Borrower will submit an application for AHP funding as directed by OCII.
- (k) Borrower shall submit to OCII final permanent residential and commercial sources and uses budgets and operating budgets, compliant with underwriting standards for OCII review and approval. The final budgets will be incorporated into the Final Financial Plan, subject to review and approval by OCII and MOHCD. Among other items, the Final Financial Plan may include as appropriate:
 - i. Adjustments to the allocation of funds between the residential and commercial loans to optimize scoring and/or maximize tax credit basis.
 - ii. Unused funds from the site preparation work conducted under agreement with Mercy, if any, may be allocated to the residential or commercial loan if needed.
 - iii. An increase to Developer Fee to add General Partner Equity, with an equal amount added as a source, if needed to maximize tax credit basis.
- (l) Borrower, in coordination with the sponsor of the Senior Project, will continue to conduct outreach to the Transbay community throughout predevelopment and construction to solicit input, address concerns, and educate community members on various aspects of the Project. Outreach should include updates to the Transbay CAC and other community organizations at key Project milestones.

(h) In Section 21.1, the email address for notices to OCII shall be modified to delete "Sally.Oerth.@sfgov.org" and insert in its place "Thor.Kaslofsky@sfgov.org".

(i) Each of the following exhibits to the Agreement is deleted in its entirety and replaced with and superseded by the applicable exhibit attached hereto (the "New Exhibits"). As of the date hereof, reference in the Agreement to any of the following exhibits refers to the applicable New Exhibit:

- a. Exhibit B-1 Table of Sources and Uses of Funds
- b. Exhibit L Schedule of Performance

2. Amended and Restated Promissory Note. Concurrently herewith, Borrower will execute an amended and restated promissory note in favor of OCII in form and substance acceptable to OCII, which will (1) supersede and replace the promissory note dated April 6, 2021 provided to OCII by Borrower, (2) become the Note as referenced in the Agreement (as hereby amended) Original Note, and as of the date of the Note, the Original Note will be canceled, returned to Borrower and of no further force or effect. A copy of the Note is attached to this First Amendment as Attachment 1.

3. Representation and Warranties.

(a) The undersigned Managing General Partner on behalf of itself, only, confirms that all of the representations and warranties made by Borrower to OCII in the Agreement and other OCII Documents, as defined in the Agreement, continue to be true and complete as of the date of this First Amendment.

(b) No event has occurred and is continuing that constitutes an event of default or potential event of default under the Agreement, Note, or any other OCII Documents.

4. Miscellaneous.

(a) References. No reference to this First Amendment is necessary in any instrument or document at any time referring to the Agreement. Any reference to such documents will be deemed a reference to the Agreement as amended by this First Amendment.

(b) No Other Amendments. Except as amended by this First Amendment, the Agreement will remain unmodified and in full force and effect.

(c) Counterparts. This First Amendment may be executed in two or more counterparts, each of which will be deemed an original, but all of which when taken together will constitute one and the same instrument.

(d) Successors and Assigns. The terms, covenants, and conditions contained in this First Amendment will bind and inure to the benefit of Borrower and OCII and, except as otherwise provided herein, their personal representatives and successors and assigns.

(e) Further Instruments. The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this First Amendment.

(f) Conflicts. In the event that any dates, numbers, or other provisions in this First Amendment and the New Exhibits conflict with any provision in the Agreement, the provisions of this First Amendment and the New Exhibits shall prevail.

[Signatures Appear on Following Page]

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

OCII:

Office of Community Investment and Infrastructure, 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: _____
Thor Kaslofsky
Executive Director

APPROVED AS TO FORM:
James B. Morales

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: _____
Doug Shoemaker
President

Authorized by OCII Resolution No. ____-2023, dated _____

ATTACHMENT 1

Amended and Restated Promissory Note

PROMISSORY NOTE

Principal Amount: \$8,000,000

San Francisco, CA

Date: _____

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, a public body organized and existing under the laws of the State of California, commonly referred to as the Office of Community Investment and Infrastructure, including any successors or assigns ("**OCII**" or "**Holder**"), the principal sum of EIGHT MILLION DOLLARS (\$8,000,000) (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 that certain Loan Agreement by and between Maker and Holder dated April 6, 2021 and as amended by that certain First Amendment thereto dated as of the date set forth above (the "**Agreement**"), which Agreement is incorporated herein by reference. Unless otherwise specified herein, 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. A previous Original Note by Borrower for OCII dated April 6, 2021 in the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000) has been cancelled and returned to Borrower, and this Note replaces the Original Note in its entirety.

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.

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 Section 3.1 of the Agreement.

All payments will be applied 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. 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.

5. Security. Maker's obligations under this Note are secured by a leasehold Deed of Trust.

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. Subject to the terms in this Note, 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 sixty (60) 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.

[Signature Appears on Following Page]

"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: _____
Doug Shoemaker
President

EXHIBIT B-1
Table of Sources and Uses of Funds

EXHIBIT L
Schedule of Performance