[Disposition and Development Agreement - Golub Real Estate and Mercy Housing - 280 Beale Street (Transbay Block 6) - $30,000,000]

Resolution retroactively approving and authorizing the Office of Community Investment and Infrastructure, as Successor Agency to the San Francisco Redevelopment Agency, to enter into a Disposition and Development Agreement for the sale and development of land located at 280 Beale Street, Assessor's Parcel No. 3738-004, commonly known as Transbay Block 6, with Golub Real Estate Corporation, an Illinois corporation, and Mercy Housing California, a California non-profit public benefit corporation beginning April 16, 2013.

WHEREAS, The California Legislature in 2003 enacted Assembly Bill 812 ("AB 812") authorizing the demolition of the historic Transbay Terminal building and the construction of the new Transbay Transit Center ("TTC") (Stat. 2003, Chapter 99, codified at § 5027.1 of the Cal. Public Resources Code). AB 812 also mandated that 25% of the residential units developed in the area around the Center "shall be available to" low income households, and an additional 10% "shall be available to" moderate income households if the City and County of San Francisco ("City") adopted a redevelopment plan providing for the financing of the Center; and

WHEREAS, In 2003, in an agreement with the Transbay Joint Powers Authority ("TJPA") and the City, the State agreed to transfer approximately 10 acres of State-owned property ("State-owned parcels") in and around the then-existing Transbay Terminal to the City and the TJPA, which would then sell the State-owned parcels and use the revenues from the sales to finance the Center ("Cooperative Agreement"). The City agreed, among other things, to commit the property tax revenue from the State-owned parcels through its
Redevelopment Agency to the Center. Under the Cooperative Agreement, the State relied on tax increment financing under a redevelopment plan to improve and sell the parcels; and

WHEREAS, The Board of Supervisors of the City and County of San Francisco approved a Redevelopment Plan for the Transbay Redevelopment Project Area ("Project Area") by Ordinance No. 124-05, adopted on June 21, 2005 and by Ordinance No. 99-06, adopted on May 9, 2006 ("Redevelopment Plan"). The Redevelopment Plan provided for the financing of the TTC and established a program for the Redevelopment Agency of the City and County of San Francisco ("Former Agency") to redevelop and revitalize the blighted Project Area; and

WHEREAS, In 2006, the TJPA and the Former Agency executed an agreement ("Implementation Agreement"), which required the Former Agency to take the lead role in facilitating the development of the State-owned parcels. Specifically, the Implementation Agreement required the Former Agency to: (1) prepare and sell the State-owned parcels to third parties, (2) deposit the sale proceeds into a trust account to help the TJPA pay the cost of constructing the TTC, (3) implement the Redevelopment Plan to enhance the financial feasibility of the Project, and (4) fund the state-mandated affordable housing program; and

WHEREAS, In 2008, the City, the Former Agency and the TJPA entered into an agreement that granted options to the Former Agency to acquire the State-owned parcels, arrange for development of the parcels, and distribute the net tax increment to the TJPA to use for the Center ("Option Agreement"). The Option Agreement provided the means by which the Former Agency could fulfill its obligations under the Implementation Agreement to prepare and sell the State-owned parcels. The Option Agreement granted to the Former Agency "the exclusive and irrevocable option to purchase" the former State-owned parcels in the Project Area that are programmed for development, which are listed in the Option

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Agreement, including Blocks 2-12 and Parcel F (Section 2.1 of the Option Agreement at p. 4); and

WHEREAS, On July 6, 2011, pursuant to the Implementation Agreement, the Former Agency issued a Request for Proposals ("RFP") from development teams to design and develop a high-density, mixed-income residential project on Blocks 6/7 in the Project Area. On December 6, 2011, after a competitive selection process, the Former Agency Commission authorized staff to enter into negotiations for the development of Blocks 6/7 with the development team lead by Golub Real Estate Corp. ("Golub") and Mercy Housing California ("Mercy"); and

WHEREAS, On February 1, 2012, the Former Redevelopment Agency was dissolved pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) ("AB 26"), codified in relevant part in California’s Health and Safety Code Sections 34161 – 34168 and upheld by the California Supreme Court in California Redevelopment Assoc. v. Matosantos, No. S194861 (Dec. 29, 2011). On June 27, 2012, AB 26 was subsequently amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) ("AB 1484"). (Together, AB 26 and AB 1484 are referred to as the “Redevelopment Dissolution Law.”); and

WHEREAS, Pursuant to the Redevelopment Dissolution Law, all of the Former Redevelopment Agency’s assets (other than housing assets) and obligations were transferred to the Office of Community Investment and Infrastructure (“OCII”), as Successor Agency to the Former Agency. Some of the Former Agency’s housing assets were transferred to the City, acting by and through the Mayor’s Office of Housing (“MOH”); 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). Under this limited...
authority, a successor agency may enter into contracts if a pre-existing enforceable obligation requires that action. See also Cal. Health & Safety Code § 34167 (f) (providing that the Redevelopment Dissolution Law does not interfere with an agency’s authority under enforceable obligations to “enforce existing covenants and obligations, or . . . perform its obligation.”). The Implementation Agreement and several other Transbay obligations are “enforceable obligations” requiring OCII to take the actions proposed by this Resolution. Cal. Health & Safety Code § 34171 (d) (1); and

WHEREAS, Under Redevelopment Dissolution Law, a successor agency may request that the Department of Finance (“DOF”) “provide written confirmation that its determination of [an] enforceable obligation as approved in a Recognized Obligation Payment Schedule ["ROPS"] is final and conclusive.” Cal. Health & Safety Code § 34177.5 (l). To be eligible for a final and conclusive determination, the enforceable obligation must provide for the “irrevocable commitment of property tax revenue and . . . the allocation of such revenues is expected to occur over time.” Id. If DOF issues a final and conclusive determination, DOF will not question the existence of the enforceable obligation in the future, but may still review whether specific payments under the enforceable obligation, as appearing on a ROPS, “are required,” Id; and

WHEREAS, On November 7, 2012, the Successor Agency submitted a request to DOF that it determine “finally and conclusively” that the Transbay Implementation Agreement, AB 812, and the Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement (“Pledge Agreement”) are enforceable obligations. The request explained that each of these obligations had previously appeared on a DOF-approved ROPS, that they met the statutory definition of an “enforceable obligation” and that they required the commitment of property tax revenue over time; and
WHEREAS, On April 15, 2013, DOF determined “finally and conclusively” that the Implementation Agreement, AB 812, and the Pledge Agreement are enforceable obligations that will not require additional DOF review in the future. Significantly, the effect of this DOF determination is to allow OCII to take the actions proposed under this Resolution, without additional review, because they are “in compliance with an enforceable obligation,” Cal. Health & Safety Code § 34177.3; and

WHEREAS, The original proposal for Blocks 6/7 from Golub/Mercy included a purchase price of $30,000,000 to be paid by Golub, construction of 545 residential units (409 market-rate units, including 61 inclusionary units at 50 percent of area median income and 136 stand-alone affordable family units at 50 percent of area median income), and a requested subsidy from the Former Agency for the stand-alone affordable units of approximately $200,000 per unit. However, due to the dissolution of the Former Agency on February 1, 2012, and the challenges that created for funding the affordable component of the development, the original proposal from Golub/Mercy was revised; and

WHEREAS, The revised proposal for Blocks 6/7 from Golub/Mercy includes a purchase price of $30,000,000 to be paid by Golub (same as the original proposal), construction of 556 residential units (409 market-rate units and 147 stand-alone affordable family units at 50 percent of area median income), and payment of a $24.3 million affordable housing fee by Golub to fund all of the affordable housing units on Block 6 and a portion of the affordable housing units on Block 7. Based on this revised proposal, OCII staff negotiated the terms of a disposition and development agreement (“DDA”) with Golub/Mercy for the sale and development of Block 6 with 409 market-rate units, 70 affordable units, shared open space, and a shared underground parking garage. The DDA, however, does not cover the development of Block 7, which includes 77 affordable units, a child care facility and shared
open space, because it will be constructed at a future date by Mercy, when additional affordable housing funding becomes available; and

WHEREAS, On April 16, 2013, the Commission on Community Investment and Infrastructure approved the DDA and the exercise of OClI’s option to acquire Blocks 6/7 from the TJPA pursuant to the Option Agreement. OClI will deliver written notice to the TJPA and acquire Blocks 6/7 prior to close of escrow with Golub under the DDA. Golub will acquire all of Blocks 6/7 from OClI then subdivide the larger parcel into separate parcels, including Block 6 and Block 7. Once the properties are subdivided, Block 7 and the Affordable Airspace Parcels on Block 6 will be reconveyed to OClI for development at a later date, subject to a separate agreement between OClI and Mercy. Provided, however, that the DDA also provides that if a subdivision map is finalized and recorded prior to OClI’s transfer to Golub, then only the Block 6 land parcel. Furthermore, the DDA provides that, prior to its development, OClI will permit Golub and Mercy to use Block 7 for staging related to the construction of Block 6, pursuant to a license agreement that will be executed at a future date; and

WHEREAS, Block 6, a TJPA-owned parcel, which will be transferred to OClI, located at 280 Beale Street, the northeast corner of Folsom and First Streets, Assessor’s Block No. 3738, Lot No. 004, San Francisco, California, in the Project Area, is an underutilized lot currently improved by a surface parking lot (“Property”); and

WHEREAS, Pursuant to the Redevelopment Plan, the Board of Supervisors shall approve the sale or lease of any property acquired by OClI pursuant to the Option Agreement in a manner consistent with the standards and procedures that govern the Agency’s disposition of property acquired with tax increment moneys and that appear in Section 33433 of the California Community Redevelopment Law; and

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WHEREAS, Notice of the public hearing has been published consistent with Health and Safety Code Section 33433; and

WHEREAS, OCII prepared and submitted a report consistent with the requirements of Section 33433 of the Health and Safety Code, including a copy of the proposed DDA, and a summary of the transaction describing the cost of the DDA to OCII, the value of the property interest to be conveyed, the purchase price and other information, which was made available for public inspection; and

WHEREAS, Ground leases with Mercy for the affordable housing parcels on both Block 6 and Block 7 will be presented to the Board of Supervisors at future dates for consideration as separate actions from the approval of the DDA; now, therefore, be it

RESOLVED, That the Board of Supervisors of the City and County of San Francisco does hereby find and determine that the sale of the Property from OCII to Golub Real Estate Corporation, an Illinois corporation: 1) includes consideration to be received by OCII that is not less than the fair reuse value at the use and with the covenants and conditions and developments costs authorized by the DDA; 2) includes a purchase price of $30,000,000, which was the highest price achieved through a competitive request for proposals process based on the development permitted on the site and the affordable housing requirements of the Redevelopment Plan, and which will be deposited into a Trust Account maintained by the TJPA for use to help pay the cost of constructing the new Transbay Transit Center; 3) will provide 70 units affordable family housing for households with incomes at or below 50 percent of area median income; 4) will provide $24.3 million in funding for affordable housing, of which approximately $14 million will be used to subsidize the 70 affordable family units to be developed on the Property and $10.3 million will be used to help subsidize the 77 affordable family units proposed for development on Block 7; and 5) will assist in the elimination of blight
by converting a underutilized parking lot into a high-density, mixed-use, mixed-income residential development; and, be it

    FURTHER RESOLVED, That the Board of Supervisors hereby approves and authorizes OCII to execute the DDA for the sale of the Property from the Office of Community Investment and Infrastructure to Golub Real Estate Corporation, an Illinois corporation, substantially in the form of the DDA lodged with the City Attorney, and to take such further actions and execute such documents as are necessary to carry out the DDA on behalf of OCII.
Resolution retroactively approving and authorizing the Office of Community Investment and Infrastructure, as Successor Agency to the San Francisco Redevelopment Agency, to enter into a Disposition and Development Agreement for the sale and development of land located at 280 Beale Street, Assessor's Parcel No. 3738-004, commonly known as Transbay Block 6, with Golub Real Estate Corporation, an Illinois corporation, and Mercy Housing California, a California non-profit public benefit corporation beginning April 16, 2013.

September 17, 2013 Board of Supervisors - ADOPTED
Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

I hereby certify that the foregoing Resolution was ADOPTED on 9/17/2013 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Date Approved
9/17/13