[Consent to Provisions of a Variation Decision - On-Site Affordable Housing Requirement - 542-550 Howard Street (Transbay Parcel F) - Transbay Redevelopment Project Area]

Resolution acting in its capacity as the legislative body to the Successor Agency to the former Redevelopment Agency of the City and County of San Francisco, approving provisions of a variation decision by the Commission on Community Investment and Infrastructure, modifying the on-site affordable housing requirement for 542-550 Howard Street (Assessor’s Parcel Block No. 3721, Lot Nos. 016, 135, 136, and 138, also known as Transbay Parcel F) in the Transbay Redevelopment Project Area, and adopting findings under the California Environmental Quality Act.

WHEREAS, State law dissolved redevelopment agencies and designated successor agencies, as separate entities from cities or counties, to assume the remaining obligations of the former redevelopment agencies, California Health and Safety Code, Sections 34170 et seq. (the “Redevelopment Dissolution Law”); and

WHEREAS, To implement the Redevelopment Dissolution Law, the Board of Supervisors initially adopted Resolution No. 11-12 (January 26, 2012) and subsequently adopted Ordinance No. 215-12 (October 4, 2012), which established a Successor Agency Commission (commonly known as the Commission on Community Investment and Infrastructure or “CCII”) and delegated to 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) (the “Successor Agency” or “OCII”) the authority, among others, to implement, modify, enforce and complete the surviving redevelopment projects, including certain Major Approved Development Projects, Retained Housing Obligations, and all other enforceable obligations except for actions decreasing property tax revenue for affordable housing and material changes to affordable housing obligations, which
must be approved by the Board of Supervisors; and

WHEREAS, California Public Resources Code, Section 5027.1 requires that 25% of the residential units developed in the Transbay Redevelopment Project Area (“Project Area”) shall be available to low income households and that an additional 10% shall be available to moderate income households (the “Transbay Affordable Housing Obligation”), which obligation has been incorporated into the Redevelopment Plan for the Transbay Redevelopment Project, approved by Ordinance No. 124-05 (June 21, 2005) and by Ordinance No. 99-06 (May 9, 2006) (the “Redevelopment Plan”), and in the Implementation Agreement, dated as of January 20, 2005, between the former Redevelopment Agency of the City and County of San Francisco and the Transbay Joint Powers Authority, which has been finally and conclusively determined by the California Department of Finance to be an enforceable obligation under Redevelopment Dissolution Law; and

WHEREAS, To fulfill the Transbay Affordable Housing Obligation, both the Redevelopment Plan and the Planning Code require that all new housing developments within the Project Area contain on-site affordable housing, Redevelopment Plan, Section 4.9.3. (requiring a minimum of 15 percent on-site affordable housing; Planning Code Sections 249.28 (b) (6) and 415.6 (requiring a minimum of 20 percent) (the “On-Site Requirement”); and

WHEREAS, Neither the Redevelopment Plan nor the Planning Code authorize off-site affordable housing construction or an "in-lieu" fee payment as an alternative to the On-Site Requirement in the Project Area; and

WHEREAS, The Redevelopment Plan provides a procedure and standards by which certain of its requirements and the provisions of the Planning Code may be waived or modified; and

WHEREAS, On December 17, 2020, OCII received a request from the developer of
WHEREAS, The Developer proposed removing the affordability restrictions from the approximately 33 affordable units on-site in the Project approved by the Planning Commission and converting them to market rate units (the “Variation Request”); and

WHEREAS, The Variation Request proposes that the Successor Agency grant a variation on the condition that the Developer contribute to the Successor Agency an amount that is equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement (based on the published fee schedule applicable to calendar year 2021) toward the development of affordable housing in the Project Area (the “Affordable Housing Fee”), which amount is significantly higher than the amount of the affordable housing fee that would be permitted under the City’s Inclusionary Affordable Housing Program if this Project were located outside of the Project Area; and

WHEREAS, Payment of this fee would ensure that the conversion of the approximately 33 inclusionary units to market rate units in the Project does not adversely affect the Successor Agency’s compliance with the Transbay Affordable Housing Obligation; and

WHEREAS, the City’s Inclusionary Affordable Housing Program provides that a payment of one hundred fifty percent (150%) of the inclusionary housing fee would fund approximately 82 affordable housing, but OCII may use the Affordable Housing Fee to assist in funding a proposed project with approximately 192 affordable housing units within the Project Area, which is in contrast to the approximately 33 units that would be produced under the On-Site Requirement, and accordingly the Affordable Housing Fee will allow OCII to better
fulfill the requirements of the Transbay Affordable Housing Obligation; and

WHEREAS, Authorizing the payment of an in-lieu fee instead of constructing on-site affordable inclusionary units is a material change to OCII’s affordable housing obligations and thus requires approval by the Board of Supervisors under Section 6 (a) of Ordinance No. 215-12 (Oct. 4, 2012); and

WHEREAS, On January 19 2021, after holding a duly noticed public hearing and consistent with its authority under Redevelopment Dissolution Law and Ordinance No. 215-12, the Successor Agency Commission conditionally approved, by CCII Resolution No. 02-2021, a variation to the Transbay Redevelopment Plan’s On-Site Affordable Housing Requirement as it applies to the Project, subject to approval by the Board of Supervisors in its capacity as legislative body for the Successor Agency (the “Variation Approval”); CCII Resolution No. 20-2021 is on file with the Clerk of the Board of Supervisors in File No. 201386, and incorporated in this Resolution by reference; and

WHEREAS, The Planning Commission and Board of Supervisors will consider approving a development agreement with the Developer that would be consistent with the Variation Approval and this Resolution, by providing relief from the on-site affordable housing requirements in Planning Code, Section 249.28 and Section 415 et seq., and would require the Developer to pay an Affordable Housing Fee in the range of $45 to 47 million to the Successor Agency for its use in fulfilling the Transbay Affordable Housing Obligation; and

WHEREAS, The above-referenced development agreement would provide that the Affordable Housing Fee would be paid to the Successor Agency on the earlier to occur of: (a) issuance of the temporary certificate of occupancy associated with the residential portions of the Project or (b) on the date that is two years after the effective date of this Agreement (but only if the “first construction document,” as defined in Section 401 of the Planning Code and Section 107A.13.1 of the Building Code, has been issued for the Project). The fee collection
procedure set forth in Section 402 of the Planning Code and Section 107A.13 of the Building Code shall not apply to the Project, nor shall any other provision of the San Francisco Municipal Code that conflicts with the fee collection and timing described in this Section 2.1.1.

In addition, the development agreement provides that within thirty (30) days after the effective date of the Disposition and Development Agreement between OCII and Developer or an entity affiliated with Developer for Transbay Block 4, Developer shall submit to OCII an enforceable letter of credit on commercially reasonable terms for the full amount of the Affordable Housing Fee; and

WHEREAS, The Variation Approval’s change to the On-Site Requirement complies with, and facilitates OCII’s fulfillment of, the Transbay Affordable Housing Obligations by significantly increasing the amount of affordable housing that would otherwise be available at the Project under the On-Site Requirement; and

WHEREAS, On January 28, 2021, in Resolution No. 20841, the Planning Commission adopted environmental findings related to this Project in accordance with the California Environmental Quality Act, Public Resources Code, Sections 21000 et seq.; and

WHEREAS, A copy of these environmental findings are on file with the Clerk of the Board of Supervisors in File No. 201387 and are incorporated herein by reference; and

WHEREAS, The Board of Supervisors adopts these findings as its own; now, therefore, be it

RESOLVED, The Board of Supervisors, acting in its capacity as the legislative body of the Successor Agency, hereby approves the change to the On-Site Requirement in the Variation Approval.
Resolution acting in its capacity as the legislative body to the Successor Agency to the former Redevelopment Agency of the City and County of San Francisco, approving provisions of a variation decision by the Commission on Community Investment and Infrastructure, modifying the on-site affordable housing requirement for 542-550 Howard Street (Assessor's Parcel Block No. 3721, Lot Nos. 016, 135, 136, and 138, also known as Transbay Parcel F) in the Transbay Redevelopment Project Area; and adopting findings under the California Environmental Quality Act.

February 22, 2021 Land Use and Transportation Committee - CONTINUED

March 08, 2021 Land Use and Transportation Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

March 08, 2021 Land Use and Transportation Committee - REFERRED WITHOUT RECOMMENDATION AS AMENDED

March 16, 2021 Board of Supervisors - ADOPTED
   Ayes: 10 - Chan, Haney, Mandelman, Mar, Melgar, Preston, Ronen, Safai, Stefani and Walton
   Noes: 1 - Peskin

File No. 201387

I hereby certify that the foregoing Resolution was ADOPTED on 3/16/2021 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

3/26/21
Date Approved