Resolution approving and authorizing the Successor Agency to the Redevelopment Agency of the City and County of San Francisco to execute a lease of an air rights parcel at 250 Fremont Street, with T8 Housing Partners, L.P., a California limited partnership, for a less than fair market value rent of approximately $15,000 per year for 75 years, for the purpose of developing housing for very low-income households.

WHEREAS, The Successor Agency to the Redevelopment Agency of the City and County of San Francisco (the “Successor Agency”), also commonly known as the Office of Investment and Infrastructure (“OCI”), and the City desire to increase the City’s supply of affordable housing and encourage affordable housing development through financial and other forms of assistance; and

WHEREAS, The Board of Supervisors of the City adopted the Transbay Redevelopment Project Area (the “Project Area”) in order to undertake a variety of projects and activities to alleviate blighted conditions; and

WHEREAS, The air rights parcel located at 250 Fremont Street, San Francisco, California, in the Project Area (“Site” or “Property”), was part of an underutilized and unimproved lot; and

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 Section 5027.1 of the Cal. Public Resources Code); and

WHEREAS, 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”); and

WHEREAS, The City agreed, among other things, to commit the property tax revenue
from the State-owned parcels through its Redevelopment Agency to the Center; and

WHEREAS, 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 Project Area by Ordinance No. 124-05, adopted on
June 21, 2005, and by Ordinance No. 99-06, adopted on May 9, 2006 (the “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 (the “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; and

WHEREAS, 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"); and

WHEREAS, 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; and

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

WHEREAS, On June 27, 2012, AB 26 was 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 primarily codified in Sections 34161 et seq. of the California Health and Safety Code, which sections, as amended from time to time, are referred to as the "Redevelopment Dissolution Law."); 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 Section 34177.5 (a); and
WHEREAS, 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, Section 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.”)); and

WHEREAS, The Implementation Agreement and several other Transbay obligations are “enforceable obligations” requiring OCI to take the actions proposed by this Resolution - Cal. Health & Safety Code, Section 34171 (d) (1); and

WHEREAS, On April 15, 2013, the California Department of Finance (“DOF”) determined “finally and conclusively,” under Cal. Health & Safety Code, Section 34177.5 (i), that the Implementation Agreement, AB 812, and the Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement (“Pledge Agreement”) are enforceable obligations; and

WHEREAS, The Implementation Agreement and several other Transbay obligations require OCI to take the actions proposed by this Resolution; and

WHEREAS, On September 10, 2013, DOF stated that in light of its determination regarding the Transbay Final and Conclusive Enforceable Obligations, “any sale, transfer, or conveyance of property related to this project, and as outlined in the project documents, is authorized” and that “no objection to any sale, transfer and/or conveyance of property related to this project will be initiated” so long as the activities comply with the approved final and conclusive enforceable obligations; and

WHEREAS, Pursuant to the Redevelopment Dissolution Law, all of the Former Redevelopment Agency’s obligations, along with completed non-housing assets, were transferred to OCI, as Successor Agency to the Former Agency; and
WHEREAS, The Former Agency’s completed housing assets were transferred to the City, acting by and through the Mayor’s Office of Housing and Community Development (“MOHCD”); and

WHEREAS, On November 20, 2013, pursuant to the Implementation Agreement, the Former Agency issued a Request for Proposals (the “RFP”) from development teams to design and develop a high-density, mixed-income residential project on Block 8 in the Project Area; and

WHEREAS, On June 17, 2014, after a competitive selection process, the OCII Commission (the “Commission”) authorized the Executive Director to execute an Exclusive Negotiations Agreement (“ENA”) for the development of Block 8 with the development team led by Related California Urban Housing, LLC (“Related”) and Tenderloin Neighborhood Development Corporation (“TNDC”), the Office of Metropolitan Architecture as the lead architect for the tower component of the development, and Fougeron Architects as the architect for the low-rise buildings (together referred to as the “Development Team”); and

WHEREAS, Based on the ENA, OCII staff negotiated the terms of a disposition and development agreement (the “DDA”) with Transbay 8 Urban Housing, LLC and TNDC for the sale and development of Block 8; and

WHEREAS, The DDA provides for a purchase price of $71,000,000, and 554 residential units (404 market-rate units and 70 inclusionary affordable units in a 550-foot tower, 20 affordable units in an OCII funded podium building adjacent to the tower, and 60 affordable units in an OCII funded standalone podium building located east of the pedestrian paseo) (the “Initial Project”); and

WHEREAS, Based on the Department of Finance’s Final and Conclusive Determination (April 15, 2013) that the Implementation Agreement is an enforceable obligation, the Commission, on April 21, 2015, under Resolution No. 23-2015, authorized the
Executive Director to: (1) exercise an option to purchase Block 8 (Assessor's Parcel Block No. 3737, Lot Nos. 005, 012, 027), located on Folsom Street at Fremont Street, from the City and County of San Francisco pursuant to the Option Agreement; and (2) execute a Disposition and Development Agreement with Transbay 8 Urban Housing LLC, a Delaware Limited Liability Company (an affiliate of Related) and TNDC, substantially in the form approved by the City Attorney, acting as counsel to OCII, and to enter into any and all ancillary document or take any additional actions necessary to consummate the transaction with respect to the development as described in the DDA; and

WHEREAS, Following the approval of the Transbay Block 8 design the Development Team revised the building programs to a final count of 548 units including: 118 market rate condominiums, 279 market rate rentals, 71 developer-subsidized below market rate rentals ("BMR units"), the 80-unit OCII funded affordable project (the "Affordable Project") and approximately 17,000 square feet of neighborhood retail; and

WHEREAS, The Affordable Project includes 39 one-bedroom units, 16 two-bedroom units, 24 three-bedroom units and 1 one-bedroom manager’s unit for a total of 80 units; the affordable podium buildings each contain amenities and community spaces from which residents will benefit; the 85-foot podium building features two rooftop decks: a terrace on the fifth level and a larger terrace on the ninth level, and

WHEREAS, These two amenities may be freely accessed by all the residents of the Affordable Project; and

WHEREAS, The taller building includes a 1,900 square foot community room, and both the podium buildings and townhouses have dedicated laundry facilities; and

WHEREAS, T8 Housing Partners, L.P., a California limited partnership (the "Affordable Project Developer" or "Tenant") intends to develop the Affordable Project within two air rights parcels commonly referred to as Lots 4 and 5 ("the Affordable Air Rights Parcels"); and
WHEREAS, Block 8, was transferred to Transbay 8 Urban Housing LLC per the terms of the DDA; and

WHEREAS, Transbay 8 Urban Housing LLC is required pursuant to the terms of the DDA to transfer the air rights parcel (the “Air Rights Parcel”) to OCII allowing sufficient time for OCII to lease the Air Rights Parcel to T8 Housing Partners, L.P. through a long term air rights lease ("Air Rights Lease") prior to start of construction of the Affordable Project within the Air Rights Parcel; and

WHEREAS, OCII is providing the T8 Housing Partners, L.P., a California limited partnership (the “Developer”) with financial assistance in the form of a loan agreement using funds from Transbay Developer Fees, Transbay Affordable Housing Fees, and Tax Increment to leverage equity from an allocation of low-income housing tax credits and other funding sources in order to construct the Affordable Project; and

WHEREAS, The OCII Commission has approved the Air Rights Lease between OCII and the Developer pursuant to the terms of the DDA, in which OCII will lease the Property for Fifteen Thousand Dollars ($15,000) per year, in exchange for the Developer’s agreement, among other things, to operate the Affordable Project with rent levels affordable to Lower-Income Households; and

WHEREAS, A copy of the OCII Commission Resolution No. 15-2016, approved by the OCII Commission on March 15, 2016, is on file with the Clerk of the Board of Supervisors in File No. 161041, and incorporated by reference herein as though fully set forth; and

WHEREAS, OCII believes that the redevelopment of the Site, pursuant to the Air Rights Lease, and the fulfillment generally of the Air Rights Lease and the intentions set forth herein, are in the vital and best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of the applicable State and Federal laws; and
WHEREAS, Upon completion of the Affordable Project, OCII intends to transfer the affordable housing loan obligation, asset, and Air Rights Lease to the Mayor's Office of Housing and Community Development ("MOHCD") as the designated Successor Housing Agency of the City and County of San Francisco under Board Resolution 11-12, as required by Dissolution Law; and

WHEREAS, Pursuant to the Redevelopment Plan, the Board of Supervisors shall approve the sale or lease of any property acquired by OCII 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

WHEREAS, Notice of the public hearing has been published as required by Health and Safety Code, Section 33433; and

WHEREAS, OCII prepared and submitted a report in accordance with the requirements of Section 33433 of the Health and Safety Code, including a copy of the proposed Air Rights Lease, and a summary of the transaction describing the cost of the Air Rights Lease to the Agency, the value of the property interest to be conveyed, the lease price and other information and such documents were made available for public inspection; now, therefore, be it

RESOLVED, That the Board of Supervisors does hereby find and determine that the lease of the Property from OCII to the Developer (1) will provide housing for very low-income families; (2) is consistent with the Project Area Implementation Plan adopted pursuant to Community Redevelopment Law Section 33490; (3) the less than fair market value rent of approximately Fifteen Thousand Dollars ($15,000.00) per year for a term of seventy-five (75) years is necessary to achieve affordability for Very Low Income Households; and (4) the consideration to be received by OCII is not less than the fair reuse value at the use and with
the covenants and conditions and development costs authorized by the Air Rights Lease; and,
be it

FURTHER RESOLVED, That the Board of Supervisors hereby approves and
authorizes OCII to execute the Air Rights Lease with the Developer, substantially in the form
on file with the Clerk of the Board of Supervisors in File No. 161041 and lodged with OCII, and
to take any such further actions needed to execute such documents as is necessary to carry
out the Air Rights Lease; and, be it

FURTHER RESOLVED, That within thirty (30) days of the Air Rights Lease being fully
executed by all parties, OCII shall provide the final lease to the Clerk of the Board for inclusion
into the official file.
Resolution approving and authorizing the Successor Agency to the Redevelopment Agency of the City and County of San Francisco to execute a lease of an air rights parcel at 250 Fremont Street, with T8 Housing Partners, L.P., a California limited partnership, for a less than fair market value rent of approximately $15,000 per year for 75 years, for the purpose of developing housing for very low-income households.

October 26, 2016 Budget and Finance Committee - RECOMMENDED

November 01, 2016 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

File No. 161041

I hereby certify that the foregoing Resolution was ADOPTED on 11/1/2016 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved