

1 [Air Rights Lease - Mercy Housing California 62, LP - 280 Beale Street - Transbay Block 6
2 Affordable Housing]

3 **Resolution approving and authorizing the Successor Agency to the Redevelopment**
4 **Agency of the City and County of San Francisco to execute an Air Rights Lease of a**
5 **parcel at 280 Beale Street, with Mercy Housing California 62, LP, a California limited**
6 **partnership, for a term of 75 years commencing on Board approval, for the purpose of**
7 **developing housing for very low-income households.**

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9 WHEREAS, The Successor Agency to the Redevelopment Agency of the City and
10 County of San Francisco (the "Successor Agency," also commonly known as the Office of
11 Investment and Infrastructure (OCII) and the City desire to increase the City's supply of
12 affordable housing and encourage affordable housing development through financial and
13 other forms of assistance; and

14 WHEREAS, The Board of Supervisors of the City adopted the Transbay
15 Redevelopment Project Area (the "Project Area") in order to undertake a variety of projects
16 and activities to alleviate blighting conditions; and

17 WHEREAS, The air rights parcel located at 280 Beale Street, San Francisco,
18 California, in the Project Area ("Site" or "Property"), was part of an underutilized and
19 unimproved lot; and

20 WHEREAS, The California Legislature in 2003 enacted Assembly Bill 812 ("AB 812")
21 authorizing the demolition of the historic Transbay Terminal building and the construction of
22 the new Transbay Transit Center (TTC) (Stat. 2003, Chapter 99, codified at Cal. Public
23 Resources Code, Section 5027.1). AB 812 also mandated that 25% of the residential units
24 developed in the area around the Center "shall be available to" low income households, and
25 an additional 10% "shall be available to" moderate income households if the City and County

1 of San Francisco (“City”) adopted a redevelopment plan providing for the financing of the
2 Center; and

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

11 WHEREAS, The Redevelopment Plan provided for the financing of the TTC and
12 established a program for the Former Agency to redevelop and revitalize the blighted Project
13 Area; and

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

21 WHEREAS, In 2008, the City, the Former Agency and the TJPA entered into an
22 agreement that granted options to the Former Agency to acquire the State-owned parcels,
23 arrange for development of the parcels, and distribute the net tax increment to the TJPA to
24 use for the Center (“Option Agreement”). The Option Agreement provided the means by
25 which the Former Agency could fulfill its obligations under the Implementation Agreement to

1 prepare and sell the State-owned parcels, including Blocks 2-12 and Parcel F (Section 2.1 of
2 the Option Agreement at p. 4); and

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

10 WHEREAS, On February 1, 2012, the Former Redevelopment Agency was dissolved
11 pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of
12 2011-12, First Extraordinary Session) (“AB 26”), codified in relevant part in California’s Health
13 and Safety Code Sections 34161 – 34168 and upheld by the California Supreme Court in
14 California Redevelopment Assoc. v. Matosantos, No. S194861 (Dec. 29, 2011). On June 27,
15 2012, AB 26 was subsequently amended in part by California State Assembly Bill No. 1484
16 (Chapter 26, Statutes of 2011-12) (“AB 1484”). (Together, AB 26 and AB 1484 are referred to
17 as the “Redevelopment Dissolution Law.”); and

18 WHEREAS, Pursuant to the Redevelopment Dissolution Law, all of the Former
19 Redevelopment Agency’s assets (other than certain housing assets) and obligations were
20 transferred to the Office of Community Investment and Infrastructure (“OCII”), as Successor
21 Agency to the Former Agency; and

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

1 obligations. The Implementation Agreement and several other Transbay obligations require
2 OCII to take the actions proposed by this Resolution; and

3 WHEREAS, Golub/Mercy has agreed that its acquisition and development of Blocks
4 6/7 shall provide a purchase price of \$30,000,000 to be paid by Golub), construction of 556
5 residential units (409 market-rate units and 147 stand-alone affordable family units at 50
6 percent of area median income), and payment of a \$24.3 million affordable housing fee by
7 Golub to fund all of the affordable housing units on Block 6 and a portion of the affordable
8 housing units on Block 7. The OCII-approved disposition and development agreement
9 (“DDA”) with Golub/Mercy provides for the sale and development of Block 6 with 409 market-
10 rate units, 70 affordable units, shared open space, and a shared underground parking garage.
11 The DDA, however, does not cover the development of Block 7, which includes 77 affordable
12 units, a child care facility and shared open space, because it will be constructed at a future
13 date by Mercy, when additional affordable housing funding becomes available; and

14 WHEREAS, On April 16, 2013, the Commission on Community Investment and
15 Infrastructure approved the DDA and the exercise of OCII’s option to acquire Blocks 6/7 from
16 the TJPA pursuant to the Option Agreement; and

17 WHEREAS, Block 6, a TJPA-owned parcel, was transferred to OCII, located at 280
18 Beale Street, the northeast corner of Folsom and First Streets, San Francisco, California, in
19 the Project Area, is an underutilized lot currently improved by a surface parking lot; and

20 WHEREAS, By Resolution No 330-13 the Board of Supervisors of the City and County
21 of San Francisco determined that the sale of the Property from OCII to Golub Real Estate
22 Corporation, an Illinois Corporation: 1) includes consideration to be received by OCII that is
23 not less than the fair reuse value at the use and with the covenants and conditions and
24 developments costs authorized by the DDA; 2) includes a purchase price of \$30,000,000,
25 which was the highest price achieved through a competitive request for proposals process

1 based on the development permitted on the site and the affordable housing requirements of
2 the Redevelopment Plan, and which will be deposited into a Trust Account maintained by the
3 TJPA for use to help pay the cost of constructing the new Transbay Transit Center; 3) will
4 provide 70 units affordable family housing for households with incomes at or below 50 percent
5 of area median income; 4) will provide \$24.3 million in funding for affordable housing, of which
6 approximately \$14 million will be used to subsidize the 70 affordable family units to be
7 developed on the Property and \$10.3 million will be used to help subsidize the 77 affordable
8 family units proposed for development on Block 7; and 5) will assist in the elimination of blight
9 by converting a underutilized parking lot into a high-density, mixed-use, mixed-income
10 residential development; and

11 WHEREAS, Block 6, was transferred to Golub per the terms of the DDA; and

12 WHEREAS, Golub is required pursuant to the terms of the DDA to transfer the air
13 rights parcel (the "Air Rights Parcel") that the affordable component of Block 6 will be built
14 within to OCII allowing sufficient time for OCII to lease the Air Rights Parcel to Mercy through
15 a long term air rights lease ("Air Rights Lease") prior to start of construction of the Affordable
16 Project; and

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

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

24 WHEREAS, OCII is providing the Mercy Housing 62, LP, a California limited
25 partnership (the "Developer") with financial assistance from the affordable housing fee paid by

1 Golub to leverage equity from an allocation of low-income housing tax credits and other
2 funding sources in order to construct approximately 70 (including one manager's unit) units of
3 affordable housing, and ground floor retail (the "Project"); and

4 WHEREAS, The OCII Commission has approved the Air Rights Lease between OCII
5 and the Developer pursuant to the terms of the DDA, in which OCII will lease the Property for
6 Fifteen Thousand Dollars (\$15,000.00) per year, in exchange for the Developer's agreement,
7 among other things, to operate the Project with rent levels affordable to Lower Income
8 Households. A copy of final draft of the OCII Commission Resolution No. 29-2013, scheduled
9 to be heard by the OCII Commission on April 15, 2014, is on file with the Clerk of the Board of
10 Supervisors in File No. 140293, and incorporated by reference herein as though fully set forth;
11 and

12 WHEREAS, OCII believes that the redevelopment of the Site, pursuant to the Air
13 Rights Lease, and the fulfillment generally of the Air Rights Lease and the intentions set forth
14 herein, are in the vital and best interests of the City and the health, safety, morals and welfare
15 of its residents, and in accord with the public purposes and provisions of the applicable State
16 and Federal laws, and

17 WHEREAS, Upon completion of the Project, OCII intends to transfer the affordable
18 housing loan obligation, asset, and Air Rights Lease to the Mayor's Office of Housing and
19 Community Development (MOHCD) as the designated Successor Housing Agency of the City
20 and County of San Francisco under Board Resolution 11-12, as required by Dissolution Law,
21 and

22 WHEREAS, Pursuant to the Redevelopment Plan, the Board of Supervisors shall
23 approve the sale or lease of any property acquired by OCII pursuant to the Option Agreement
24 in a manner consistent with the standards and procedures that govern the Agency's
25 disposition of property acquired with tax increment moneys and that appear in Section 33433

1 of the California Community Redevelopment Law; and

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

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

9 RESOLVED, That the Board of Supervisors does hereby find and determine that the
10 lease of the Property from OCII to the Developer (1) will provide housing for very low-income
11 families; (2) is consistent with the former Redevelopment Agency's citywide Tax Increment
12 Affordable Housing Program, pursuant to Community Redevelopment Law Section 33342.2;
13 (3) the less than fair market value rent of approximately Fifteen Thousand Dollars
14 (\$15,000.00) per year for a term of seventy-five (75) years is necessary to achieve
15 affordability for Very Low Income Households; and (4) the consideration to be received by
16 OCII is not less than the fair reuse value at the use and with the covenants and conditions and
17 development costs authorized by the Air Rights Lease; and, be it

18 FURTHER RESOLVED, That the Board of Supervisors hereby approves and
19 authorizes OCII to execute the Air Rights Lease with the Developer, substantially in the form
20 on file with the Clerk of the Board of Supervisors in File No. 140293 and lodged with the OCII,
21 and to take any such further actions needed to execute such documents as is necessary to
22 carry out the Air Rights Lease.

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1 APPROVED AS TO FORM:

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3 DENNIS J. HERRERA

4 City Attorney

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8 By: _____

9 HEIDI J. GEWERTZ

10 Deputy City Attorney

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