

1 [Consent to Provisions of a Variation Decision - On-Site Affordable Housing Requirement -  
2 181 Fremont Street - Transbay Redevelopment Project Area]

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3 **Resolution of the Board of Supervisors, acting in its capacity as the legislative body to**  
4 **the Successor Agency to the former Redevelopment Agency of the City and County of**  
5 **San Francisco, approving provisions of a variation decision by the Commission on**  
6 **Community Investment and Infrastructure, modifying the on-site affordable housing**  
7 **requirement for 181 Fremont Street in the Transbay Redevelopment Project Area.**

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

13 WHEREAS, To implement the Redevelopment Dissolution Law, the Board of  
14 Supervisors initially adopted Resolution No. 11-12 (Jan. 26, 2012) and subsequently adopted  
15 Ordinance No. 215-12 (Oct. 4, 2012), which established a Successor Agency Commission  
16 and delegated to the Successor Agency to the Redevelopment Agency of the City and County  
17 of San Francisco (commonly known as the Office of Community Investment and  
18 Infrastructure) (the “Successor Agency” or “OCII”) the authority, among others, to implement,  
19 modify, enforce and complete the surviving redevelopment projects, including certain Major  
20 Approved Development Projects, Retained Housing Obligations, and all other enforceable  
21 obligations except for actions decreasing property tax revenue for affordable housing and  
22 material changes to affordable housing obligations, which must be approved by the Board of  
23 Supervisors; and

24 WHEREAS, California Public Resources Code, Section 5027.1 requires that 25% of  
25 the residential units developed in the Transbay Redevelopment Project Area (“Project Area”)

1 shall be available to low income households and that an additional 10% shall be available to  
2 moderate income households (the “Transbay Affordable Housing Obligation”), which  
3 obligation has been incorporated into the Redevelopment Plan for the Transbay  
4 Redevelopment Project, approved by Ordinance No. 124-05 (June 21, 2005) and by  
5 Ordinance No. 99-06 (May 9, 2006), and in the Implementation Agreement, dated as of  
6 January 20, 2005, between the former Redevelopment Agency of the City and County of San  
7 Francisco and the Transbay Joint Powers Authority and has been finally and conclusively  
8 determined by the California Department of Finance to be an enforceable obligation under  
9 Redevelopment Dissolution Law; and

10 WHEREAS, To fulfill the Transbay Affordable Housing Obligation, both the  
11 Redevelopment Plan and the Planning Code require that all housing developments within the  
12 Project Area contain a minimum of 15% on-site affordable housing (the “On-Site  
13 Requirement”); and

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

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

20 WHEREAS, On June 5, 2014, OCII received a request from the developer of 181  
21 Fremont Street (“Developer”) for a variation from the On-Site Requirement; and

22 WHEREAS, The Developer proposed removing the affordability restrictions from the  
23 approximately 11 affordable units on-site and converting them to market rate units (the  
24 “Variation Request”); and

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1           WHEREAS, The Variation Request proposes that the Successor Agency grant a  
2 variation on the condition that the Developer contribute \$13,850,000 toward the development  
3 of affordable housing in the Project Area, which is significantly higher than the amount of the  
4 affordable housing fee that would be permitted under the City’s Inclusionary Affordable  
5 Housing Program if this Project were located outside of the Project Area; and

6           WHEREAS, Payment of this fee would ensure that the conversion of the approximately  
7 11 inclusionary units to market rate units does not adversely affect the Successor Agency’s  
8 compliance with the Transbay Affordable Housing Obligation; and

9           WHEREAS, OCII estimates that the Affordable Housing Fee may subsidize  
10 approximately 69 affordable housing units on publicly owned parcels in the Project Area in  
11 contrast to the up to 11 units that would be produced under the On-Site Requirement and  
12 accordingly the Affordable Housing Fee will allow OCII to better fulfill the requirements of the  
13 Transbay Affordable Housing Obligation; and

14           WHEREAS, In addition, the 69 affordable housing units would provide deeper  
15 affordability levels (50% of AMI) compared to the levels (100% of AMI) that would be achieved  
16 through the application of the On-Site Requirement for up to 11 units; and

17           WHEREAS, On October 14, 2014, after holding a duly notice public hearing and  
18 consistent with its authority under Redevelopment Dissolution Law and Ordinance 215-12, the  
19 Successor Agency Commission conditionally approved, by Resolution No. 80-2014, a  
20 variation to the Transbay Redevelopment Plan’s On-Site Affordable Housing Requirement as  
21 it applies the mixed use project at 181 Fremont Street, subject to approval by the Board of  
22 Supervisors in its capacity as legislative body for the Successor Agency (the “Variation  
23 Approval”); OCII Resolution No. 80-2014 is on file with the Clerk of the Board of Supervisors  
24 in File No. 141022, and incorporated in this Resolution by reference; and

1           WHEREAS, The San Francisco Planning Commission and Board of Supervisors will  
2 consider approving a development agreement with the Developer that would be consistent  
3 with the Variation Approval and this Resolution, by providing relief from the on-site affordable  
4 housing requirement in Planning Code, Section 249.28, and would require the Developer to  
5 pay an affordable housing fee of \$13,850,000 to the City for payment to the Successor  
6 Agency for its use in fulfilling the Transbay Affordable Housing Obligation; and

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

11           WHEREAS, Consent to the modification of the On-Site Requirement by the Board of  
12 Supervisors does not compel any direct or indirect physical changes in the Project that the  
13 Planning Commission previously approved; rather, this approval merely authorizes the  
14 Commission on Community Investment and Infrastructure, Planning Commission and Board  
15 of Supervisors to remove the On-Site Requirement from the Project and to accept affordable  
16 housing funding; thus, this approval does not constitute a project under the California  
17 Environmental Quality Act (“CEQA”), CEQA Guidelines Section 15378 (b)(4) because it  
18 merely creates a government funding mechanism that does not involve any commitment to a  
19 specific project; now, therefore, be it

20           RESOLVED, By this Board of Supervisors of the City and County of San Francisco,  
21 acting in its capacity as the legislative body of the Successor Agency, that the change to the  
22 On-Site Requirement in the Variation Approval is hereby approved.

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