

1 [Air Rights Lease of Successor Agency property for 250 Fremont Street Transbay Block 8
2 Affordable Housing - \$15,000 per Year]

3 **Resolution approving and authorizing the Successor Agency to the Redevelopment**
4 **Agency of the City and County of San Francisco to execute a lease of an air rights**
5 **parcel at 250 Fremont Street, with T8 Housing Partners, L.P., a California limited**
6 **partnership, for a less than fair market value rent of approximately \$15,000 per year for**
7 **75 years, for the purpose of 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 blighted conditions; and

17 WHEREAS, The air rights parcel located at 250 Fremont 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 Section 5027.1
23 of the Cal. Public Resources Code); and

24 WHEREAS, AB 812 also mandated that 25% of the residential units developed in the
25 area around the Center “shall be available to” low income households, and an additional 10%

1 “shall be available to” moderate income households if the City and County of San Francisco
2 (“City”) adopted a redevelopment plan providing for the financing of the Center; and

3 WHEREAS, In 2003, in an agreement with the Transbay Joint Powers Authority
4 (“TJPA”) and the City, the State agreed to transfer approximately 10 acres of State-owned
5 property (“State-owned parcels”) in and around the then-existing Transbay Terminal to the
6 City and the TJPA, which would then sell the State-owned parcels and use the revenues from
7 the sales to finance the Center (“Cooperative Agreement”); and

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

10 WHEREAS, Under the Cooperative Agreement, the State relied on tax increment
11 financing under a redevelopment plan to improve and sell the parcels; and

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

18 WHEREAS, In 2006, the TJPA and the Former Agency executed an agreement
19 (“Implementation Agreement”), which required the Former Agency to take the lead role in
20 facilitating the development of the State-owned parcels; and

21 WHEREAS, Specifically, the Implementation Agreement required the Former Agency
22 to: (1) prepare and sell the State-owned parcels to third parties, (2) deposit the sale proceeds
23 into a trust account to help the TJPA pay the cost of constructing the TTC, (3) implement the
24 Redevelopment Plan to enhance the financial feasibility of the Project, and (4) fund the state-
25 mandated affordable housing program; and

1 WHEREAS, In 2008, the City, the Former Agency and the TJPA entered into an
2 agreement that granted options to the Former Agency to acquire the State-owned parcels,
3 arrange for development of the parcels, and distribute the net tax increment to the TJPA to
4 use for the Center (“Option Agreement”); and

5 WHEREAS, The Option Agreement provided the means by which the Former Agency
6 could fulfill its obligations under the Implementation Agreement to prepare and sell the State-
7 owned parcels; and

8 WHEREAS, The Option Agreement granted to the Former Agency “the exclusive and
9 irrevocable option to purchase” the former State-owned parcels in the Project Area that are
10 programmed for development, which are listed in the Option Agreement, including Blocks 2-
11 12 and Parcel F (Section 2.1 of the Option Agreement at p. 4); and

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

17 WHEREAS, On June 27, 2012, AB 26 was amended in part by California State
18 Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) (“AB 1484”); (together, AB 26 and
19 AB 1484 are primarily codified in Sections 34161 et seq. of the California Health and Safety
20 Code, which sections, as amended from time to time, are referred to as the “Redevelopment
21 Dissolution Law.”); and

22 WHEREAS, Redevelopment Dissolution Law authorizes successor agencies to enter
23 into new agreements if they are “in compliance with an enforceable obligation that existed
24 prior to June 28, 2011” - Cal. Health & Safety Code Section 34177.5 (a); and

1 WHEREAS, Under this limited authority, a successor agency may enter into contracts if
2 a pre-existing enforceable obligation requires that action (see also Cal. Health & Safety Code,
3 Section 34167 (f) (providing that the Redevelopment Dissolution Law does not interfere with
4 an agency’s authority under enforceable obligations to “enforce existing covenants and
5 obligations, or . . . perform its obligation.”); and

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

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

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

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

22 WHEREAS, Pursuant to the Redevelopment Dissolution Law, all of the Former
23 Redevelopment Agency’s obligations, along with completed non-housing assets, were
24 transferred to OCII, as Successor Agency to the Former Agency; and

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1 WHEREAS, The Former Agency’s completed housing assets were transferred to the
2 City, acting by and through the Mayor’s Office of Housing and Community Development
3 (“MOHCD”); and

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

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

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

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

23 WHEREAS, Based on the Department of Finance’s Final and Conclusive
24 Determination (April 15, 2013) that the Implementation Agreement is an enforceable
25 obligation, the Commission, on April 21, 2015, under Resolution No. 23-2015, authorized the

1 Executive Director to: (1) exercise an option to purchase Block 8 (Assessor's Parcel Block No.
2 3737, Lot Nos. 005, 012, 027), located on Folsom Street at Fremont Street, from the City and
3 County of San Francisco pursuant to the Option Agreement; and (2) execute a Disposition
4 and Development Agreement with Transbay 8 Urban Housing LLC, a Delaware Limited
5 Liability Company (an affiliate of Related) and TNDC, substantially in the form approved by
6 the City Attorney, acting as counsel to OCII, and to enter into any and all ancillary document
7 or take any additional actions necessary to consummate the transaction with respect to the
8 development as described in the DDA; and

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

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

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

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

23 WHEREAS, T8 Housing Partners, L.P., a California limited partnership (the “Affordable
24 Project Developer” or “Tenant”) intends to develop the Affordable Project within two air rights
25 parcels commonly referred to as Lots 4 and 5 (“the Affordable Air Rights Parcels”); and

1 WHEREAS, Block 8, was transferred to Transbay 8 Urban Housing LLC per the terms
2 of the DDA; and

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

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

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

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

21 WHEREAS, OCII believes that the redevelopment of the Site, pursuant to the Air
22 Rights Lease, and the fulfillment generally of the Air Rights Lease and the intentions set forth
23 herein, are in the vital and best interests of the City and the health, safety, morals and welfare
24 of its residents, and in accord with the public purposes and provisions of the applicable State
25 and Federal laws; and

1 WHEREAS, Upon completion of the Affordable Project, OCII intends to transfer the
2 affordable housing loan obligation, asset, and Air Rights Lease to the Mayor’s Office of
3 Housing and Community Development (“MOHCD”) as the designated Successor Housing
4 Agency of the City and County of San Francisco under Board Resolution 11-12, as required
5 by Dissolution Law; and

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

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

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

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

1 the covenants and conditions and development costs authorized by the Air Rights Lease; and,
2 be it

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

8 FURTHER RESOLVED, That within thirty (30) days of the Air Rights Lease being fully
9 executed by all parties, OCII shall provide the final lease to the Clerk of the Board for inclusion
10 into the official file.

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