

1 [Consent to Provisions of a Variation Decision - On-Site Affordable Housing Requirement -
2 542-550 Howard Street (Transbay Parcel F) - Transbay Redevelopment Project Area]

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

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

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

1 must be approved by the Board of Supervisors; and

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

13 WHEREAS, To fulfill the Transbay Affordable Housing Obligation, both the
14 Redevelopment Plan and the Planning Code require that all new housing developments within
15 the Project Area contain on-site affordable housing, Redevelopment Plan, Section 4.9.3.
16 (requiring a minimum of 15 percent on-site affordable housing; Planning Code Sections
17 249.28 (b) (6) and 415.6 (requiring a minimum of 20 percent) (the “On-Site Requirement”);
18 and

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

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

25 WHEREAS, On December 17, 2020, OCII received a request from the developer of

1 542-550 Howard Street (the “Project”) (Assessor’s Parcel Block No. 3721, Lot Nos. 016, 135,
2 136, and 138, also known as Transbay Parcel F) (“Developer”) for a variation from the On-Site
3 Requirement; and

4 WHEREAS, The Developer proposed removing the affordability restrictions from the
5 approximately 33 affordable units on-site in the Project approved by the Planning Commission
6 and converting them to market rate units (the “Variation Request”); and

7 WHEREAS, The Variation Request proposes that the Successor Agency grant a
8 variation on the condition that the Developer contribute to the Successor Agency an amount
9 that is equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section
10 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-
11 Site Requirement (based on the published fee schedule applicable to calendar year 2021)
12 toward the development of affordable housing in the Project Area (the “Affordable Housing
13 Fee”), which amount is significantly higher than the amount of the affordable housing fee that
14 would be permitted under the City’s Inclusionary Affordable Housing Program if this Project
15 were located outside of the Project Area; and

16
17 WHEREAS, Payment of this fee would ensure that the conversion of the approximately
18 33 inclusionary units to market rate units in the Project does not adversely affect the
19 Successor Agency’s compliance with the Transbay Affordable Housing Obligation; and

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

1 fulfill the requirements of the Transbay Affordable Housing Obligation; and

2 WHEREAS, Authorizing the payment of an in-lieu fee instead of constructing on-site
3 affordable inclusionary units is a material change to OCII’s affordable housing obligations and
4 thus requires approval by the Board of Supervisors under Section 6 (a) of Ordinance No. 215-
5 12 (Oct. 4, 2012); and

6 WHEREAS, On January 19 2021, after holding a duly noticed public hearing and
7 consistent with its authority under Redevelopment Dissolution Law and Ordinance No. 215-
8 12, the Successor Agency Commission conditionally approved, by CCII Resolution No. 02-
9 2021, a variation to the Transbay Redevelopment Plan’s On-Site Affordable Housing
10 Requirement as it applies to the Project, subject to approval by the Board of Supervisors in its
11 capacity as legislative body for the Successor Agency (the “Variation Approval”); CCII
12 Resolution No. 20-2021 is on file with the Clerk of the Board of Supervisors in File No.
13 201386, and incorporated in this Resolution by reference; and

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

20 WHEREAS, The above-referenced development agreement would provide that the
21 Affordable Housing Fee would be paid to the Successor Agency on the earlier to occur of: (a)
22 issuance of the temporary certificate of occupancy associated with the residential portions of
23 the Project or (b) on the date that is two years after the effective date of this Agreement (but
24 only if the “first construction document,” as defined in Section 401 of the Planning Code and
25 Section 107A.13.1 of the Building Code, has been issued for the Project). The fee collection

1 procedure set forth in Section 402 of the Planning Code and Section 107A.13 of the Building
2 Code shall not apply to the Project, nor shall any other provision of the San Francisco
3 Municipal Code that conflicts with the fee collection and timing described in this Section 2.1.1
4 In addition, the development agreement provides that within thirty (30) days after the effective
5 date of the Disposition and Development Agreement between OCII and Developer or an entity
6 affiliated with Developer for Transbay Block 4, Developer shall submit to OCII an enforceable
7 letter of credit on commercially reasonable terms for the full amount of the Affordable Housing
8 Fee; and

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

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

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

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

20 RESOLVED, The Board of Supervisors, acting in its capacity as the legislative body of
21 the Successor Agency, hereby approves the change to the On-Site Requirement in the
22 Variation Approval.

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