

**COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE**

**RESOLUTION NO. 14 – 2016**

*Adopted March 15, 2016*

**AUTHORIZING A 75-YEAR GROUND LEASE FOR THE CONSTRUCTION OF 120 UNITS (INCLUDING ONE MANAGER’S UNIT) OF VERY LOW-INCOME AFFORDABLE FAMILY RENTAL HOUSING DEVELOPMENT AT TRANSBAY BLOCK 7 AT 255 FREMONT STREET / 222 BEALE STREET WITH MERCY HOUSING CALIFORNIA 64, L.P., A CALIFORNIA LIMITED PARTNERSHIP AND ADOPTING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; TRANSBAY REDEVELOPMENT PROJECT AREA**

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 (the “TTC”) (Stat. 2003, Chapter 99, codified at § 5027.1 of the Cal. Public Resources Code). 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 (the “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 (the “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 (the “Cooperative Agreement”). The City agreed, among other things, to commit property tax revenue through its Redevelopment Agency to the Center. 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 Transbay Redevelopment Project Area (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. 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 (the “Option Agreement”). 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. 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 July 6, 2011, 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 Blocks 6/7 in the Project Area. On December 6, 2011, after a competitive selection process, the Former Agency Commission authorized staff to enter into negotiations for the development of Blocks 6/7 with the development team lead by Golub Real Estate Corp. (“Golub”) and Mercy Housing California (“Mercy”), along with Solomon Cordwell and Buenz (“SCB”) as the lead architect for the market-rate component of the development and Santos Prescott and Associates (“Santos Prescott”), a small business enterprise, as the architect for the affordable component (the “Block 6 Affordable Project”); 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). On June 27, 2012, AB 26 was subsequently 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 referred to as the “Redevelopment Dissolution Law.”); and,

WHEREAS, Pursuant to the Redevelopment Dissolution Law, all of the Former Redevelopment Agency’s obligations were transferred to the Office of Community Investment and Infrastructure (“OCII”), along with completed non-housing assets as Successor Agency to the Former Agency. 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, 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 § 34177.5 (a). 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 § 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.”). The Implementation Agreement and several other Transbay obligations are “enforceable obligations” requiring OCII to take the actions proposed by this Resolution. Cal. Health & Safety Code § 34171 (d) (1); and,

WHEREAS, On April 15, 2013 the California Department of Finance (“DOF”) approved the OCII’s request that DOF determine “finally and conclusively” that the Implementation Agreement, AB 812 and the Pledge Agreement are enforceable obligations that will not require additional DOF review in the future. On September 10, 2013, DOF interpreted this Final and Conclusive Determination as meaning that “any sale, transfer, or conveyance of property related to this project, and as outlined in the project documents, is authorized” and further verified that it would not initiate an “objection to any sale, transfer and/or conveyance of property related to this project.” Email, J. Howard, DOF Assist. Program Budget Manager, to T. Bohee, OCII Executive Director (Sep. 10, 2013, 09:17 AM). The Department of Finance subsequently approved OCII’s Long-Range Property Management Plan on December 7, 2015 the California Department of Finance approved OCII’s Long-Range Property Management Plan, which provides for the disposition of the Agency parcels in the Transbay Redevelopment Project Area for the purposes of developing affordable housing. Accordingly, under Ordinance 215-12 and Dissolution Law, OCII has the obligation and authority to enter into this Agreement; and,

WHEREAS, The original proposal from Golub/Mercy included a purchase price of \$30,000,000, 545 residential units (409 market-rate units, including 61 inclusionary units and 136 stand-alone affordable units), and a requested subsidy from the Former Agency for the stand-alone affordable units of approximately \$200,000 per unit. However, due to the dissolution of the Former Agency on February 1, 2012, and the challenges that created for funding the affordable component of the development, the original proposal from Golub/Mercy was revised; and,

WHEREAS, Under the revised proposal, Blocks 6/7 included a total of 556 residential units, as well as ground-floor retail, shared open space and underground parking. Based on this revised proposal, OCII staff negotiated the terms of a disposition and development agreement (the “DDA”) with Golub/Mercy for the sale of Blocks 6/7 and the development of Block 6 with 409 market-rate units, 70 affordable units, shared open space, and an underground parking garage. Instead of providing inclusionary units in the market-rate component of the project, Golub paid an affordable housing fee (“Affordable Housing Fee”) of \$24,300,000 to OCII to provide funding for all of the anticipated Former Agency subsidy for the

Block 6 Affordable Project and a portion of the Former Agency subsidy for Block 7. The DDA does not cover the development of Block 7; and,

WHEREAS, On April 16, 2013, the DDA was approved by the Commission on Community Investment and Infrastructure (“Commission”) and executed. Pursuant to the terms of the DDA, Mercy developed the Block 6 Affordable Project. As part of the negotiated terms of the DDA, Golub paid directly for any predevelopment costs for the affordable components, including up to \$2,000,000 for the Block 6 Affordable Project plus up to \$1,000,000 for the Transbay Block 7 Project, plus the costs for the underground parking structure as part of the Affordable Housing Fee once approved by MOHCD/OCII staff. These costs were all incurred after the selection of Golub and Mercy by the Former Agency Commission in December 2011; and,

WHEREAS, In October, 2013 Golub completed the purchase of Block 6 and paid the Affordable Housing Fee. Transbay Block 7 remained under OCII ownership and development rights to construct the Transbay Block 7 Project will be delivered to the Tenant through this Ground Lease presented for approval; and,

WHEREAS, In March 2014, Mercy proposed a revised plan for Transbay Block 7 that added 8 units and maintained OCII subsidy at \$200,000 per unit for a total of 85-units comprised of 34 one-bedroom units, 32 two-bedroom units, 18 three-bedroom units and 1 manager’s unit, a child care facility and open space; and,

WHEREAS, On August 19, 2014 the Commission approved Mercy’s revised Schematic Design proposal to add 8 units increasing the total unit count for Block 7 to 85 units and approved a predevelopment loan agreement in the amount of \$3,382,523 for activities related to the development and construction of the Transbay 7 Project; and,

WHEREAS, In April 2015, Mercy proposed to add 35 more units to the Transbay Block 7 Project by altering the building’s structural system to achieve greater economies of scale. The resultant change in construction scope required an increase of OCII subsidy to \$213,000 per unit. OCII staff determined that increasing the per unit subsidy from \$200,000 per unit to \$213,000 per unit was warranted given the additional 35 affordable units that will subsequently be delivered and which will contribute to its meeting the overall 35% mandate in the Project Area. The final design for the Transbay Block 7 Project is a 120-unit family project serving households earning no more than 50% of the Area Median Income and comprised of 53 one-bedroom units, 43 two-bedroom units, 23 three-bedroom units and 1 manager’s unit, a child care facility and open space; and,

WHEREAS, On July 31, 2015, the Citywide Affordable Housing Loan Committee approved a loan to the Tenant for the development of the Transbay Block 7 Project for an amount of \$22,177,477 and not to exceed \$25,560,000 (the “OCII Loan”). The OCII Loan includes \$3,382,523 of predevelopment expenses (the “Predevelopment Amount”) paid by the Affordable Housing Fee and approved by

MOHCD and OCII staff as the previously disbursed portion of the loan amount; and,

WHEREAS, On August 18, 2015, the OCII Commission approved the OCII Loan through Resolution No. 51-2015 and on the same date approved the final Schematic Design through Resolution No. 50-2015 and,

WHEREAS, On February 16, 2016, the OCII Commission approved a third revision to the Schematic Design granting a variation of nine inches to the minimum six-foot townhouse setback on Clementina Street for seismic safety purposes through Resolution No. 06-2016 and,

WHEREAS, The OCII Loan requires, among other things, that Mercy submit a marketing plan to OCII and MOHCD that addresses how it intends to affirmatively market units in the Transbay Block 7 Affordable Project to Certificate of Preference (“COP”) holders and also requires that Mercy, either through a third-party Access to Housing counseling organization as approved by MOHCD or on its own, conduct outreach to COP Holders, including making “support services staff available to provide assistance throughout the application process, as it may be needed, with the goal of maximizing COP . . . participation to the extent possible” and ensuring that COP holders “are aware that such assistance is available.” (“COP Outreach Obligation”) *See* Section 6 of OCII Loan Agreement and Exhibit S to OCII Loan Agreement at section entitled “Outreach to Certificate Holders; and

WHEREAS, Mercy is now requesting to enter into a seventy-five (75) year ground lease (with one twenty-four (24) year option) in connection with the development and operation of the Transbay Block 7 Project (the “Ground Lease Agreement”); and

WHEREAS, The Ground Lease Agreement will have an Annual Rent equal to 10% of the unrestricted fair market value of the Project site, which is consistent with the provisions of the California Health and Safety Code Section 33433, or One Million, Eight Hundred and Seventy Five Thousand Dollars (\$1,875,000), composed of Base Rent equal to Fifteen Thousand Dollars (\$15,000) and Residual Rent equal to Annual Rent minus Base Rent or, One Million, Eight Hundred and Sixty Thousand Dollars (\$1,860,000). Base Rent will be due every year from the Tenant and will accrue if unpaid. Residual Rent will be paid annually from any available surplus cash proceeds generated from the operations of the Project; and

WHEREAS, The Transbay Redevelopment Plan requires that the San Francisco Board of Supervisors approves the sale or lease of any property acquired by the Former Agency or OCII, as Successor to the Former Agency, pursuant to the Option Agreement for the Purchase and Sale of Real Property, in a manner consistent with the standards and procedures that govern the disposition of property acquired with tax increment funds and that appear in Section 33433 of the California Health and Safety Code. As such the Ground Lease will be introduced to the Board of Supervisors on March 22, 2016, along with the request for the issuance of tax exempt bonds which will aid in the Transbay Block 7 Project financing; and,

- WHEREAS, Upon completion of the Transbay Block 7 Project, OCII intends to transfer the affordable housing loan obligation, asset, and ground lease to 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, On April 20, 2004, the Former Agency Commission adopted Resolution No. 45-2004, certifying the Final Environmental Impact Statement/Environmental Impact Report (the “Final EIS/EIR”) for the Transbay Redevelopment Project (the “Project”), and on January 25, 2005 adopted Resolution No. 11-2005, adopting findings under the California Environmental Quality Act (“CEQA”), a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program in connection with the adoption of the Redevelopment Plan. The Board of Supervisors and the City Planning Commission adopted similar findings. Because the Final EIS/EIR includes evaluation of the new Transbay Transit Center, the TJPA also adopted environmental findings.
- WHEREAS, The Final EIS/EIR includes eight addenda, the first seven of which cover changes to the transportation infrastructure related to the Transbay Terminal and Caltrain Downtown Rail Extension (“DTX”) portions of the EIS/EIR. The eighth addresses a proposed increase in tower height on Transbay Block 1; and
- WHEREAS, In adopting each Addendum, the lead agencies determined that modifications to the Project would not require subsequent environmental review and would not require major revisions to the Final EIS/EIR; and,
- WHEREAS, On December 28, 2015, the Federal Transit Administration, in conjunction with the Federal Railroad Administration and the Transbay Joint Power Authority, published a Draft Supplemental Environmental Impact Statement / Environmental Impact Report to EIS/EIR (“Draft SEIS/SEIR”) to evaluate refinements to the Caltrain Downtown Rail Extension (“DTX”) component of the Transbay Program, as well as other transportation improvements and development opportunities associated with the Transbay Program. The Draft SEIS/SEIR does not contain information that would alter the determination not to require a Subsequent or Supplemental EIR in connection with the Proposed Ground Lease pursuant to CEQA Guidelines in Section 15164.
- WHEREAS, The Final EIS/EIR is a program EIR under CEQA Guidelines Section 15168 and a redevelopment plan EIR under CEQA Guidelines Section 15180. The Final EIS/EIR is also a project EIR under CEQA Guidelines Section 15161 for certain structures and facilities, including the Temporary Terminal. The development of 120 units of affordable housing including one manager’s unit on Transbay Block 7 is an undertaking pursuant to and in furtherance of the Redevelopment Plan in conformance with CEQA Sections 15180 and 15168; and,
- WHEREAS, OCII staff has reviewed the Ground Lease Agreement for the Transbay Block 7 Project and finds the proposed actions to be Implementing Actions to facilitate construction of market-rate and affordable housing on Transbay Block 7 and within the scope of the Project analyzed in the Final EIS/EIR and subsequent

addenda and no additional environmental review is required pursuant to State CEQA Guidelines Sections 15180 and 15168; and,

WHEREAS, OCII staff, in making the necessary findings for the Implementing Actions contemplated herein, considered and reviewed the Final EIS/EIR and addenda, has made documents related to the Implementing Actions, the Final EIS/EIR, and addenda available for review by the OCII Commission and the public, and these files are part of the record before OCII; and,

WHEREAS, The Final EIS/EIR findings and statement of overriding considerations adopted in accordance with CEQA by the Agency Commission by Resolution No. 11-2005 dated January 25, 2005 were and remain adequate, accurate and objective and are incorporated herein by reference as applicable to the Implementing Actions

WHEREAS, A copy of the Ground Lease Agreement is attached to the Commission memorandum accompanying this resolution; now, therefore, be it

RESOLVED, The Office of Community Investment and Infrastructure finds and determines that authorizing the Executive Director to execute a Ground Lease for the Transbay Block 7 Project is an Implementing Action within the scope of the project analyzed in the Final EIS/EIR and Addenda and requires no additional environmental review pursuant to State CEQA Guidelines Sections 15180, 15168, 15162 and 15163 for the following reasons:

- a. The Implementing Action is within the scope of the project analyzed in the Final EIS/EIR and Addenda and no major revisions are required due to the involvement of new significant environmental effects or a substantial increase in the severity of significant effects previously identified in the Final EIS/EIR;
- b. No substantial changes have occurred with respect to the circumstances under which the project analyzed in the Final EIS/EIR and Addenda was undertaken that would require major revisions to the Final EIS/EIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the Final EIS/EIR; and,
- c. No new information of substantial importance to the project analyzed in the Final EIS/EIR and Addenda has become available which would indicate that (a) the Implementing Actions will have significant effects not discussed in the Final EIS/EIR; (b) significant environmental effects will be substantially more severe; (c) mitigation measures or alternatives found not feasible which would reduce one or more significant effects have become feasible; or (d) mitigation measures or alternatives which are considerably different from those in the Final EIS/EIR will substantially reduce one or more significant effects on the environment.

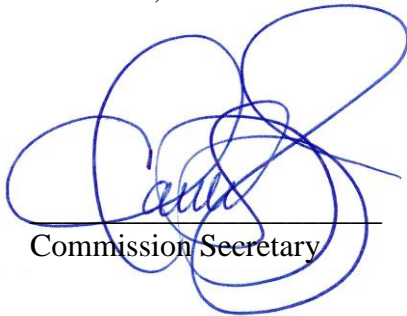
RESOLVED, The Commission hereby authorizes the Executive Director to execute a Ground Lease Agreement for the Transbay Block 7 Project with Mercy Housing California 64, L.P. a California limited partnership, for activities related to the construction of 119 affordable housing units plus one manager's unit at 255 Fremont Street /

222 Beale Street on Transbay Block 7, substantially in the form approved by the City Attorney acting as counsel to OCII, and to execute any related documents, and adopting environmental findings pursuant to the California Environmental Quality Act; and be it further

RESOLVED, That Mercy provide a report at least three months prior to construction completion and prior to the initiation to the Commission on its compliance with the COP Outreach Obligation of any tenant selection process; and be it further

RESOLVED, That the Commission authorizes the Executive Director take such other actions necessary to transfer the affordable housing assets related to the Transbay Block 7 Project to MOHCD as Housing Successor.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of March 15, 2016.



Commission Secretary