

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 and delegated to the Successor Agency to the Redevelopment Agency of the
19 City and County of San Francisco (commonly known as the Office of Community Investment
20 and Infrastructure) (the “Successor Agency” or “OCII”) the authority, among others, to
21 implement, modify, enforce and complete the surviving redevelopment projects, including
22 certain Major Approved Development Projects, Retained Housing Obligations, and all other
23 enforceable obligations except for actions decreasing property tax revenue for affordable
24 housing and material changes to affordable housing obligations, which must be approved by
25 the Board of Supervisors; and

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

12 WHEREAS, To fulfill the Transbay Affordable Housing Obligation, both the
13 Redevelopment Plan and the Planning Code require that all housing developments within the
14 Project Area contain a minimum of 20% on-site affordable housing (the “On-Site
15 Requirement”); and

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

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

22 WHEREAS, On June 28, 2018, OCII received a request from the developer of 542-550
23 Howard Street (Assessor’s Parcel Block No. 3721, Lot Nos. 016, 135, 136, and 138, also
24 known as Transbay Parcel F) (“Developer”) for a variation from the On-Site Requirement; and

25 WHEREAS, The Developer proposed removing the affordability restrictions from the

1 approximately 33 affordable units on-site and converting them to market rate units (the
2 “Variation Request”); and

3 WHEREAS, The Variation Request proposes that the Successor Agency grant a
4 variation on the condition that the Developer contribute to the Successor Agency an amount
5 that is equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section
6 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-
7 Site Requirement (based on the published fee schedule applicable to calendar year 2021)
8 toward the development of affordable housing in the Project Area, which amount is
9 significantly higher than the amount of the affordable housing fee that would be permitted
10 under the City’s Inclusionary Affordable Housing Program if this Project were located outside
11 of the Project Area; and

12 WHEREAS, The Variation Request proposed that the above-described fee would be
13 paid to the Successor Agency on the earlier to occur of: (a) issuance of the temporary
14 certificate of occupancy associated with the residential portions of the Project or (b) on the
15 date that is two years after the effective date of this Agreement (but only if the “first
16 construction document,” as defined in Section 401 of the Planning Code and Section
17 107A.13.1 of the Building Code, has been issued for the Project); the fee collection procedure
18 set forth in Section 402 of the Planning Code and Section 107A.13 of the Building Code shall
19 not apply to the Project, nor shall any other provision of the San Francisco Municipal Code
20 that conflicts with the fee collection and timing described in this Section 2.1.1 in addition,
21 within thirty (30) days after the effective date of the Disposition and Development Agreement
22 between OCII and Developer or an entity affiliated with Developer for Transbay Block 4,
23 Developer shall submit to OCII an enforceable letter of credit on commercially reasonable
24 terms for the full amount of the Affordable Housing Fee; and

25 WHEREAS, Payment of this fee would ensure that the conversion of the approximately

1 33 inclusionary units to market rate units does not adversely affect the Successor Agency's
2 compliance with the Transbay Affordable Housing Obligation; and

3 WHEREAS, OCII estimates that the Affordable Housing Fee may subsidize
4 approximately 192 affordable housing units within the Project Area in contrast to the
5 approximately 33 units that would be produced under the On-Site Requirement and
6 accordingly the Affordable Housing Fee will allow OCII to better fulfill the requirements of the
7 Transbay Affordable Housing Obligation; and

8 WHEREAS, In addition, the 192 affordable housing units would provide deeper
9 affordability levels (45% of AMI) compared to the levels (100% of AMI) that would be achieved
10 through the application of the On-Site Requirement for up to 33 units; and

11 WHEREAS, On January 19, 2021, after holding a duly noticed public hearing and
12 consistent with its authority under Redevelopment Dissolution Law and Ordinance No. 215-
13 12, the Successor Agency Commission conditionally approved, by Resolution No. 02-2021, a
14 variation to the Transbay Redevelopment Plan's On-Site Affordable Housing Requirement as
15 it applies to the mixed use project at 542-550 Howard Street (Transbay Parcel F), subject to
16 approval by the Board of Supervisors in its capacity as legislative body for the Successor
17 Agency (the "Variation Approval"); OCII Resolution No. 02-2021 is on file with the Clerk of the
18 Board of Supervisors in File No. 201387, and incorporated in this Resolution by reference;
19 and

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

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

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

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

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

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

15
16 n:\legana\as2020\1900166\01499787.docx
17
18
19
20
21
22
23
24
25