

**COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE**

**RESOLUTION NO. 15 – 2016**

*Adopted March 15, 2016*

**AUTHORIZING A 75-YEAR AIR RIGHTS LEASE WITH T8 HOUSING PARTNERS, L.P., A CALIFORNIA LIMITED PARTNERSHIP, FOR THE CONSTRUCTION OF AN 80 UNIT (INCLUDING ONE MANAGER’S UNIT) VERY LOW-INCOME AFFORDABLE FAMILY RENTAL HOUSING DEVELOPMENT AT TRANSBAY BLOCK 8 (250 FREMONT STREET), 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 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 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 primarily codified in sections 34161 et seq. of the California Health and Safety Code, which sections, as amended from time to time, are referred to as the “Redevelopment Dissolution Law.”); 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”) determined finally and conclusively that the Pledge Agreement, the Implementation Agreement, and the Transbay Affordable Housing Obligation are enforceable obligations under Redevelopment Dissolution Law and will not be subject to further DOF review except to determine if future Agency expenditures are consistent with those obligations. Letter, S. Szalay, DOF Local Government Consultant, to T. Bohee, Agency Executive Director (April 15, 2012[sic]) (the “Transbay Final and Conclusive Enforceable Obligations”); and,

WHEREAS, On September 10, 2013, DOF stated that in light of its determination regarding the Transbay Final and Conclusive Enforceable Obligations, “any sale, transfer,

or conveyance of property related to this project, and as outlined in the project documents, is authorized” and that “no objection to any sale, transfer and/or conveyance of property related to this project will be initiated” so long as the activities comply with the approved final and conclusive enforceable obligations. Email, J. Howard, DOF, to T. Bohee, OCII (Sep. 10, 2013); and,

WHEREAS, Pursuant to the Redevelopment Dissolution Law, all of the Former Redevelopment Agency’s obligations, along with completed non-housing assets, were transferred to the Office of Community Investment and Infrastructure (“OCII”), 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, On November 20, 2013, 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 Block 8 in the Project Area. On June 17, 2014, after a competitive selection process, the Commission on Community Investment and Infrastructure (the “Commission”) authorized the Executive Director to execute an Exclusive Negotiations Agreement (“ENA”) for the development of Block 8 with the development team led by Related California Urban Housing, LLC (“Related”) and Tenderloin Neighborhood Development Corporation (“TNDC”), along with Office of Metropolitan Architecture (“OMA”) as the lead architect for the tower component of the development and Fougerson Architects (“Fougerson”), a small business enterprise, as the architect for the low-rise buildings (together referred to as the “Development Team”); and,

WHEREAS, Based on the ENA, OCII staff negotiated the terms of a disposition and development agreement (the “DDA”) with Transbay 8 Urban Housing, LLC and TNDC for the sale and development of Block 8. The DDA provides for a purchase price of \$71,000,000, and 554 residential units (404 market-rate units and 70 inclusionary affordable units in a 550 foot tower, 20 affordable units in an OCII funded podium building adjacent to the tower, and 60 affordable units in an OCII funded standalone podium building located east of the pedestrian paseo)(the “Initial Project”); and,

WHEREAS, Based on the Department of Finance’s Final and Conclusive Determination (April 15, 2013) that the Implementation Agreement is an enforceable obligation, the Commission, on April 21, 2015 under Resolution No. 23-2015, authorized the Executive Director to: (1) exercise an option to purchase Block 8 (Block 3737, Lots 005, 012, 027), located on Folsom Street at Fremont Street, from the City and County of San Francisco pursuant to the Option Agreement; and (2) execute a Disposition and Development Agreement with Transbay 8 Urban Housing LLC, a Delaware Limited Liability Company and TNDC, substantially in the form approved by the City Attorney acting as counsel to OCII and to enter into any and all ancillary document or take any additional actions necessary to consummate the transaction with respect to the Project as described in the DDA; and,

WHEREAS, On April 21, 2015, pursuant to Resolution No. 22-2015, the Commission

approved the Transbay Block 8 Schematic Design (“Transbay Block 8 Designs”); and,

WHEREAS, Following the approval of the Transbay Block 8 Design the Development Team revised the building programs to a final count of 546 units including: 116 market rate condominiums, 280 market rate rentals, 70 developer-subsidized below market rate rentals (“BMR units”), the 80-unit OCII funded affordable project (the “Affordable Project”) and approximately 17,000 square feet of neighborhood retail (the “Project”); and,

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

WHEREAS, On July 17, 2015, the Citywide Affordable Housing Loan Committee approved a loan to the Tenant for the development of the Project in an amount not to exceed \$16,000,000 (the “OCII Loan”). The sources of the OCII Loan include Transbay Developer Fees, Transbay Affordable Housing Fees, and Tax Increment; and,

WHEREAS, On August 4, 2015, the OCII Commission approved the OCII Loan through Resolution No. 47-2015; and,

WHEREAS, The OCII Loan requires, among other things, that the Affordable Project Developer submit a marketing plan to OCII and MOHCD that addresses how it intends to affirmatively market units in the Affordable Project to Certificate of Preference (“COP”) holders and also requires that T8 Housing Partners, L.P. conducts 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, T8 Housing Partners, L.P., is now requesting to enter into a seventy-five (75) year air rights lease agreement (with one twenty-four (24) year option; the “Air Rights Lease Agreement”) in connection with the development and operation of the Project. The Affordable Project Developer will be the Tenant of the Affordable Air Rights Parcels; and,

WHEREAS, The Air Rights Lease Agreement will have an Annual Rent equal to 10% of the unrestricted fair market value of the Air Rights Parcels, which is consistent with the provisions of Section 33433 of the California Health and Safety Code, or Seven Hundred Forty-Two Thousand Two Hundred Thirty-Seven Dollars (\$742,237), composed of Base Rent equal to Fifteen Thousand Dollars (\$15,000) and Residual Rent equal to Annual Rent minus Base Rent or, Seven Hundred Twenty-Seven Thousand Two Hundred Thirty-Seven Dollars (\$727,237). 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 Air Rights 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 financing the Affordable Project; and,

WHEREAS, 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 Air Rights Lease Agreement to allow for the development of the Affordable Project; and,

WHEREAS, Upon completion of the Project, OCII intends to transfer the affordable housing loan obligation, asset, and Air Rights Lease Agreement 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, 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; and,

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 Transbay Redevelopment 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 Air Rights Lease pursuant to CEQA Guidelines in Section 15164; and,

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 approximately 554 units of market-rate and affordable housing on Transbay Block 8 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 Air Rights Lease Agreement and related actions for Transbay Block 8 and finds the proposed actions to be Implementing Actions to facilitate construction of market-rate and affordable housing on Transbay Block 8 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 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; and,

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

RESOLVED, On March 15, 2016, under Resolution No. 15-2016 the Commission authorized the Executive Director to approve the Air Rights Lease Agreement as an Implementing Action within the scope of the project analyzed in the Final EIS/EIR and Addenda and required no additional environmental review pursuant to State CEQA Guidelines Sections 15180, 15168, 15162 and 15163 for the following reasons:

- a. The Implementing Actions are 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 an Air Rights Lease Agreement for Transbay Block 8 Affordable Housing with T8 Housing Partners, L.P., a California limited partnership, for activities related to the construction of 79 affordable housing units plus one manager's unit at 250 Fremont Street on Transbay Block 8, and to execute any related documents and adopting environmental findings pursuant to the California Environmental Quality Act; and be it further

RESOLVED, That T8 Housing Partners, L.P. provide a report to the Commission on its compliance with the COP Outreach Obligation at least three months prior to construction completion and prior to the initiation 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 this 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.



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Commission Secretary