

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 04-2019

Adopted April 2, 2019

FINDING, PURSUANT TO SECTION 9.07 OF THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH TRANSBAY 8 URBAN HOUSING, LLC, THAT THE DEVELOPER HAS MADE GOOD FAITH EFFORTS, BUT HAS BEEN UNSUCCESSFUL, IN LEASING AN APPROXIMATELY 12,400-SQUARE-FOOT GROCERY STORE AT TRANSBAY BLOCK 8 (450 FOLSOM STREET); AND APPROVING THE TERMINATION OF THE DEVELOPER'S OBLIGATION UNDER SECTION 9.07; NORTH BLOCK OF FOLSOM STREET BETWEEN FIRST STREET AND FREMONT STREET; TRANSBAY REDEVELOPMENT PROJECT AREA

WHEREAS, The Successor Agency to the Redevelopment Agency of the City and County of San Francisco (commonly known as the Office of Community Investment and Infrastructure) (the "Successor Agency" or "OCII") is completing the enforceable obligations of the Redevelopment Agency of the City and County of San Francisco (the "Former Agency") in the Transbay Redevelopment Project Area ("Project Area") under the authority of the California Community Redevelopment Law, Cal. Health & Safety Code §§ 33000 et seq., as amended by the Redevelopment Dissolution Law, Cal. Health & Safety Code §§ 34170 et seq.; and,

WHEREAS, The City and County of San Francisco (the "City") approved, by Ordinance No. 124-05 and Ordinance No. 99-06, the Redevelopment Plan for the Project Area (the "Redevelopment Plan"). The Redevelopment Plan provides for the redevelopment, rehabilitation, and revitalization of the area generally bounded by Mission, Main, Second, and Folsom Streets in downtown San Francisco, and containing approximately forty (40) acres of land. The Redevelopment Plan also provides for the financing of the Transbay Terminal Project ("TTP") and thus triggered the Transbay Affordable Housing Obligation, which is explicitly incorporated into Section 4.9.2 of the Redevelopment Plan and into binding agreements; and,

WHEREAS, Approximately ten (10) acres of land in the Project Area were owned by the State of California ("State Owned Parcels"). The State of California ("State"), acting by and through its Department of Transportation ("Caltrans"), the City, and the Transbay Joint Powers Authority ("TJPA") entered into that certain Cooperative Agreement, dated as of July 11, 2003 (the "Cooperative Agreement"), pursuant to which the State has or will transfer the State-Owned Parcels to the City and the TJPA subject to certain terms and conditions; and,

WHEREAS, Among the State-Owned Parcels included in the Cooperative Agreement is Parcel C (portion of Block 3737, Lot 040), located north of Folsom Street between First Street and Fremont Street, generally depicted on Exhibit 4 to the Redevelopment Plan as "Block 8", in San Francisco, CA; and,

WHEREAS, Consistent with the Cooperative Agreement and the Redevelopment Plan, the City, TJPA, and the Former Agency entered into that certain Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement (the "Pledge Agreement"), dated as of January 31, 2008, pursuant to which the parties provided for the irrevocable pledge of Net Tax Increment, as defined in the Pledge

Agreement, to TJPA for design, construction, and operation of the TTP. Also in furtherance of the Cooperative Agreement and the Redevelopment Plan, the TJPA and the Former Agency entered into that certain Transbay Redevelopment Project Implementation Agreement, dated as of January 20, 2005 (the “Implementation Agreement”), which requires, among other things, the Former Agency to prepare and sell the State-owned Parcels to third parties and deposit the gross sales proceeds in the account dedicated to payments for the cost of construction of the TTP; 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. Letter, S. Szalay, DOF Local Government Consultant, to T. Bohee, Agency Executive Director (April 15, 2012[sic]) (the “Transbay Final and Conclusive Obligations”); and,

WHEREAS, To implement the Transbay Final and Conclusive Obligations, the City, TJPA, and the Former Agency entered into the Option Agreement for the Purchase and Sale of Real Property (“2008 Option Agreement”) dated as of January 31, 2008. The 2008 Option Agreement granted the Former Agency the option to take title to certain formerly State-owned parcels, subject to certain limitations, including Block 8; and,

WHEREAS, On April 21, 2015, the Commission approved, by Resolution No. 22-2015, that certain Disposition and Development Agreement for the Sale and Development of Transbay Block 8 by and between OCII and Transbay 8 Urban Housing, LLC, a Delaware limited liability company (the “Developer”) and Tenderloin Neighborhood Development Corporation, a California non-profit public benefit corporation (the “Block 8 DDA”). The Block 8 DDA requires the subject property to be developed in accordance with the Scope of Development attached thereto as Attachment 6 (so developed, the “Block 8 Project”) . In December, 2015, the Developer acquired the subject land, began construction in November, 2016, and anticipates completing construction by mid-2019; and,

WHEREAS, Section 9.07 of the Block 8 DDA requires that the Developer use good faith efforts to obtain a grocery tenant for approximately 12,400 square feet in the ground floor and basement levels of the Block 8 Project. Good faith efforts include hiring a leasing agent to market the grocery space, providing adequate staffing for the marketing efforts, and reporting quarterly to OCII on its progress. Section 9.07 also provides that should the Developer be unable to enter into a lease with a grocery tenant on commercially reasonable terms acceptable to the Developer within 12 months of the completion of the grocery space, the Developer may seek approval from the Commission to terminate its obligation to secure a grocery tenant and that Commission approval will not be unreasonably withheld, conditioned or delayed; and,

WHEREAS, The Developer has undertaken efforts to obtain a grocery tenant, including hiring Colliers International as the broker to lease the grocery space, providing adequate staffing to support the efforts to secure a grocery lease, and providing OCII with quarterly updates of progress including market surveys, descriptions of the outreach

efforts to potential tenants, and descriptions of the barriers to the Developer's outreach efforts to market the grocery store space; and,

WHEREAS, The Developer anticipates the completion date of the retail space in the Block 8 Project will sometime in June, 2019.

WHEREAS, On February 15, 2018, the Developer submitted a letter to OCII stating that has been unable to secure a grocery tenant due to the proximity of the a recently opened grocery (Woodlands Market), insufficient parking at the Block 8 Project for grocery customers, and the bi-level layout of the space being undesirable for grocery use. The Developer requested to seek approval from the Commission to terminate its obligations under Section 9.07 of the Block 8 DDA; and,

WHEREAS, Thereafter, OCII hired Strategic Economics, a retail consultant, to analyze the commercial real estate market for grocery uses in the Project Area, and to review the validity of the Developer's determinations that a grocery store is not feasible at the Block 8 Project. In a study dated June 25, 2018, Strategic Economics also determined that a grocery store is not feasible at Block 8 due to its close proximity to Woodlands Market, the potential for grocery supply to exceed demand in the Project Area, uncertainty of future demand due to the increasing popularity of grocery delivery services, and the retail space in the Block 8 Project not being properly sized for multi-level grocery use; and,

WHEREAS, At the Commission's regular meeting of December 18, 2018, the Developer presented evidence that it had used good faith efforts to obtain a grocery tenant for the Block 8 Project, but was unsuccessful in doing so, and requested the Commission's approval of the termination of Developer's obligations under Section 9.07. The Commission voted to request additional information from and actions by the Developer, and to continue consideration of Developer's request for 90 days (beginning January 1, 2019) to permit the Developer to comply. As part of the motion to continue the matter, the Commission also requested a status report 60 days into the 90 day period; and,

WHEREAS, On March 11, 2019, OCII staff transmitted to the Commission a letter from the Developer providing the 60-day status report submitted in response to the Commission's motion; and,

WHEREAS, The 90-day period ended March 31, 2019, and the Developer has taken additional actions to obtain a grocery tenant, consistent with the requests of the Commission and also with a recently formed community group consisting of members of the Transbay Citizens Advisory Committee and staff of the East Cut Community Business District; and,

WHEREAS Despite its additional efforts, the Developer has been unable to enter into a grocery lease in accordance with Section 9.07 of the Block 8 DDA, and is now seeking the Commission's approval to terminate of its obligations thereunder; and,

WHEREAS Section 9.07 of the Block 8 DDA provides that the Commission may not unreasonably withhold, condition, or delay its approval to terminate the Developer's obligations under Section 9.07; and,

WHEREAS, Approving the termination of the Developer's obligation to enter into a lease for a grocery store on Block 8 is not subject to the California Environmental Quality Act ("CEQA") since there is no possibility such approval may have a significant effect on the environment pursuant to CEQA Guidelines Section 15061(b)(3); and, now, therefore, be it

RESOLVED, The Commission finds, based on all information provided and testimony heard on this matter, that the Developer has made good faith efforts to obtain a grocery tenant in the Block 8 Project, and despite those efforts, the Developer is unable to enter into a lease with a grocery tenant on commercially reasonable terms acceptable to the Developer at least 12 months prior to anticipated completion date of the retail space within the Block 8 Project; and be it further

RESOLVED, On request of the Developer, the Commission approves the termination of the Developer's obligations under Section 9.07 of the Block 8 DDA (including any requirement to withhold retail space in the Block 8 Project for a grocery tenant).

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of April 2, 2019.



Commission Secretary