

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 10 - 2023

AUTHORIZING A SHORING, UNDERPINNING AND TIEBACK EASEMENT AGREEMENT AND ESCROW AGREEMENT WITH HPS1 BLOCK 52, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO PROVIDE RIGHT OF ACCESS FOR TEMPORARY STRUCTURAL IMPROVEMENTS NECESSARY FOR THE CONSTRUCTION OF AN AFFORDABLE RENTAL HOUSING PROJECT AT 351 FRIEDEL STREET, AND PROVIDING NOTICE THAT THIS APPROVAL IS WITHIN THE SCOPE OF THE HUNTERS POINT SHIPYARD PHASE 1 REUSE FINAL ENVIRONMENTAL IMPACT REPORT, A PROGRAM EIR, AND IS ADEQUATELY DESCRIBED IN THE PHASE 1 EIR FOR THE PURPOSES OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”); AND, ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO CEQA; HUNTERS POINT SHIPYARD REDEVELOPMENT PROJECT AREA

- WHEREAS, In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 *et seq.* the “CRL”), the Redevelopment Agency of the City and County of San Francisco (the “Former Agency”) undertook programs for the redevelopment of blighted areas in the City and County of San Francisco (“City”), including within the Hunters Point Shipyard (“HPS”) Redevelopment Project Area; and,
- WHEREAS, In accordance with the CRL, the City and County of San Francisco (“City”) acting through its Board of Supervisors approved, by Ordinance No. 285-97 (July 14, 1997), a Redevelopment Plan for the HPS Redevelopment Project Area and subsequently amended it on several occasions (as currently amended, the “Redevelopment Plan”); and,
- WHEREAS, On December 2, 2003, the Former Agency Commission authorized, by Resolution No. 03-179, the execution of a Disposition and Development Agreement for Hunters Point Shipyard Phase 1 with Lennar/BVHP, LLC (succeeded by HPS Development Co, LP, the “Master Developer”) (as amended by the First through Seventh Amendments thereto (the “Phase 1 DDA”). The Phase 1 DDA together with the related binding agreements attached to or referenced in the text therein establish a comprehensive set of contractual obligations that collectively govern the implementation of the first phase of redevelopment under the Redevelopment Plan, referred to as “HPS Phase 1”; and,
- WHEREAS, Pursuant to California Health and Safety Code §§ 34170 *et seq.* (the “Redevelopment Dissolution Law”) and San Francisco Ordinance No. 215-12 (Oct. 4, 2012) (establishing the Successor Agency Commission (“Commission”) and delegating to it state authority under the Redevelopment Dissolution Law), OCII is responsible for implementing the HPS Redevelopment Plan and fulfilling the enforceable obligations under the Phase 1 DDA; and,

- WHEREAS, On December 14, 2012, the California State Department of Finance issued a Final and Conclusive Determination under California Health and Safety Code § 34177.5, that the Phase 1 DDA is an enforceable obligation that survived the dissolution of the Former Agency; and,
- WHEREAS, The Phase 1 DDA requires the Master Developer to undertake development of infrastructure in HPS Phase 1 to support 1,428 residential units and 26 acres of open space and parks, and to deliver “finished lots” (i.e., subdivided land improved with streets, sidewalks, parks, open space and utilities) to be sold to vertical developers for residential or commercial use, or retained by OCII for the development of affordable housing; and,
- WHEREAS, In addition, OCII is providing financing to assist in the construction of at least 218 affordable housing units on Agency Housing Parcels within HPS Phase 1; and,
- WHEREAS, On April 4, 2023, by Resolution Nos. 08-2023 and 09-2023, the Commission authorized the executive Director to enter into a loan agreement and a ground lease (“Ground Lease”) with HPSY 52-54, LP, a California limited partnership (“Affordable Developer”) for the development of approximately 112 affordable housing units (the “Project”) on Agency Housing Parcels located within HPS Phase 1 Blocks 52 and 54; and,
- WHEREAS, The Agency Housing Parcel within Block 52, identified as Assessor’s Block 4591C Lot 673 (“OCII’s Block 52 Property”), shares a property boundary with a market-rate housing development owned by HPS1 Block 52 LLC, a Delaware limited liability company (“Block 52 Developer”), an affiliate of the Master Developer, identified as Assessor’s Block 4591C Lot 671 (“Block 52 Developer’s Property”); and,
- WHEREAS, Affordable Developer requires access to Block 52 Developer’s Property to perform shoring, underpinning and/or tieback activities to temporarily stabilize Block 52 Developer’s Property during excavation for the Project in accordance with design documents approved by OCII and one or more building permits issued by the San Francisco Department of Building Inspection (collectively, the “Shoring Work”). Once foundation work for the Project is complete, the Shoring Work will no longer be necessary and will be left in place within the Block 52 Developer’s Property; and,
- WHEREAS, To demonstrate to Project lenders that adequate rights have been secured to perform the Shoring Work, Affordable Developer requests that OCII enter into a temporary Shoring, Underpinning and Tieback Easement Agreement (“Easement Agreement”) with Block 52 Developer providing access to Block 52 Developer’s Property to perform and complete the Shoring Work in support of the Project; and,
- WHEREAS, Upon execution of the Ground Lease and creation of the leasehold interest thereunder, the Easement Agreement provides that it thereafter benefits and

burdens Affordable Developer's leasehold interest and Affordable Developer assumes all rights and obligations under the Easement Agreement (provided that OCII retains an obligation to Block 52 Developer to guaranty any costs incurred by Block 52 Developer in the event that Affordable Developer does not perform its obligations under the Easement Agreement); and

WHEREAS, Concurrently with the execution of the Easement Agreement, Block 52 Developer is requesting OCII enter into an Escrow Agreement ("Escrow Agreement") to secure payment and performance of Affordable Developer's obligations under the Easement Agreement. Pursuant to the terms of the Escrow Agreement, the Affordable Developer will fund into an escrow account the sum of \$250,000, to be drawn down if Affordable Developer does not perform its obligations under the Easement Agreement or otherwise released after the City and County of San Francisco has issued a certificate of occupancy for the Project; and,

WHEREAS, The Former Agency Commission and the San Francisco Planning Commission ("Planning Commission") certified the Hunters Point Shipyard Reuse Final Environmental Impact Report ("Phase 1 FEIR"), and adopted California Environmental Quality Act ("CEQA") findings, a mitigation monitoring and reporting program and statement of overriding considerations (collectively "CEQA Findings") in 2000, and subsequently issued addendum to the Final EIR to address project changes (collectively, the FEIR and the CEQA Findings as updated by the addenda are referred to as the "Phase 1 EIR"). The Commission has received the Phase 1 EIR and the Phase 1 EIR was made available to the public during prior Commission meetings. Additionally, the Former Agency Commission and the Planning Commission certified the Candlestick Point/Hunters Point Shipyard Phase 2 Final Environmental Impact Report in 2010 and adopted CEQA findings, a mitigation monitoring and reporting program and statement of overriding considerations (collectively, "Phase 2 CEQA Findings"), and subsequently issued addenda, to address project changes (collectively, the FEIR and Phase 2 CEQA Findings as updated by the addenda are referred to as the "Phase 2 EIR"). The Phase 2 EIR updated the transportation analysis and transportation plan (including the transportation system management plan) for Phase 1, but the Phase 2 EIR did not identify any new significant environmental effects or an increase in the severity of significant impacts of the Phase 1 Project previously identified in the Phase 1 EIR; and,

WHEREAS, OCII staff has reviewed the Shoring, Underpinning and Tieback Easement Agreement and Escrow Agreement ("Agreements"), and has found them to be within the scope of the project analyzed in the Phase 1 EIR and its subsequent addenda; and,

WHEREAS, Copies of the Phase 1 EIR and Phase 2 EIR and supporting documentation for each are on file with the Commission Secretary and are incorporated into this Resolution by this reference; now therefore be it

RESOLVED, That the Commission finds the Agreements are within the scope of the project analyzed in the Phase 1 EIR and Phase 2 EIR and require no additional environmental review pursuant to CEQA Guidelines Sections 15180, 15162, 15163, and 15164 for the following reasons:

(1) implementation of the Agreements does not require major revisions to the Phase 1 EIR or the Phase 2 EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant impacts; and,

(2) no substantial changes have occurred with respect to the circumstances under which the project analyzed in the Phase 1 EIR and Phase 2 EIR will be undertaken that would require major revisions to the Phase 1 EIR or Phase 2 EIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the Phase 1 EIR or Phase 2 EIR; and,

(3) no new information of substantial importance to the project analyzed in the Phase 1 EIR and Phase 2 EIR has become available, which would indicate that (i) implementation of the Agreements will have significant effects not discussed in the Phase 1 EIR or Phase 2 EIR; (ii) significant environmental effects will be substantially more severe; (iii) mitigation measures or alternatives found not feasible, which would reduce one or more significant effects, have become feasible; or (iv) mitigation measures or alternatives, which are considerably different from those in the Phase 1 EIR or Phase 2 EIR, will substantially reduce one or more significant effects on the environment that would change the conclusions set forth in the Phase 1 EIR and Phase 2 EIR; and be it further

RESOLVED, The Commission authorizes the Executive Director to: (i) enter into the Shoring, Underpinning and Tieback Easement Agreement with Block 52 Developer, substantially in the form of the document approved by legal counsel for OCII on file with the Commission Secretary and attached to the Commission Memorandum accompanying this Resolution, for the development of the Project; and (ii) enter into the Escrow Agreement with Block 52 Developer, substantially in the form of the document approved by legal counsel for OCII on file with the Commission Secretary and attached to the Commission Memorandum accompanying this Resolution, for the development of the Project; and (iii) to enter into any and all ancillary documents or to take any additional actions necessary to consummate the transaction contemplated by this Resolution.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of April 4, 2023.

Commission Secretary