

THE COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 46-2022

**AUTHORIZING AN EXTENSION OF THE DUE DATE FOR PAYMENT OF THE
AGENCY AFFORDABLE HOUSING FEE REQUIRED UNDER THE AGREEMENT
FOR PURCHASE AND SALE OF REAL ESTATE BETWEEN THE SUCCESSOR
AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF
SAN FRANCISCO AND 706 MISSION STREET CO., LLC, A DELAWARE LIMITED
LIABILITY COMPANY**

- 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 (“Former Agency”) undertook programs for the redevelopment of blighted areas in the City and County of San Francisco (“City”), including within the Yerba Buena Center Approved Redevelopment Project Area D-1 (“YBC Project Area”), which was subject to the Redevelopment Plan for the YBC Project Area, duly adopted by the Board of Supervisors of the City and County of San Francisco (Ordinance No. 98-66, April 29, 1966) in accordance with the CRL, and which expired by its own terms on January 1, 2011 (the “Redevelopment Plan”). The purpose of the Redevelopment Plan was to redevelop and revitalize blighted areas in the YBC Project Area; and,
- WHEREAS, The Former Agency owned several properties within the YBC Project Area, including an approximately 9,778-square-foot undeveloped parcel fronting Mission Street between Third and Fourth Streets, adjacent to Jessie Square Plaza (Assessor’s Block 3706, a portion of former Lot 277) (the “Agency Property”); and,
- WHEREAS, 706 Mission Co., LLC (“Developer”) owned certain real property formerly known as 706 Mission Street, San Francisco, California (Assessor’s Block 3706, former Lot 93 “Developer’s Property,” and together with the Agency Property, the “Site”). Developer’s Property was improved in part with a 10-story office and retail building determined to be a Category I Significant Building pursuant to the City’s Planning Code (the “Aronson Building”); and,
- WHEREAS, On July 15, 2008, Former Agency and Developer entered into an Exclusive Negotiation Agreement (as amended by that certain Amended and Restated Exclusive Negotiation Agreement dated May 4, 2010, the “ENA”) establishing the parties’ mutual understanding of the terms under which the Former Agency and Developer would negotiate a purchase and sale agreement pursuant to which Successor Agency would sell the Agency Property to Developer for development of a mixed-use residential, cultural and retail/restaurant use on the Site; and,
- WHEREAS, On January 1, 2011, the Redevelopment Plan for the YBC Project Area expired, but the CRL authorized the Former Agency to continue to enforce existing covenants, contracts, or other obligations. Cal. Health & Safety Code § 33333.6 (a); and,
- WHEREAS, On February 1, 2012, the State of California dissolved all redevelopment agencies, including the Former Agency, by operation of law pursuant to California Health and Safety Code Sections 34170 *et seq.* (“Redevelopment Dissolution Law”). Thereafter, under the authority of the Redevelopment Dissolution Law and under San Francisco Ordinance No. 215-12 (Oct. 4, 2012) (establishing the Successor

Agency Commission or “Commission” and delegating to it state authority under the Redevelopment Dissolution Law), the Successor Agency continued and concluded negotiations under the ENA, an enforceable obligation of the Former Agency; and,

WHEREAS, On July 16, 2013, the Commission approved, by Resolution No. 32-2013, a purchase and sale agreement (“PSA”) with Developer for disposition of the Agency Property. On July 22, 2016, the Oversight Board of the City and County of San Francisco approved, by Resolution No. 8-2013, the PSA, which the Department of Finance subsequently approved. Under the PSA, the Successor Agency transferred the Agency Property to Developer for construction of an integrated development on the Site, consisting of: (a) approximately 146 residential units in a new tower of approximately 510 feet in height; (b) a cultural component of approximately 48,000 net square feet fronting Jessie Square for The Mexican Museum; (c) the historic rehabilitation of the Aronson Building; (d) approximately 4,800 gross square feet of additional restaurant/retail uses on the ground floor of the Aronson Building to be owned by Developer and separately leased to The Mexican Museum; and (e) the purchase of the Jessie Square Garage (collectively, the “Project”); and,

WHEREAS, On May 24, 2016, Successor Agency transferred the Agency Property to Developer in accordance with the PSA, by that certain Grant Deed recorded on the same day as Document No. 2016-K250104; and,

WHEREAS, Under the PSA, in addition to the purchase price of \$34,280,000, Developer agreed to provide several public benefits, including payment to the Successor Agency of an affordable housing fee calculated in accordance with Section 8.1 of the PSA to be in the amount of \$4,456,378.00 (the “Agency Fee”). The Agency Fee is payable in three installments: (i) twenty percent (20%), or \$891,276, upon issuance of the first building permit for the Project; (ii) forty percent (40%), or \$1,782,551, upon issuance of the first temporary certificate of occupancy for a residential unit in the Project, and (iii) the remaining forty percent (40%), or \$1,782,551, one year after the date of issuance of the first temporary certificate of occupancy for a residential unit in the Project. In 2017, Developer paid the first installment of the Agency Fee in accordance with the requirements of the PSA; and,

WHEREAS, On June 30, 2020, Developer notified the Successor Agency that as a result of Public Health Order C19-07b (March 31, 2020) prohibiting most construction in San Francisco, Developer’s general contractor suspended construction on the Project as of the date of the Public Health Order. Developer’s general contractor re-commenced construction on May 4, 2020 after further modifications to the Public Health Order permitted resumption of construction activities in San Francisco. Developer’s notice stated that Public Health Order C19-07b constituted a Force Majeure event under Section 13.7(a) of the PSA, and that “the time for performance of Developer’s obligations under the [PSA] ... shall be automatically extended for a period of time equal to the period the delays arising from such Force Majeure event...” and,

WHEREAS, In November 2020, Developer received its first temporary certificate of occupancy for a residential unit, triggering the due date for payment of the Agency Fee second installment. On or about that time, the Successor Agency’s Executive Director exercised her discretion under Section 13.7(a) and (c) of the PSA to extend the due date for the second installment for twelve months (to November 2021), at which time the final two installments of the Agency Fee (collectively \$3,565,102) would be due; and,

- WHEREAS, The Project is now complete and Developer is actively offering units for sale, but Developer has not made payment of the final two installments of the Agency Fee; and,
- WHEREAS, By letter to Successor Agency dated June 30, 2022, Developer stated that it had expected to have pre-sold approximately 50 units prior to the time the first temporary certificate of occupancy was issued, with an expected additional 33 units sold within one year thereafter, and that achieving these expectations would have provided Developer sales proceeds in excess of \$700 million, sufficient to pay off all Project construction financing with excess cash flow to cover carrying costs and fees, including the Agency Fee. However, to date Developer has sold approximately 14 units within the Project; and,
- WHEREAS, By letter to Successor Agency dated October 24, 2022, Developer recognized that pursuant to the PSA, the Agency Fee in amount of \$3,565,102 remains outstanding, and requested that the Commission, under its authority under the PSA, approve an extension of the Agency Fee due date to March 31, 2023 to allow Developer to complete an immediate recapitalization of the Project necessary to ensure its future success; and,
- WHEREAS, In its October 24, 2022 letter, the Developer cites certain factors causing delay, including that “the San Francisco condominium market continues to struggle and to date has shown very little recovery relative to other major urban markets in the United States [and] sales volume for condominium product is limited at best as a result of virtually non-existent buyer demand;” and,
- WHEREAS, Regional, national and international economic and social trends have contributed to a difficult sales market for luxury residential condominiums in San Francisco. These conditions include lower office occupancy in the downtown area resulting from the rise in remote or hybrid working schedules particularly in the Bay Area, and related negative effects for downtown businesses and cultural facilities, who were also damaged by extended COVID-related shutdowns. Other factors, such as the Russian invasion of Ukraine, inflation in domestic goods and commodities prices and in the US Dollar abroad, and resulting tightening of national and international monetary and fiscal policies, all result in lessened demand for the residential condominium product offered at the Project. Staff agree with Developer’s characterization of the Project as being of high quality and uniquely positioned in the San Francisco market, but the current difficult economic conditions put the sales in the Project at a disadvantage; and,
- WHEREAS, The preceding factors provide a reasonable basis for the Commission to consider Developer’s request for an extension of time to pay the remaining Agency Fee owed under the PSA; NOW, THEREFORE BE IT
- RESOLVED, Pursuant to its authority under PSA section 13.7(b) to extend the time for Developer’s performance of any term, covenant or condition of the PSA, the Commission hereby approves an extension of the due date for payment of the second and third installment of the Agency Fee (collectively totaling \$3,565,102), from November 30, 2021 to April 3, 2023.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of December 06, 2022.

Commission Secretary