

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 23-0099

WHEREAS, On December 20, 2022, the City and County of San Francisco (City) sold, the approximately 17.6-acre Balboa Reservoir (Property) under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC), located near Ocean Avenue and Frida Kahlo Way in San Francisco to BHC Balboa Builders, LLC, a California limited liability company (BHC), pursuant to an Agreement for the Sale of Real Estate (PSA), for the sales price of \$11,400,000 (Purchase Price); and

WHEREAS, BHC purchased the Property to develop it with approximately 1,100 units of much-needed housing including fifty percent (50%), or 550 homes, as affordable housing units pursuant to a Development Agreement with City. The development project includes approximately 1,000 units of multi-family rental residential housing, approximately 100 for-sale residential units, ground-floor community space, approximately four acres of privately owned and publicly accessible open space, parking garages, and a child-care facility (Project); and

WHEREAS, The Project includes affordable housing exceeding the Planning Code requirements for inclusionary affordable housing. It also includes extensive investments in public infrastructure, including new water distribution, auxiliary water supply facilities, stormwater management improvements, sanitary sewer systems, power facilities, and street lighting that the City will accept, at no cost to the City, upon completion; and

WHEREAS, Under the PSA, BHC elected to have the City provide carryback financing for the Property in the principal sum of \$11,006,965 (Loan) to BHC. The Loan is evidenced by the following documents: (1) that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated December 20, 2022 (Deed of Trust) and recorded as Document No. 2022112690 in the Official Records of the City and County of San Francisco on December 20, 2022, which Deed of Trust secures the Loan; and (2) a Secured Carry-Back Promissory Note made by BHC to the order of the City (Original Note) dated December 20, 2022. The Deed of Trust and the Original Note are together referred to as the Loan Documents; and

WHEREAS, In light of the decline in economic conditions for construction of housing since 2020, BHC, in consultation with the City, has revised its phasing plan for the Project and is pursuing the construction of two affordable buildings first, with approximately 290 affordable housing units in a smaller Phase 1 that will require a more limited infrastructure investment. BHC and the City now seek to amend the Loan Documents to revise the payment schedule to align with the new Project phasing and allow for earlier prepayment and release of the Deed of Trust on a more flexible parcel-by-parcel basis. Interest would remain at three percent per annum, BHC could still pre-pay the Loan at any time, and the Maturity Date of December 31, 2028 would remain unchanged. The corresponding release price for the Deed of Trust per housing unit also remains unchanged; and

WHEREAS, As amended, the Loan Documents would require BHC to pay \$2,871,817, plus accrued and unpaid interest on such amount (the Initial Payment) on or before December 31, 2026 and any remaining amounts due under the Loan by the Maturity Date. Upon receipt of the Initial Payment, the City would release the lien of the Deed of Trust from the affordable buildings that will be constructed in the revised Phase 1 and from the streets that will be constructed for the Project. The amended Loan Documents do not require BHC to make any payments other than the Initial Payment until the Maturity Date; however, if BHC does make additional payments, it can obtain partial releases of the Deed of Trust according to a release payment schedule specified in the amended Loan Documents; and

WHEREAS, SFPUC staff recommends that this Commission approve the amended Loan Documents to advance the proposed construction schedule for 290 units of affordable housing on the Property. The SFPUC will receive the full purchase price for the Property by the same Maturity Date, but on an altered payment schedule; and

WHEREAS, On December 4, 2008, the San Francisco Planning Commission certified the Final [Program] Environmental Impact Report (PEIR) for the Balboa Park Station Area Plan (Case Number 2004.1059E); and

WHEREAS, On July 10, 2015, the San Francisco Planning Department issued an Addendum to the PEIR for the rezoning of 19 parcels to Ocean Avenue Neighborhood Commercial Transit (NCT); and

WHEREAS, The Balboa Reservoir Project is a subsequent activity under the Balboa Park Station Area Plan; and

WHEREAS, On May 28, 2020, the Planning Commission certified the Final Subsequent Environmental Impact Report (SEIR) for the Balboa Reservoir Project (Case No 2018-007883ENV), approved the project, and adopted the California Environmental Quality Act (CEQA) Findings, a Statement of Overriding Considerations, and a Mitigation, Monitoring, and Reporting Program (MMRP); and

WHEREAS, on June 23, 2020, by Resolution 20-0135, this Commission consented to the Development Agreement, and adopted the CEQA Findings and an MMRP; and

WHEREAS, The San Francisco Planning Department is the custodian of records, located in the files for Case Numbers 2018-007883ENV and 2004.1059E at 49 South Van Ness Avenue, Suite 1400, San Francisco, California, 94103, which have been made available for review by this Commission and the public, and those files are part of the record before this Commission; and

WHEREAS, This Commission has reviewed and considered the information contained in the SEIR, the CEQA Findings and MMRP, PEIR, and Addendum to the PEIR, and all written and oral information provided by the San Francisco Planning Department, the public, relevant public agencies, San Francisco Public Utilities Commission staff and other experts, and the administrative files for the Project; now, therefore, be it

RESOLVED, This Commission finds that the record as a whole is adequate for its use as the decision-making body for the Project and incorporates the CEQA Findings and MMRP contained in Planning Commission Motion 20731 this reference thereto as though set forth in this Resolution; and be it

FURTHER RESOLVED, This Commission further finds that since the SEIR was finalized, there have been no substantial Project changes and no substantial changes in Project circumstances that would require major revisions to these CEQA documents due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the CEQA documents; and be it

FURTHER RESOLVED, That this Commission approves the terms and conditions of the First Amendment to Secured Promissory Carry-Back Note and the First Amendment to the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing as presented to this commission (the Amended Loan Documents); and, be it

FURTHER RESOLVED, That this Commission authorizes the General Manager of the SFPUC to seek approval from the Board of Supervisors of Amended Loan Documents; and be it

FURTHER RESOLVED, That subject to and upon approval by City's Board of Supervisors and the Mayor, the General Manager is authorized to execute the Amended Loan Documents in substantially the same forms presented to this Commission, if any; and, be it

FURTHER RESOLVED, That this Commission hereby ratifies, approves, and authorizes all actions heretofore taken by any City official in connection with the Amended Loan Documents; and, be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to enter into any amendments or modifications to each of the Amended Loan Documents, including without limitation, the exhibits to such documents, that the SFPUC's General Manager determines, in consultation with the City Attorney, are in the best interest of City; do not materially increase the obligations or liabilities of City; do not materially decrease the benefits to City; are necessary or advisable to effectuate the purposes and intent of each of the documents or this Resolution; and are in compliance with law; and be it

FURTHER RESOLVED, That upon approval by City's Board of Supervisors and the Mayor, this Commission authorizes the SFPUC General Manager to take any and all other steps they, in consultation with the City Attorney, deem necessary or advisable to effectuate the purpose and intent of this Resolution.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of May 9, 2023.


Secretary, Public Utilities Commission