

1 [Exclusive Negotiating Agreement - Ground Lease of 155 Grove Street, 165 Grove Street, and
2 240 Van Ness Avenue - Mercy Housing California - \$15,000 Annual Lease Payment]

3 **Resolution approving an Exclusive Negotiating Agreement (“ENA”) with Mercy Housing**
4 **California, a California non-profit public benefit corporation, for a proposed ground**
5 **lease of City real property at 155 Grove Street, 165 Grove Street, and 240 Van Ness**
6 **Avenue (Assessor’s Parcel Block No. 0811, Lot Nos. 016, 019, and 021), with an annual**
7 **lease payment of \$15,000 under the jurisdiction of the Real Estate Division, subject to**
8 **several conditions; affirming the Planning Department’s determination under the**
9 **California Environmental Quality Act (“CEQA”); adopting the Planning Department’s**
10 **findings that the transaction contemplated by the ENA is consistent with the General**
11 **Plan, and the eight priority policies of Planning Code, Section 101.1, and that the**
12 **transaction contemplated by the ENA is not defined as a project under CEQA**
13 **Guidelines, Sections 15378 and 15060(c)2, subject to the City’s discretionary approval**
14 **after the completion of environmental review; and authorizing the Director of Property**
15 **to execute documents, make certain modifications and take certain actions in**
16 **furtherance of the ENA and this Resolution, as defined herein.**

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18 WHEREAS, The City and County of San Francisco, under the jurisdiction of the Real
19 Estate Division, owns certain real property known as 155 Grove Street, 165 Grove Street
20 and 240 Van Ness Avenue, Assessor’s Parcel Block No. 0811, Lot Nos. 016, 019 and 021
21 (the “City Property”), an assemblage of approximately 8,700 square feet of land improved
22 with the former Arts Commission one-story gallery space (155 Grove Street), Please Touch
23 Community Garden (165 Grove Street) and a two-level storage building (240 Van Ness
24 Avenue); and
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1 WHEREAS, The improvements upon 155 Grove and 240 Van Ness are classified as
2 Vacant and Abandoned, and are unreinforced masonry structures ineligible for occupancy;
3 and

4 WHEREAS, The assembled City Property was declared surplus by the City,
5 following the finding by the Mayor’s Office of Housing and Community Development
6 (“MOHCD”) that the City Property was inappropriate for an MOHCD-sponsored affordable
7 housing project primarily due to the site’s configuration; and

8 WHEREAS, The C40 Cities Climate Leadership Group initiated a Reinventing Cities
9 global competition and invited the City and County of San Francisco to participate in their
10 Request for Qualifications/Request for Proposals (“RFQ/RFP”) process that sought cutting
11 edge sustainable (resilient and net-zero energy or better) project applications from
12 architects and developers for selected sites throughout the world – 31 sites in 14 cities
13 representing 9 different countries; and

14 WHEREAS, The City agreed to participate in the RFQ/RFP process and offered the
15 City Property in the competition, which began with a global announcement of the
16 opportunity in November of 2017, and required initial submittals from interested parties be
17 provided to the City by May 31, 2018; and

18 WHEREAS, Prior to the RFQ/RFP deadline, four submittals were tendered to the
19 City, and three specific proposals were subsequently tendered in the subsequent round
20 during the remainder of 2018; and

21 WHEREAS, Following a robust panel interview by international and local experts in
22 May of 2019 of those three specific proposals and their formal submittals, the proposal of
23 102 affordable, fully accessible housing units, some dedicated solely toward those with
24 developmental disabilities, under a long-term Ground Lease, tendered jointly by Mercy
25 Housing California and The Kelsey (collectively, “Developer”) as lead sponsors, was

1 recommended as the most responsive submittal to move forward into ENA discussions with
2 the City; and

3 WHEREAS, City staff and the Developer team have now negotiated an ENA for
4 consideration, a copy of which is on file with the Clerk of the Board of Supervisors in File
5 No. 191111 (the “Agreement”), and if approved, shall jointly initiate the pre-development
6 process to secure appropriate entitlements and required funding consistent with the
7 Schedule of Performance detailed in the Agreement; and

8 WHEREAS, The Agreement does not commit the City to approving any proposed
9 development of the City Property; and

10 WHEREAS, The City has not completed environmental review under CEQA
11 (California Public Resources Code, Section 21000 et seq.) the CEQA Guidelines
12 (California Code of Regulations, Title 14, Section 15000 et seq.), and Chapter 31 of the
13 San Francisco Administrative Code for the proposed project; and

14 WHEREAS, The Planning Department, in a letter dated September 19, 2019, found
15 that the ENA is not a project under the California Environmental Quality Act (“CEQA”)
16 Guidelines, Section 15060(c)(2) and 15378, and is consistent with the General Plan, and
17 the eight priority policies of Planning Code, Section 101.1, which letter is on file the Clerk of
18 the Board of Supervisors in File No. 191111, and incorporated herein by this reference;

19 WHEREAS, The City’s obligation to enter into a subsequent Ground Lease is
20 conditioned on, among other things, the City’s approval of a negotiated Ground Lease at its
21 sole discretion following completion of all required environmental review; and

22 WHEREAS, Developer’s obligation to enter into a subsequent Ground Lease is
23 conditioned upon, among other things, the receipt of all governmental approvals necessary
24 for Developer to proceed with the proposed project outlined in the ENA and Ground Lease,
25 including zoning changes if deemed necessary; and

1 WHEREAS, The City will review and consider each of the environmental review
2 documents that relate to the proposed project outlined in the ENA before deciding whether
3 to approve the proposed project, including any associated rezoning, Municipal Code or
4 General Plan amendments or waivers, and design, demolition, and building permits; and

5 WHEREAS, The ENA is merely an Agreement to conduct exclusive negotiations
6 between City and Developer, and as such, reserves for subsequent Board of Supervisors
7 and Mayor action and final discretion and approval regarding the proposed project and
8 Ground Lease and all proceedings and decisions in connection therewith; and

9 WHEREAS, The City does not commit to any definite course of action with regard to
10 the proposed project prior to CEQA compliance and further, retains its absolute discretion
11 to (a) require modifications to the proposed project to mitigate significant adverse
12 environmental impacts; (b) select feasible alternatives that avoid significant adverse
13 impacts of the proposed project, including the “no project” alternative; (c) require the
14 implementation of specific measures to mitigate the significant adverse environmental
15 impacts of the proposed project, as identified through environmental review; (d) reject all or
16 part of the proposed project if the economic and social benefits of the proposed project do
17 not outweigh otherwise unavoidable significant adverse impacts of that project; (e) approve
18 the proposed project upon a finding that the economic and social benefits of the proposed
19 project outweigh otherwise unavoidable significant adverse environmental impact of that
20 project; and (f) deny the proposed project; and

21 WHEREAS, This Resolution is not an approval of the proposed project or a
22 commitment to proceed with the Ground Lease, and this Resolution does not constitute an
23 “Approval” as that term is defined by CEQA Guidelines, Section 15352; now, therefore, be
24 it

1 RESOLVED, That the Board of Supervisors finds that the ENA is not defined as a
2 project under CEQA Guidelines, Section 15378 and 15060(c)(2) because it would not result
3 in a direct or indirect physical change in the environment; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors finds that the project
5 described in the ENA is consistent with the eight priority policies of Planning Code, Section
6 101.1 and is, on balance, in conformity with the Objectives and Policies of the General
7 Plan; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors hereby approves the ENA
9 and authorizes the execution and performance of the ENA by the Director of Property in
10 substantially the form presented to the Board in File No. 191111, together with any other
11 subsequently negotiated documents or exhibits thereto that are necessary or advisable to
12 effectuate the ENA; and, be it

13 FURTHER RESOLVED, Nothing in this Resolution limits the discretion of the Board
14 with respect to the approval or rejection of the proposed project, and the Board of
15 Supervisors understands that conditions for the benefit of Developer, including the
16 issuance of project approvals for the Development Project, may be waived by Developer;
17 and, be it

18 FURTHER RESOLVED, That within thirty (30) days of the ENA being fully executed
19 by all parties, the Real Estate Division shall provide the final contract to the Clerk of the
20 Board for inclusion into the official file.

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RECOMMENDED:

Andrico Q. Penick
Director of Real Estate