

1 [Municipal Transportation Agency Leverage
2 Lease Financing.]

3 **Resolution authorizing one or more defeased lease-to-service contract transactions**
4 **with respect to up to 118 Breda light rail cars; approving the form of and authorizing**
5 **the execution and delivery of one or more Participation Agreements setting forth the**
6 **terms and conditions of the lease-to-service contract transactions relating to the rail**
7 **cars; approving the form of and authorizing the execution and delivery of one or more**
8 **Head Lease Agreements providing the terms and conditions pursuant to which the rail**
9 **cars will be leased to one of up to 6 trusts; approving the form of and authorizing the**
10 **execution and delivery of one or more Head Lease Supplements supplementing the**
11 **terms and conditions pursuant to which specific rail cars will be leased to each trust;**
12 **approving the form of and authorizing the execution and delivery of one or more**
13 **Sublease Agreements providing the terms and conditions pursuant to which each trust**
14 **will lease the rail cars back to the City to be operated and maintained by the City;**
15 **approving the form of and authorizing the execution and delivery of one or more**
16 **Sublease Supplements supplementing the terms and conditions pursuant to which the**
17 **City will lease back the rail cars from each trust; approving the form of and authorizing**
18 **the execution and delivery of one or more Payment Agreements providing the terms**
19 **and conditions pursuant to which the City will provide for the payment of a portion of**
20 **the sublease rent; approving the form of and authorizing the execution and delivery of**
21 **an Equity Collateral Security Agreement and a Custody Agreement providing the terms**
22 **and conditions pursuant to which the City will provide for a custody account to hold**
23 **and a security interest in, certain securities for the payment of a portion of the**
24 **sublease rent and the purchase option purchase price if the purchase option is or is**
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1 deemed exercised; approving the form of and authorizing the execution and delivery of
2 one or more Support and Access Agreements providing the terms and conditions
3 pursuant to which the City will provide each trust support and access to certain
4 property if the City chooses not to purchase the rail cars at the end of the “base”
5 sublease term; approving the form of and authorizing the execution and delivery of one
6 or more Agreements for Assignment on Default each of which will provide the lender
7 with an option to purchase, and take an assignment from an equity investor, such
8 equity investor’s beneficial interest in the trust estate upon the occurrence of a trigger
9 event (as such term is defined in said Agreement); approving the form of and
10 authorizing the execution and delivery of one or more Tax Indemnification Agreements
11 providing the terms and conditions pursuant to which the City will indemnify each
12 equity investor for income inclusions or losses of tax benefits; approving the form of
13 and authorizing the execution and delivery of one or more Insurance and Indemnity
14 Agreements providing the terms and conditions pursuant to which the City will
15 indemnify each strip surety provider; approving indemnification of various parties;
16 acknowledging the waiver of the City’s right to jury trial under certain circumstances;
17 acknowledging proposed waiver requests pursuant to Sections 12B.5-1(d) and 12C.5-
18 1(d) of the San Francisco Administrative Code; finding that the lease-to-service
19 contract transaction is designed to reduce the amount or duration of payment or
20 similar risk to the City or enhance the relationship between risk and return with respect
21 to investments made pursuant to or in connection with such transaction; approving
22 and authorizing the execution and delivery of any document necessary to implement
23 this Resolution; authorizing the execution and delivery of documents in conforming
24 sets for one or more equity investors; ratifying and approving any action heretofore
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1 **taken in connection with the transaction contemplated by this Resolution; and related**
2 **matters.**

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4 WHEREAS, The City and County of San Francisco (the "City") acting through its
5 Municipal Transportation Agency (the "MTA") currently owns and operates approximately 130
6 Breda rail cars entirely within the jurisdiction of the City; and,

7 WHEREAS, The Board of Directors of the MTA (the "MTA Board") authorized and
8 directed staff to explore potential lease-sublease transactions generating funds for the MTA
9 through the lease of the Breda rail cars; and,

10 WHEREAS, A plan of financing the lease-sublease transactions, as described in a staff
11 report to the MTA Board (referred to herein as, the "Transaction Summary"), was presented
12 by staff to the MTA Board, a copy of which is on file with the Clerk of this Board of Supervisors
13 (the "Board"), and, describes a substantial present value benefit to the City which would be
14 available for use by the MTA for the benefit of the public; and,

15 WHEREAS, Based on said Transaction Summary, the City has determined that it is
16 desirable and appropriate to enter into up to six separate transactions (each a "Transaction"
17 and collectively the "Transactions") with up to four separate equity investors (as further
18 specified below) for the lease of up to 118 of the Breda rail cars (the "Rail Cars") to one or
19 more trusts, the beneficial owner of each trust being one of the aforementioned equity
20 investors, and the sublease of the Rail Cars back from said trusts in order to generate an
21 immediate cash payment to the City; and,

22 WHEREAS, The Transaction Summary describes various financing and other
23 documents relating to the Transactions, including the following, one of each of which will be
24 executed for each separate Transaction: a Head Lease (between the City, as lessor, and a
25 trust, the beneficiary of which will be either CIBC Capital Corporation, Wells Fargo Bank

1 Minnesota, N.A., Australia and New Zealand Banking Group Limited or Comerica Leasing
2 Corporation (each an "Equity Investor"), as lessee), a Sublease (between a trust, the
3 beneficiary of which is an Equity Investor, as sublessor, and the City, as sublessee), a
4 Participation Agreement (among the City, an Equity Investor, a trustee, a trust, a lender and a
5 payment undertaker), a Tax Indemnification Agreement (between the City, as indemnitor, and
6 an Equity Investor) and other documents described herein and/or authorized hereby
7 (collectively referred to herein, as the "Operative Documents"); and,

8 WHEREAS, The Operative Documents for each individual Transaction will be
9 substantially identical to the Operative Documents for each of the other Transactions; and

10 WHEREAS, In approving the Payment Agreement, the City has given due
11 consideration to the credit worthiness of Financial Security Assurance as Guarantor, and has
12 noted the current ratings of the Guarantor which are the highest ratings categories given by
13 three nationally recognized rating agencies; and,

14 WHEREAS, In compliance with Government Code Section 5922, the Board of
15 Supervisors hereby determines that the Operative Documents (including amounts required to
16 be deposited and invested thereunder) are intended to reduce the amount or duration of
17 payment, rate or currency, or similar risk connected to the lease agreements, or enhance the
18 relationship between risk and return with respect to investments made pursuant to or in
19 connection with, the Operative Documents; and,

20 WHEREAS, It is deemed necessary and advisable and in the best financial interest for
21 the City to enter into the Operative Documents, as authorized herein; and,

22 WHEREAS, All acts, conditions and things required by law to exist, to have happened
23 and to have been performed precedent to and in connection with the consummation of the
24 Transactions hereby do exist, have happened and have been performed in regular and due
25 time, form and manner as required by law; now, therefore, be it

1 RESOLVED, by the Board of Supervisors of the City and County of San Francisco as
2 follows:

3 Section 1. Approval of Recitals. The Board hereby finds and declares that the above
4 recitals are true and correct.

5 Section 2. Approval of the Transactions. In accordance with the applicable law and
6 the Charter of the City, the Board hereby approves the Transactions as described in the
7 Transaction Summary. The Transactions shall proceed in substantially the form described in
8 the Transaction Summary, each Sublease shall have a term of no more than thirty (30) years
9 and shall generate a net present value benefit to the City of at least 6% of the appraised value
10 of the Rail Cars, currently estimated to be \$388,156,000.

11 Section 3. Participation Agreements. The form of each Participation Agreement, each
12 to be dated as of March 28, 2002 or such other date selected by the Mayor or his designee
13 (each a "Participation Agreement"), each among the City, as head lessor and sublessee; a
14 MUNI Rail Statutory Trust 2002 (each a "Trust"), as head lessee and sublessor; an Equity
15 Investor ; FSA Global Funding Limited as lender (the "Lender"); Premier International Funding
16 Co., as payment undertaker (the "Payment Undertaker"), and State Street Bank and Trust
17 Company of California, National Association, as trustee (the "Trustee" and in its individual
18 capacity the "Trust Company"); in substantially the form of the Participation Agreement
19 presented to the Board (including the various exhibits and addenda attached thereto), a copy
20 of which is on file with the Clerk of the Board, is hereby approved. The Mayor or his designee
21 is hereby authorized to execute, and the Clerk of the Board or her designee is hereby
22 authorized to attest to, each Participation Agreement, with such changes, additions and
23 modifications (including any schedules, to be attached thereto, which will be prepared on or
24 around the closing date of the Transactions) as the City Attorney may approve as to form;

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1 such approval as to form to be conclusively evidenced by the execution and delivery of each
2 Participation Agreement.

3 Section 4. Head Lease Agreement. The form of each Head Lease Agreement, each to
4 be dated as of March 28, 2002 or such other date selected by the Mayor or his designee
5 (each a "Head Lease"), each between the City, as head lessor, and a Trust, as head lessee,
6 in substantially the form of the Head Lease presented to the Board (including the various
7 exhibits and addenda attached thereto), a copy of which is on file with the Clerk of the Board,
8 is hereby approved. The Mayor or his designee is hereby authorized to execute, and the
9 Clerk of the Board or her designee is hereby authorized to attest to, each Head Lease, with
10 such changes, additions and modifications (including any schedules, to be attached thereto,
11 which will be prepared on or around the closing date of the Transactions) as the City Attorney
12 may approve as to form; such approval as to form to be conclusively evidenced by the
13 execution and delivery of each Head Lease.

14 Section 5. Head Lease Supplements No. 1. The form of each Head Lease
15 Supplement No. 1, to be dated as of March 28, 2002 or such other date selected by the Mayor
16 or his designee (each a "Head Lease Supplement"), between a Trust, as head lessee, and
17 the City, as head lessor, in substantially the form of the Head Lease Supplement presented to
18 the Board (including the various exhibits and addenda attached thereto), a copy of one of
19 which is on file with the Clerk of the Board, is hereby approved. The Mayor or his designee is
20 hereby authorized to execute, and the Clerk of the Board or her designee is hereby authorized
21 to attest to, each Head Lease Supplement, with such changes, additions and modifications
22 (including any schedules, to be attached thereto, which will be prepared on or around the
23 closing date of the Transactions) as the City Attorney may approve as to form; such approval
24 as to form to be conclusively evidenced by the execution and delivery of each Head Lease
25 Supplement.

1 Section 6. Sublease Agreements. The form of each Sublease Agreement, each to be
2 dated as of March 28, 2002 or such other date selected by the Mayor or his designee (each a
3 “Sublease Agreement”), each between a Trust, as sublessor, and the City, as sublessee, in
4 substantially the form of the Sublease Agreement presented to the Board (including the
5 various exhibits and addenda attached thereto), a copy of which is on file with the Clerk of the
6 Board, is hereby approved. The Mayor or his designee is hereby authorized to execute, and
7 the Clerk of the Board or her designee is hereby authorized to attest to, each Sublease
8 Agreement, with such changes, additions and modifications (including any schedules, to be
9 attached thereto, which will be prepared on or around the closing date of the Transactions) as
10 the City Attorney may approve as to form; such approval as to form to be conclusively
11 evidenced by the execution and delivery of each Sublease Agreement.

12 Section 7. Sublease Supplements No. 1. The form of each Sublease Supplement
13 No. 1, each to be dated as of March 28, 2002 or such other date selected by the Mayor or his
14 designee (each a “Sublease Supplement”), each between a Trust, as sublessor, and the City,
15 as sublessee, in substantially the form of the Sublease Supplement presented to the Board
16 (including the various exhibits and addenda attached thereto), a copy of which is on file with
17 the Clerk of the Board, is hereby approved. The Mayor or his designee is hereby authorized
18 to execute, and the Clerk of the Board or her designee is hereby authorized to attest to, each
19 Sublease Supplement, with such changes, additions and modifications (including any
20 schedules, to be attached thereto, which will be prepared on or around the closing date of the
21 Transactions) as the City Attorney may approve as to form; such approval as to form to be
22 conclusively evidenced by the execution and delivery of each Sublease Supplement.

23 Section 8. Payment Agreements. The form of each Payment Agreement, each to be
24 dated as of March 28, 2002 or such other date selected by the Mayor or his designee (each, a
25 “Payment Agreement”), each among the Payment Undertaker, the City and a Trust, in

1 substantially the form of the Payment Agreement presented to the Board (including the
2 various exhibits and addenda attached thereto), a copy of which is on file with the Clerk of the
3 Board, is hereby approved. The Mayor or his designee is hereby authorized to execute, and
4 the Clerk of the Board or her designee is hereby authorized to attest to, each Payment
5 Agreement, with such changes, additions and modifications (including any schedules, to be
6 attached thereto, which will be prepared on or around the closing date of the Transactions) as
7 the City Attorney may approve as to form; such approval as to form to be conclusively
8 evidenced by the execution and delivery of each Payment Agreement.

9 Section 9. Support and Access Agreements. The form of each Support and Access
10 Agreement, each to be dated as of March 28, 2002 or such other date selected by the Mayor
11 or his designee (each a "Support and Access Agreement"), each between the City and a
12 Trust, in substantially the form of the Support and Access Agreement presented to the Board
13 (including the various exhibits and addenda attached thereto), a copy of which is on file with
14 the Clerk of the Board, is hereby approved. The Mayor or his designee is hereby authorized
15 to execute, and the Clerk of the Board or her designee is hereby authorized to attest to, each
16 Support and Access Agreement, with such changes, additions and modifications (including
17 any schedules, to be attached thereto, which will be prepared on or around the closing date of
18 the Transactions) as the City Attorney may approve as to form; such approval as to form to be
19 conclusively evidenced by the execution and delivery of each Support and Access
20 Agreement.

21 Section 10. Tax Indemnification Agreements. The form of each Tax Indemnification
22 Agreement, each to be dated as of March 28, 2002 or such other date selected by the Mayor
23 or his designee (each a, "Tax Indemnification Agreement"), each between the City, as
24 indemnitor, and an Equity Investor, in substantially the form of the Tax Indemnification
25 Agreement presented to the Board (including the various exhibits and addenda attached

1 thereto), a copy of which is on file with the Clerk of the Board, is hereby approved. The Mayor
2 or his designee is hereby authorized to execute, and the Clerk of the Board or her designee is
3 hereby authorized to attest to, each Tax Indemnification Agreement, with such changes,
4 additions and modifications (including any schedules, to be attached thereto, which will be
5 prepared on or around the closing date of the Transactions) as the City Attorney may approve
6 as to form; such approval as to form to be conclusively evidenced by the execution and
7 delivery of each Tax Indemnification Agreement.

8 Section 11. Agreements for Assignment on Default. The form of each Agreement for
9 Assignment on Default, each to be dated as of March 28, 2002 or such other date selected by
10 the Mayor or his designee (each an, "Agreement for Assignment on Default"), among the City,
11 a Trust, the Trust Company, and a Strip Surety Provider in substantially the form of the
12 Agreement for Assignment on Default presented to the Board (including the various exhibits
13 and addenda attached thereto), a copy of which is on file with the Clerk of the Board, is
14 hereby approved. The Mayor or his designee is hereby authorized to execute, and the Clerk
15 of the Board or her designee is hereby authorized to attest to, each Agreement for
16 Assignment on Default, with such changes, additions and modifications (including any
17 schedules, to be attached thereto, which will be prepared on or around the closing date of the
18 Transactions) as the City Attorney may approve as to form; such approval as to form to be
19 conclusively evidenced by the execution and delivery of each Agreement for Assignment on
20 Default.

21 Section 12. Insurance and Indemnity Agreement. The form of each Insurance and
22 Indemnity Agreement, each to be dated as of March 28, 2002 or such other date selected by
23 the Mayor or his designee (each an "Insurance and Indemnity Agreement"), between
24 Financial Security Assurance, or ACE Guaranty Re., Inc. (each, a "Strip Surety Provider") and
25 the City, in substantially the form of the Insurance and Indemnity Agreement presented to the

1 Board (including the various exhibits and addenda attached thereto), a copy of which is on file
2 with the Clerk of the Board, is hereby approved. The Mayor or his designee is hereby
3 authorized to execute, and the Clerk of the Board or her designee is hereby authorized to
4 attest to, each Insurance and Indemnity Agreement, with such changes, additions and
5 modifications (including any schedules, to be attached thereto, which will be prepared on or
6 around the closing date of the Transactions) as the City Attorney may approve as to form;
7 such approval as to form to be conclusively evidenced by the execution and delivery of each
8 Insurance and Indemnity Agreement.

9 Section 13. Equity Collateral Security Agreement. The form of each Equity Collateral
10 Security Agreement, each to be dated as of March 28, 2002 or such other date selected by
11 the Mayor or his designee (each an "Equity Collateral Security Agreement"), among the City,
12 as pledgor, the Trust Company as pledgee and collateral agent, and a Trust, in substantially
13 the form of the Equity Collateral Security Agreement presented to the Board (including the
14 various exhibits and addenda attached thereto), a copy of which is on file with the Clerk of the
15 Board, is hereby approved. The Mayor or his designee is hereby authorized to execute, and
16 the Clerk of the Board or her designee is hereby authorized to attest to, each Equity Collateral
17 Security Agreement, with such changes, additions and modifications (including any
18 schedules, to be attached thereto, which will be prepared on or around the closing date of the
19 Transactions) as the City Attorney may approve as to form; such approval as to form to be
20 conclusively evidenced by the execution and delivery of each Equity Collateral Security
21 Agreement.

22 Section 14. Custody Agreement. The form of each Custody Agreement, each to be
23 dated as of March 28, 2002 or such other date selected by the Mayor or his designee (each, a
24 "Custody Agreement"), among the City, as pledgor, the Trust Company, as custodian, and the
25 Trust Company as pledgee and Collateral Agent, in substantially the form of the Custody

1 Agreement presented to the Board (including the various exhibits and addenda attached
 2 thereto), a copy of which is on file with the Clerk of the Board, is hereby approved. The Mayor
 3 or his designee is hereby authorized to execute, and the Clerk of the Board or her designee is
 4 hereby authorized to attest to, each Custody Agreement, with such changes, additions and
 5 modifications (including any schedules, to be attached thereto, which will be prepared on or
 6 around the closing date of the Transactions) as the City Attorney may approve as to form;
 7 such approval as to form to be conclusively evidenced by the execution and delivery of each
 8 Custody Agreement.

9 Section 15. Approval of Indemnification of Various Parties. The Board hereby
 10 expressly approves the indemnification by the City of the party or parties for the liabilities
 11 described below (capitalized terms used in the descriptions below and not otherwise defined,
 12 shall have the meanings given to such terms as set forth in the respective agreement):

<u>Agreement</u>	<u>Indemnified Party</u>	<u>Liability</u>
Each Participation Agreement (Section 15)	A Trust, the Trustee, the Trust Company, Trust Estate, an Equity Investor, the Agent, the Initial Lender, any Holder, the Payment Undertaker, the Payment Undertaker Guarantor, a Strip Surety Provider, any New Strip Surety Provider, any Equity Investor Guarantor, and, in each case, their respective affiliates, agents, directors, officers and employees.	General Indemnity and General Tax Indemnity on an after-tax basis, with respect to the transactions and matters contemplated by the Participation Agreement, each Loan Certificate, the Loan Agreement, the Head Lease, each Head Lease Supplement, the Sublease, each Sublease Supplement, the Trust Agreement, any Transferee Guaranty, the Payment Agreement, the Payment Undertaker Guaranty, the Tax Indemnification Agreement, the Strip Surety Policy, the

1			Insurance and Indemnity Agreement, the Agreement for Assignment on Default, the Support and Access Agreement, the Account Pledge and Security Agreement, and the Custody Agreement.
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6	Each Payment Agreement	Payment Undertaker	Any deduction or withholding taxes required to be made or withheld from any payment by the Payment Undertaker on an after tax basis
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10	Each Tax Indemnification Agreement (Section 5)	Each Equity Investor	Loss of Tax benefits of each Equity Investor
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12	Each Insurance and Indemnity Agreement	Each Strip Surety Provider	All payments made by the Strip Surety Provider pursuant to the Policy, or otherwise
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14	Custody Agreement	State Street Bank and Trust Company of California, as Custodian	General indemnification with respect to matters related to or arising from the Equity Collateral Security Agreement, the Custody Agreement or the Securities Account.
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In addition:

(1) In the event of any early termination, the City bears the risk of payment in the event that market conditions result in the equity defeasance not completely satisfying the payment owed on such early termination date, and

(2) In no event shall an Indemnified Party under any Participation Agreement or Tax Indemnification Agreement ("Indemnitees") be required, or the City permitted, to appeal an

1 adverse judicial determination to the United States Supreme Court unless prior to the
2 Indemnitee taking any action (a) the City shall have acknowledged in writing its obligation to
3 indemnify the Indemnitee in respect of such contested Tax in the event such contest is
4 unsuccessful;(b) if the City has not previously done so, the City shall advance the amount
5 thereof plus interest, penalties and additions to Tax with respect thereto to such Indemnitee
6 on an interest-free basis with no additional net after-tax cost to such Indemnitee to make such
7 payment and shall indemnify such Indemnitee against any adverse tax consequences arising
8 from such advance; (c) in making such appeal, the Indemnitee shall only be required to make
9 a good faith attempt to effect an appeal by a writ of certiorari or otherwise and (d) the City
10 shall have furnished the Indemnitee with an opinion of independent tax counsel selected by
11 the City and reasonably satisfactory to the Indemnitee to the effect that there is a substantial
12 likelihood (although not necessarily more likely than not) that such adverse judicial
13 determination will be reversed or substantially modified for the position asserted in such
14 appeal.

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16 Section 16. Waiver of Jury Trial. The City will waive its right to a jury trial in any suit,
17 action or proceeding arising as a result of a breach by the City of a monetary obligation under
18 any of the documents to which the City is a party under the Transactions.

19 Section 17. Proposed Waiver of the Requirements of Sections 12B and 12C of the
20 Administrative Code. The Director of Transportation of the MTA has requested, in
21 accordance with the provisions of Sections 12B.5-1(d) and 12C.5-1(d) of the Administrative
22 Code of the City and County of San Francisco that the requirements of Section 12B and 12C
23 be waived for any agreement authorized by this Resolution to which the City and the Lender
24 are parties, the City and a Strip Surety Provider are parties, the City and an Equity Investor
25 are parties, or the City and a Payment Undertaker are parties.

1 Section 18. Findings in Accordance with the Law. In accordance with the applicable
2 law, the Board hereby finds and determines that the Transactions (including amounts required
3 to be deposited and invested therein) described in the Transaction Summary are designed to
4 reduce the amount or duration of payment, currency, rate, spread or similar risk to the City or
5 enhance the relationship between risk and return with respect to the investments made
6 pursuant to or in connection with the Transactions.

7 Section 19. Modification, Changes and Additions. The Mayor or his authorized
8 designee executing a document approved herein, in consultation with the City Attorney, is
9 hereby authorized to approve and make such modifications, changes or additions to said
10 document as may be necessary or advisable provided that such modification, change or
11 addition does not extend the term of the Sublease beyond thirty (30) years or provide for a net
12 present value benefit to the City of less than 6% of the appraised value of the Rail Cars. The
13 approval as to form by the City Attorney and the approval by the Mayor or his designee of any
14 modification, change or addition to any of the aforementioned documents shall be evidenced
15 conclusively by the execution and delivery of the document in question.

16 Section 20. Execution of Documents. The documents approved herein may be
17 executed and delivered by the Mayor or his authorized designee in conforming sets for each
18 respective entity party thereto.

19 Section 21. Ratification. All actions heretofore taken by the officers and agents of the
20 City with respect to the Transactions are hereby approved, confirmed and ratified, and the
21 proper officers of the City are hereby authorized and directed, for and in the name of the City,
22 to do any and all things and take any and all actions and execute any and all certificates,
23 agreements and other documents, including but not limited to those documents described in
24 the Transaction Summary, the Participation Agreement or the Sublease and other documents
25 herein approved, which they, or any of them, may deem necessary or advisable in order to

1 consummate the Transactions and to effectuate the purposes thereof and of the documents
2 herein approved in accordance with this Resolution.

3 Section 22. Documents on File. All documents referenced herein as being on file with
4 the Clerk of the Board are located in File No. _____.

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6 APPROVED AS TO FORM

7 DENNIS J. HERRERA
8 City Attorney

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10 By: _____
11 ROBERT A. BRYAN
12 Deputy City Attorney

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