

1 [In-kind agreement and acceptance of easement relating to 333 Fremont Street.]

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3 **Resolution approving an in-kind agreement for the provision of a mid-block pathway**
4 **and streetscape improvements to satisfy a portion of the developer's impact fee**
5 **obligation relating to the 333 Fremont Street project; authorizing the acceptance of an**
6 **easement for such mid-block pathway under the terms of the in-kind agreement;**
7 **authorizing the Director of Property to execute documents, make certain modifications**
8 **and take certain actions in furtherance of this resolution; and ratifying previous actions**
9 **taken in connection therewith.**

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11 WHEREAS, The Board of Supervisors (the "Board") of the City and County of San
12 Francisco (the "City") has adopted Ordinance No. 217-05 (File No. 050865) on August 9, 2005
13 (the "Ordinance") which, among other matters, imposes a Community Improvements Impact
14 Fee (the "Fee") on owners of land in the Rincon Hill Downtown Residential District, related to
15 residential development; and,

16 WHEREAS, The Ordinance allows property owners, under certain circumstances and
17 with the approval of the City's Planning Commission, to enter an in-kind agreement with the
18 City, by which the owner agrees to provide certain in-kind public infrastructure and facilities
19 improvements in return for the waiver of a portion of the Fee otherwise imposed under the
20 Ordinance; and,

21 WHEREAS, 333 Fremont Venture, LLC (the "Project Sponsor"), is in the process of
22 developing an 88-unit residential building located at 333 Fremont Street (the "Project") which
23 under the Ordinance would require a payment of \$769,142 to satisfy the Fee obligation (the
24 "Total Project Fee"); and,

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1 WHEREAS, Under the terms of the Ordinance relating to the Fee the Project Sponsor
2 is seeking an in-kind agreement (the "In-Kind Agreement") to provide infrastructure
3 improvements including a mid-block pathway adjacent to the Project on land owned by the
4 Project Sponsor (the "In-Kind Improvements") in return for a waiver of a portion of the Total
5 Project Fee; and,

6 WHEREAS, Upon completion of the In-Kind Improvements, the In-Kind Agreement
7 calls for the granting of a perpetual, irrevocable easement by the Project Sponsor to the City
8 for the benefit of the public and the City to use and access the In-Kind Improvements, in the
9 form attached to the In-Kind Agreement as Exhibit C (the "Easement"); and,

10 WHEREAS, Upon conveyance of the Easement and satisfaction of the terms of the In-
11 Kind Agreement, the Project Sponsor will be receive a credit of the combined value of the In-
12 Kind Improvements and the Easement towards theTotal Project Fee (the "Credit Amount"),
13 such value as determined by the Director of Planning under the terms of the Ordinance and
14 set forth in Sections 4.2 and 4.3 of the In-Kind Agreement; and,

15 WHEREAS, To secure the Project Sponsor's satisfaction of its Fee obligation, the In-
16 Kind Agreement requires the Project Sponsor to maintain a deposit of funds in an escrow
17 account in an amount equal to the Credit Amount plus interest that may accrue on that
18 amount; and,

19 WHEREAS, The City has the right to draw on such escrow funds if the Project Sponsor
20 fails to satisfy its obligations under the In-Kind Agreement; and,

21 WHEREAS, In accordance with the terms of Section 4.4 of the In-Kind Agreement,
22 upon Board approval of the In-Kind Agreement the Project Sponsor will cause the payment to
23 the City of an amount equal to the Total Project Fee minus the Credit Amount, plus applicable
24 interest; and,

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1 WHEREAS, Section 5.1 of the In-Kind Agreement conditions the effectiveness of the
2 In-Kind Agreement on the receipt of Board of Supervisors approval of the In-Kind Agreement
3 and the acceptance of the Easement; and,

4 WHEREAS, Among other things, the Easement will require the Project Sponsor to
5 repair and maintain the In-Kind Improvements over the term of the Easement; and,

6 WHEREAS, At its meeting on August 10, 2006, the Planning Commission adopted its
7 Motion No. 17302 (the "Planning Commission Motion"), which approved the execution of the
8 In-Kind Agreement pending the required review by the Board of Supervisors; and,

9 WHEREAS, Copies of the Planning Commission Motion and the executed In-Kind
10 Agreement are on file with the Clerk of the Board of Supervisors in File No. _____,
11 which is hereby declared to be a part of this resolution as if set forth fully herein; and,

12 WHEREAS, On June 16, 2005, the Planning Commission adopted Motion No. 17044, a
13 copy of which is on file with the Clerk of the Board of Supervisors in File No. _____,
14 wherein the City's Planning Commission (i) found that the Project is consistent with the City's
15 General Plan and with the Eight Priority Policies under Planning Code Section 101.1, and
16 (ii) adopted findings as required by the California Environmental Quality Act ("CEQA") in
17 connection with its approval of the Project, including a Statement of Overriding
18 Considerations, and adopted a mitigation monitoring and reporting program as set forth in the
19 Conditions of Approval (the "CEQA Documents"), which findings are incorporated herein by
20 this reference; now, therefore, be it

21 RESOLVED, That this Board finds and declares the above recitals are true and correct;
22 and, be it

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1 FURTHER RESOLVED, That this Board hereby finds that the Project, the In-Kind
2 Improvements and the acceptance of the Easement are consistent with the City's General
3 Plan, and with the Eight Priority Policies of City Planning Code Section 101.1; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors finds that since the final
5 environmental impact report was certified and the Planning Commission approved the CEQA
6 Documents, there have been no substantial changes to the Project and no substantial
7 changes in Project circumstances that would require major revisions to the CEQA Documents
8 due to the involvement of new significant environmental effects or an increase in the severity
9 of previously identified significant impacts, and there is no new information of substantial
10 importance that would change the conclusions set forth in the CEQA Documents; and, be it

11 FURTHER RESOLVED, That this Board approves the In-Kind Agreement; and, be it

12 FURTHER RESOLVED, That this Board approves the acceptance of the Easement
13 under the terms of the In-Kind Agreement and authorizes the Director of Property to take any
14 and all steps as the Director of Property deems necessary or appropriate in order to
15 consummate the acceptance of such Easement and satisfy the terms of the In-Kind
16 Agreement, or to otherwise effectuate the purpose and intent of this resolution, such
17 determination to be conclusively evidenced by the execution and delivery by the Director of
18 Property of any such documents; and, be it

19 FURTHER RESOLVED, That this Board authorizes the Director of Property to enter
20 into any additions, amendments or other modifications to the Easement documents (including,
21 without limitation, the attached exhibits) that the Director of Property determines are in the
22 best interests of the City, that do not materially increase the obligations or liabilities of the City,
23 and are necessary or advisable to complete the transactions contemplated by the In-Kind
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1 Agreement, such determination to be conclusively evidenced by the execution and delivery by
2 the Director of Property of the documents and any amendments thereto; and, be it

3 FURTHER RESOLVED, All actions authorized and directed by this Resolution and
4 heretofore taken are hereby ratified, approved and confirmed by this Board.

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