

1 [Major Encroachment Permit - 555 Fulton Street]

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3 **Resolution granting revocable permission to 555 Fulton Street Development, LLC to**
4 **construct and maintain encroachments in the public right-of-way, including but not**
5 **limited to stamped asphalt on the roadway of Birch Street between Laguna and Octavia**
6 **Streets, tree wells with metal gutter covers, pavers, and a raised crosswalk, fronting**
7 **upon 555 Fulton Street, Assessor's Parcel Block No. 0794, Lot Nos. 059 through 198;**
8 **adopting environmental findings under the California Environmental Quality Act; and**
9 **making findings of consistency with the General Plan, and the eight priority policies of**
10 **Planning Code, Section 101.1.**

11
12 WHEREAS, Pursuant to Public Works Code, Sections 786 et seq., 555 Fulton Street
13 Development, LLC (the "Permittee") requested permission from the Department of Public
14 Works ("Public Works") to construct and maintain various improvements in the public right-of-
15 way in connection with the redevelopment of the property located at 555 Fulton Street
16 (Assessor's Parcel Block No. 0794, Lot Nos. 059 through 198); and

17 WHEREAS, The improvements include: stamped asphalt roadway on Birch Street
18 between Laguna and Octavia Streets; seven tree wells with associated metal gutters and
19 irrigation lines on the northerly side of Birch Street; permeable pavers along the sidewalk on
20 the southerly side of Fulton Street between Laguna and Octavia Streets, along the sidewalk
21 on the easterly side of Laguna Street between Fulton and Birch Streets, and along the
22 westerly side of Octavia Street between Fulton and Birch Streets; concrete sidewalk pavers
23 on the sidewalk fronting the entrance to the building located at 555 Fulton Street; pervious
24 concrete sidewalk on the northerly side of Birch Street between Laguna and Octavia Streets;
25 one planter on the northerly side of Birch Street east of Laguna Street; three planters with

1 trees and associated metal gutters and irrigation lines on the northerly side of Birch Street;
2 and a raised crosswalk at the intersection of Birch Street at Laguna Street, all of which
3 improvements (collectively, the “Encroachments”) are adjoining the real property located at
4 555 Fulton Street (Assessor’s Parcel Block No. 0794, Lot Nos. 059 through 198); and

5 WHEREAS, The Permittee has constructed the Encroachments under Public Works
6 Permit Nos. 14ME-0017, 15SW-0081, and 18IE-0759, in conjunction with its multifamily
7 condominium development project at 555 Fulton Street, and the Permittee has proposed to
8 maintain the Encroachments for the duration of the permit in accordance with and subject to
9 that certain Major Encroachment Permit and Maintenance Agreement (Permit No.
10 _____) (“Encroachment Permit Agreement”), which is on file in the Office of the
11 Clerk of the Board of Supervisors in File No. _____ and incorporated herein by
12 reference; and

13 WHEREAS, The Encroachments are shown in the documents and plans on file in the
14 Office of the Clerk of the Board of Supervisors in File No. _____ and
15 incorporated herein by reference; and

16 WHEREAS, On May 13, 2010, the Planning Commission conducted a duly noticed
17 public hearing at a regularly scheduled meeting on Conditional Use/Planned Unit
18 Development Application No. 2005.1085C to demolish an existing commercial/industrial
19 building and construct a new five-story, mixed-use building containing approximately 139
20 dwelling units, 30,400 square feet of ground floor commercial uses, 148 off-street parking
21 spaces, and streetscape and pedestrian-oriented improvements (the “Mixed-Use Project”) and
22 the appeal of the Mitigated Negative Declaration for the Mixed-Use Project; and

23 WHEREAS, At the May 13, 2010 hearing, the Planning Commission upheld the
24 Preliminary Mitigated Negative Declaration for the Mixed-Use Project and approved the
25 issuance of the Final Mitigated Negative Declaration (“FMND”) as prepared by the Planning

1 Department in compliance with the California Environmental Quality Act (California Public
2 Resources Code, Sections 21000 et seq.) ("CEQA"), 14 California Code of Regulations
3 Sections 15000 et seq. (the "CEQA Guidelines"), and Administrative Code, Chapter 31; and

4 WHEREAS, The Planning Commission reviewed and considered the FMND, and at the
5 May 13, 2010 hearing, the Planning Commission found that the contents of the FMND and the
6 procedures through which the FMND was prepared, publicized, and reviewed complied with
7 CEQA, the CEQA Guidelines, and Administrative Code, Chapter 31; and the Planning
8 Commission found that the FMND was adequate, accurate, and objective; that the FMND
9 reflected the independent analysis and judgment of the Department and the Commission; and
10 that the summary of comments and responses contained no significant revisions to the Draft
11 Initial Study/Mitigated Negative Declaration (together the "2010 CEQA Findings"); and

12 WHEREAS, On October 3, 2013, by Motion No. 18891, the Planning Commission
13 found that since the FMND was finalized, there had been no substantial project changes and
14 no substantial changes in project circumstances that would require major revisions to the
15 FMND due to the involvement of new significant environmental effects or an increase in the
16 severity of previously identified significant impacts, and there was no new information of
17 substantial importance that would change the conclusions set forth in the FMND (together
18 with the "2010 CEQA Findings," the "Environmental Findings") and the Planning Commission
19 adopted the FMND and the Mitigation Monitoring and Reporting Program ("MMRP") for the
20 Mixed-Use Project; and

21 WHEREAS, The Planning Commission, by Motion No. 18891, found that the Mixed-
22 Use Project, including the Encroachments, is in conformity with the General Plan, and is
23 consistent with the eight priority policies of Planning Code, Section 101.1; and

24 WHEREAS, A copy of said Motion is on file with the Clerk of the Board of Supervisors
25 in File No. _____ and is incorporated herein by reference; and

1 WHEREAS, In Public Works Order No. 188001, dated July 3, 2018, the Public Works
2 Director recommended that the Board of Supervisors approve the subject Encroachment
3 Permit and its Encroachment Permit Agreement (collectively, the "Permit"); and

4 WHEREAS, Public Works Order No. 188001 is on file with the Clerk of the Board of
5 Supervisors in File No. _____ and incorporated herein by reference; and

6 WHEREAS, Public Works has determined that under Public Works Code, Section
7 786.7, the Permittee owes \$51,379.13 as the initial payment for the annual public right-of-way
8 occupancy assessment fee; and

9 WHEREAS, The Public Works Director has determined and the City Engineer has
10 certified that the annual maintenance cost for the Permit is \$21,091.25; and

11 WHEREAS, The Permit shall not become effective until: the Permittee executes and
12 acknowledges the Permit, and submits the executed and acknowledged Permit and all
13 required documents and fees to Public Works, and Public Works records the Permit in the
14 Office of the Assessor-Recorder, ensuring constructive notice of the maintenance and other
15 requirements corresponding to the Encroachments; and

16 WHEREAS, The Permittee, at its sole expense and as is necessary as a result of this
17 permit, shall make the following arrangements: to provide for the support and protection of
18 facilities under the jurisdiction of Public Works, the San Francisco Public Utilities Commission,
19 the San Francisco Fire Department, other City Departments, and public utility companies; to
20 provide access to such facilities to allow said entities to construct, reconstruct, maintain,
21 operate, or repair such facilities as set forth in the Permit; to remove or relocate such facilities
22 if installation of Encroachments requires said removal or relocation and to make all necessary
23 arrangements with the owners of such facilities, including payment for all their costs, should
24 said removal or relocation be required; and the Permittee shall assume all costs for the
25

1 maintenance and repair of the Encroachments pursuant to the Permit and no cost or
2 obligation of any kind shall accrue to Public Works by reason of this permission granted; and

3 WHEREAS, No structures shall be erected or constructed within the public right-of-way
4 except as specifically permitted herein; now, therefore, be it

5 RESOLVED, That the Board of Supervisors adopts the Environmental Findings as its
6 own and adopts the MMRP; and, be it

7 FURTHER RESOLVED, That the Board finds that the Permit and the Encroachments
8 are consistent with the General Plan, and the eight priority policies of Planning Code, Section
9 101.1, for the reasons set forth in Motion No. 18891, as approved by the Planning
10 Commission on October 3, 2013; and, be it

11 FURTHER RESOLVED, That the Board accepts the recommendations in Public Works
12 Order No. 188001 and approves the Permit with respect to the Encroachments; and, be it

13 FURTHER RESOLVED, That pursuant to Public Works Code, Sections 786 et seq.,
14 the Board hereby grants revocable, personal, non-exclusive, and non-possessionary permission
15 to the Permittee, 555 Fulton Street Development, LLC, to occupy the public right-of-way with
16 the Encroachments and to maintain said Encroachments under the terms of the Permit; and,
17 be it

18 FURTHER RESOLVED, That the Board authorizes the Public Works Director to
19 perform and exercise the City's rights with respect to the Encroachments under the Permit;
20 and, be it

21 FURTHER RESOLVED, That the Board authorizes the Public Works Director to
22 authorize any amendments or modifications that the Public Works Director, in consultation
23 with the City Attorney, determines are in the best interest of the City, do not materially
24 increase the obligations or liabilities of the City or materially decrease the obligations of the
25 Permittee or its successors, are necessary or advisable to effectuate the purposes of the

1 Permit or this resolution with respect to the Encroachments, and are in compliance with all
2 applicable laws; and, be it

3 FURTHER RESOLVED, That the Board, under Public Works Code, Section 786.7,
4 acknowledges that the initial payment for the public right-of-way occupancy assessment fee is
5 \$51,379.13 and the initial annual maintenance cost for the Permit is \$21,091.25, in
6 accordance with the Public Works Director’s determination for the Encroachments.