

1 [Agreement to Purchase a Condominium Unit to be Located at Diamond and Wilder Streets
2 for Use as the Glen Park Branch of the San Francisco Public Library]

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4 **Ordinance approving and authorizing the Director of Property to execute an Agreement**
5 **of Purchase and Sale of Real Property with Glen Park Marketplace Phoenix, LLC, for**
6 **the purchase of a condominium unit in a mixed use project to be located at Diamond**
7 **and Wilder Streets for use as the Glen Park branch of the San Francisco Public Library;**
8 **adopting findings pursuant to the California Environmental Quality Act; adopting**
9 **findings that the conveyance is consistent with the City's General Plan and Eight**
10 **Priority Policies of City Planning Code Section 101.1.; and authorizing the Director of**
11 **Property to execute documents, make certain modifications and take certain actions in**
12 **furtherance of this Ordinance.**

13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. Findings. The Board of Supervisors of the City and County of
15 San Francisco finds, determines and declares as follows:

16 A. Glen Park Marketplace Phoenix, LLC (the "Seller") owns approximately 16,000
17 square feet of real property known as Lots 63, 25A, 26, 27, 28 and 29 in Assessor's Block
18 6745, in the City and County of San Francisco, State of California ("Seller's Property").

19 B. Seller proposes to design and develop a mixed use condominium project on Seller's
20 Property proposed as follows (collectively, the "Project"): (i) one condominium unit comprised
21 of approximately 7,000 square feet of ground floor commercial space initially consisting of a
22 grocer; (ii) 15 individual residential upper floor condominium units with 15 car parking; and
23 (iii) one condominium unit located on the corner of Diamond and Wilder Streets with a
24 separate main entrance, comprised of approximately 9,200 square feet of space, consisting of
25 approximately 700 square feet of ground floor space on Diamond Street and approximately

1 8,500 square feet of space over such ground floor parcel on the second floor of the Project,
2 along with 4,000 square feet of air rights above the Diamond Street portion of the Project, to
3 be purchased by the City and initially used as the Glen Park Branch of the San Francisco
4 Public Library (the "Property").

5 C. Seller desires to sell and City desires to purchase the Property and a copy of the
6 proposed Agreement of Purchase and Sale of Real Property (along with all exhibits and
7 schedules, the "Agreement") is on file with the Clerk of the Board of Supervisors in file No.
8 _____.

9 D. Pursuant to the Agreement, the Purchase Price for the Property will be \$3,361,000,
10 all of which will be paid at the closing of the transaction (the "Closing"), except for a 10%
11 Punchlist Reserve which is to be paid after the completion of any punch list items.

12 E. The Property is to be delivered as an enhanced shell in accordance with the terms
13 of the Agreement.

14 F. The Construction of the Property shall be governed by a Construction Rider
15 attached to the Agreement as Exhibit G (the "Rider") and during the term of the Agreement,
16 the Seller will submit, and the City will have the successive right to review and approve, more
17 detailed plans for the construction of the Property in each case, not inconsistent with any
18 previously approved submittal.

19 G. Pursuant to the Rider, the Seller is solely responsible for every aspect of the
20 construction of the Project and the Property and all of the activities related thereto.

21 H. Pursuant to the Rider, the Seller must commence construction of the Property by
22 two years from the signing of the Agreement, and must complete construction of the Property
23 by five years from the signing of the Agreement, unless extended by City.

24 I. Pursuant to the Rider, the Seller is responsible for correcting all defective work
25 during the term of the Agreement and for one year after the final completion of the Property.

1 J. The Rider contains a commercially standard mediation provision for the resolution of
2 disputes regarding the Agreement, excluding disputes related to the termination of the
3 Agreement.

4 K. Pursuant to the Agreement, the City will also have opportunities to review and
5 approve other information concerning the Property and the Seller's Property and to terminate
6 the Agreement if the City is dissatisfied. One such item for review and approval by the City
7 Attorney and the Director of Property will be conditions covenants and restrictions (the
8 "CC&Rs"). The CC&Rs will contain provisions governing the use, operation, maintenance,
9 cost sharing, rules and regulations relating to the Project and the condominium unit holders.

10 L. On December 5, 2002, the City Planning Commission, by Motion No. 16486 (a copy
11 of such motion is on file with the Clerk of the Board in file No. _____), certified the
12 Negative Declaration for the transaction contemplated by the Agreement ("Final Negative
13 Declaration") as accurate, adequate and objective and in compliance with the California
14 Environmental Quality Act ("CEQA")], and such Motion is incorporated herein by this
15 reference . This Board of Supervisors has reviewed and considered the information contained
16 in the Final Negative Declaration.

17 M. On December 5, 2002, the Planning Commission by Motion 16488 found that the
18 transaction contemplated by the Agreement is consistent with the City's General Plan, and
19 with the Eight Priority Policies of City Planning Code Section 101.1, (a copy of such motion is
20 on file with the Clerk of the Board in file No. _____), and such Motion is incorporated
21 herein by this reference. This Board of Supervisors has reviewed and considered the
22 information contained in the General Plan Findings.

23 N. Entering into the Agreement directly with the Seller is appropriate and in the best
24 interests of the City under the circumstances described herein. Such circumstances include,
25 without limitation, all of the following: (1) The Project offers unique advantages to the City

1 regarding its location and use as a branch Library; (2) Seller is the owner of the Property and
2 is undertaking the development of the Seller's Property as a mixed use project; and, (3) Seller
3 is wholly responsible for the development and construction of the Project and the Property
4 and will agree to sell the Property to the City only as a completed enhanced shell.

5 O. On July 2, 2002, the San Francisco Public Library Commission (the "Library
6 Commission") endorsed and recommended the purchase of the Property from the Seller, (a
7 copy of such Library Resolution is on file with the Clerk of the Board of Supervisors).

8 Section 2. The Board of Supervisors hereby adopts and incorporates the findings under
9 CEQA contained in Planning Commission Motion No. 16486, (a copy of which are on file with
10 the Clerk of the Board, in file No. _____) by reference as though such findings were fully
11 set forth in this Ordinance.

12 Section 3. The Board of Supervisors hereby finds that the Project, as contemplated by
13 the Agreement is consistent with the General Plan, and with the eight Priority Policies of
14 Planning Code Section 101.1 for the same reasons as set forth in the Planning Commission
15 Motion 16488 (a copy of which are on file with the Clerk of the Board, in file No. _____),
16 and hereby incorporates such findings by reference as though fully set forth in this Ordinance.

17 Section 4. The Board of Supervisors hereby finds that the Project, as contemplated by
18 the Agreement is not a public works project and sections of Articles 6 and 12 of the
19 Administrative Code related to public works and contracting issues are not applicable, and in
20 accordance with the recommendation of the Library Commission and the Director of Property,
21 the Board of Supervisors hereby approves the Agreement and the transaction contemplated
22 thereby and authorizes and approves the execution by the Director of Property of the
23 Agreement, in substantially the form of such Agreement presented to this Board in the name
24 and on behalf of the City and any such other documents that are necessary or advisable to
25

1 complete the transaction contemplated by the Agreement and effectuate the purpose and
2 intent of this Ordinance.

3 Section 5. That the Board of Supervisors authorizes the Director of Property to enter
4 into any additions, amendments or other modifications to the Agreement and any other
5 documents or instruments necessary in connection therewith, that the Director of Property
6 determines are in the best interests of the City, do not materially decrease the benefits to the
7 City with respect to the Property, do not materially increase the purchase price, obligations or
8 liabilities of the City not provided for in the Agreement, and are necessary or advisable to
9 complete the transaction contemplated in the Agreement and effectuate the purpose and
10 intent of this Ordinance, such determination to be conclusively evidenced by the execution
11 and delivery by the Director of Property of any such additions, amendments, or other
12 modifications.

13 Section 6. That all actions heretofore taken by the officers of the City with respect to
14 such Agreement are hereby approved, confirmed and ratified.

15

16 **RECOMMENDED:**

APPROVED:

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20 _____
Director of Property

Mayor

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24 _____
City Librarian
25 Library Commission Resolution No.#3/02

SUPERVISOR BEVAN DUFTY
BOARD OF SUPERVISORS

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APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

By: _____
Donnell Choy, Deputy City Attorney