

1 [Real Property Conveyance - Land Dedication - 1294-8 Shotwell Street - Inclusionary
2 Affordable Housing]

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4 **Resolution approving and authorizing an agreement for the conveyance of a parcel of**
5 **real estate, consisting of approximately .27 acres improved by a 11,672 square foot**
6 **commercial building for the Mayor’s Office of Housing pursuant to the land dedication**
7 **process permitted under Planning Code Section 419; adopting findings under the**
8 **California Environmental Quality Act; adopting findings that the conveyance is**
9 **consistent with the City’s General Plan and Eight Priority Policies of City Planning**
10 **Code, Section 101.1; and authorizing the Director of Property to execute documents,**
11 **make certain modifications and take certain actions in furtherance of this Resolution.**

12
13 WHEREAS, Thomas Murphy and Martina Murphy, Trustees of the Murphy Trust UDT
14 dated October 03, 2003 (“Seller”) owns Lot 026, in Block 6571 located at 1294-8 Shotwell
15 Street of the County of San Francisco (the “Property”), containing 11,672 square feet of
16 Production, Distribution and Repair space on .27 acres of land; and

17 WHEREAS, 2558 Mission LLC (“Developer”) is the developer of 2558 Mission Street,
18 San Francisco, a mixed use project known as the New Mission Theatre Project (the “Principal
19 Site”); and

20 WHEREAS, Developer has elected to satisfy the Inclusionary Affordable Housing
21 Program requirements under Planning Code Section 415 for the Principal Site by dedicating
22 the Property to the City pursuant to Planning Code Section 419; and

23 WHEREAS, the land dedication of the Property was included in the Conditional Use
24 Authorization and Planned Unit Development approvals and California Environmental Quality
25 Act (CEQA) findings for the Principal Site, which were considered and approved by Planning

1 Commission Motion No. 18775 dated January 10, 2013, a copy of which is on file with the
2 Clerk of the Board of Supervisors under File No. 130420 and is incorporated herein by
3 reference (“Planning Approvals”); and

4 WHEREAS, As a condition to the approval of the land dedication of the Property, and
5 as further described in the Planning Approvals, the Mayor’s Office of Housing (MOH)
6 determined that the Property is suitable for development of up to 46 affordable housing
7 dwelling units as required under Planning Code Sections 419.5(2) and 419.6; and

8 WHEREAS, The Developer has agreed to purchase the Property from the Seller
9 pursuant to a Purchase and Sale Agreement and Joint Escrow Instructions dated September
10 29, 2011 (the “Seller Agreement”), a copy of which is on file with the Clerk of the Board of
11 Supervisors under File No. 130420 and is incorporated herein by reference; and

12 WHEREAS, The terms and conditions of the conveyance of the Property to the City
13 have been negotiated, as further outlined in the Agreement of Purchase and Sale for Real
14 Estate by and between the Developer and City (the “Agreement”), a copy of which is on file
15 with the Clerk of the Board of Supervisors under File No. 130420 and is incorporated herein
16 by reference, pursuant to which Developer shall pay Seller to acquire the Property and direct
17 Seller to convey the fee title to the Property directly to City; and

18 WHEREAS, The Property was appraised by a third party appraiser on April 10, 2013 at
19 \$4,200,000, and said appraisal was reviewed and approved by the City’s Director of Property;
20 and

21 WHEREAS, Because the Property is being conveyed to the City pursuant to the land
22 dedication process permitted under Planning Code Section 419, the purchase price to be paid
23 by the City under the Agreement is \$1; and

1 WHEREAS, The results of preliminary environmental testing on the Property
2 discovered soluble lead concentrations in the soil exceeding State of California waste criteria;
3 and

4 WHEREAS, In response to negotiations with the Director of Property and MOH,
5 Developer has proposed to provide the following in the Agreement to address City's concerns
6 regarding the condition of the Property (the "Developer Proposal"): 1) an assignment of
7 Seller's representations and warranties in the Seller Agreement; 2) an agreement to deposit
8 \$92,230 into an escrow account to be made available to City to **transport and dispose of**
9 contaminated soil if necessary for any future development of the Property; and 3) a
10 representation and warranty that the Property contains no further undisclosed adverse
11 environmental conditions, with Developer's liability for any breach of this representation
12 limited to a period of two years after conveyance and a cap of \$500,000.

13 WHEREAS, There are two existing commercial leases for portions of the Property,
14 which the City will assume as part of the conveyance; and

15 WHEREAS, The Planning Approvals determined that the development of the Principal
16 Site and the land dedication of the Property are consistent with the City's General Plan and
17 with the Eight Priority Policies of City Planning Code Section 101.1, and are not subject to
18 CEQA pursuant to CEQA Guidelines Section 15060(c)(2), now, therefore, be it

19 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
20 hereby adopts the findings contained in the Planning Approvals regarding CEQA, and hereby
21 incorporates such findings by reference as though fully set forth in this Resolution; and be it

22 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
23 hereby finds that the conveyance of the Property is consistent with the General Plan and with
24 the Eight Priority Policies of City Planning Code Section 101.1 for the same reasons as set
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1 forth in the Planning Approvals, and hereby incorporates such findings by reference as though
2 fully set forth in this Resolution; and, be it

3 FURTHER RESOLVED, That in accordance with the recommendation of the Director
4 of MOH and Director of Property, the Board of Supervisors hereby approves the conveyance
5 of the Property to the City and the transaction contemplated thereby in substantially the form
6 of the Agreement presented to the Board, which incorporates the terms of the Developer
7 Proposal, and authorizes the Director of Property to execute the Agreement and any
8 associated assignments of lease; and, be it

9 FURTHER RESOLVED, That all actions heretofore taken by any employee or official of
10 the City with respect to this conveyance are hereby approved, confirmed and ratified; and, be
11 it

12 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
13 Property to enter into any amendments or modifications to the Agreement (including, without
14 limitation, the attached exhibits) that the Director of Property determines, in consultation with
15 the City Attorney and Director of MOH, are in the best interest of the City, do not otherwise
16 materially increase the obligations or liabilities of the City, are necessary or advisable to
17 effectuate the purposes of the Agreement and are in compliance with all applicable laws,
18 including City's Charter; and, be it

19 FURTHER RESOLVED, That the Director of Property is hereby authorized and urged,
20 in the name and on behalf of the City and County, to accept the deed to the Property from the
21 Seller upon the closing in accordance with the terms and conditions of the Agreement, and to
22 take any and all steps (including, but not limited to, the execution and delivery of any and all
23 certificates, agreements, notices, consents, escrow instructions, closing documents and other
24 instruments or documents) as the Director of Property deems necessary or appropriate in
25 order to consummate the conveyance of the Property pursuant to the Agreement, or to

1 otherwise effectuate the purpose and intent of this Resolution, such determination to be
2 conclusively evidenced by the execution and delivery by the Director of Property of any such
3 documents.

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INDEX CODE: MYRMOHAHF
AFFORDABLE HOUSING - MOH

PROJECT CODE: PMOAHF AHFREV
AFFORDABLE HOUSING FUND - MOH
REVENUE

Controller

Recommended:

Director
Mayor's Office of Housing

Director of Property