

1 [Expansion of Saint Mary’s Square Park and authorization of acceptance and expenditure of  
2 voluntary contribution of \$1,000,000 for the acquisition, renovation or construction of  
3 permanent affordable single room occupancy housing in San Francisco.]

4 **Resolution in conjunction with the development of the office projects at 350 Bush**  
5 **Street and 500 Pine Street: (i) approving the conveyance of a parcel of property to the**  
6 **city, which parcel shall be improved and maintained as a public park at no cost to the**  
7 **city, pursuant to the terms of established documentation developed by the City**  
8 **Attorney’s Office and the projects’ sponsors (ii) authorizing execution of**  
9 **documentation implementing conveyance of the property and the effectuation of the**  
10 **transactions contemplated therein (iii) providing that, following the execution of the**  
11 **documentation and the conveyance, the property shall be under the jurisdiction of the**  
12 **Recreation and Park Commission to be administered by the San Francisco Recreation**  
13 **and Park Department and (iv) authorizing the Mayor’s Office of Affordable Housing to**  
14 **accept and expend a voluntary contribution \$1,000,000 for the acquisition or**  
15 **construction of permanent affordable single room occupancy housing in San**  
16 **Francisco.**

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18 WHEREAS, 500 Pine Street LLC (“Pine LLC”) is the owner of certain real property  
19 located at the corner of Pine and Kearny Streets (the “Pine Property”); and,

20 WHEREAS, Pine LLC obtained approval from the San Francisco Planning Commission  
21 (the “Planning Commission”) to build a four and one-half story building on the Pine Property  
22 (the “Pine Project”) including certain rooftop park improvements (collectively “the Park  
23 Improvements”) located on the Square Expansion (as described below); and,

1           WHEREAS, As part of such approvals, Pine LLC is required to provide 1,000 square  
2 feet of publicly accessible open space on the roof of the Pine Building (the “Pine Open  
3 Space”); and,

4           WHEREAS, The Pine Open Space will be immediately adjacent to and accessible from  
5 St. Mary’s Square Park, a public park under the jurisdiction of the San Francisco Recreation  
6 and Park Commission; and,

7           WHEREAS, 350 Bush Street LLC (“Bush LLC”), an affiliate of Pine LLC, is the owner of  
8 certain real property located on Bush and Pine Streets between Montgomery and Kearny  
9 Streets (the “Bush Property”); and,

10          WHEREAS, Bush LLC obtained approval from the Planning Commission to build a 19-  
11 story office building on the Bush Property (the “Bush Project”); and,

12          WHEREAS, As part of such approvals, Bush LLC is required to provide publicly  
13 accessible open space; and,

14          WHEREAS, The Bush Project will create a small amount of new shade on the St.  
15 Mary’s Square Park during the early morning hours certain days of the year; and,

16          WHEREAS, In order to partially satisfy the open space requirement and to mitigate the  
17 impact of the Bush Project shadow on St. Mary’s Square Park to insignificance, Bush LLC  
18 proposes to convey approximately 5,127 square feet of space on the roof of the Pine Building  
19 (the “Bush Open Space”) to the City as an expansion of St. Mary’s Square Park; and,

20          WHEREAS, The amount of sun hours added to the expanded park by the Bush Open  
21 Space will exceed the amount of shadow hours added by the Bush Project; and,

22          WHEREAS, In addition, Pine LLC proposes to convey the Pine Open Space to the City  
23 as a further expansion of St. Mary’s Square Park (the Bush Open Space together with the  
24 Pine Open Space shall collectively be referred to as the “Square Expansion”); and,

1           WHEREAS, The Square Expansion will consist of a single air space parcel improved  
2 as a public park, commencing at the top surface of the unfinished roof slab at the fourth floor  
3 of the Pine Building and extending vertically approximately twenty-five (25) feet upwards and  
4 bounded horizontally by the dimensions of the Bush Open Space and the Pine Open Space  
5 and will be immediately adjacent to and accessible from St. Mary’s Square Park; and,

6           WHEREAS, The Square Expansion will effectively add considerable sun hours to the  
7 expanded park, which will be protected by the provisions of Planning Code Section 295 from  
8 future shadow; and,

9           WHEREAS, The existing St. Mary’s Square Park is currently underutilized due to its  
10 lack of sunlight during the middle of the day and to its deemed inaccessibility resulting from  
11 that fact that it is not visible from the downtown; and,

12           WHEREAS, The expansion of the park will provide sunlit areas for use during the  
13 middle of the day; and,

14           WHEREAS, The amount of sun hours added to the expanded park by the Square  
15 Expansion will be more than 40 times greater than the amount of shadow hours added by the  
16 Bush Project and, therefore, no additional net shadow will be added to St. Mary’s Square  
17 Park; and,

18           WHEREAS, Pursuant to Section 295 of the Planning Code, the Planning Commission  
19 on the recommendation of the General Manager of the Recreation and Park Department (the  
20 “General Manager”), after consultation with the Recreation and Park Commission, determined  
21 that the Bush Project does not create significant and adverse new shadow load on St. Mary’s  
22 Square Park; and,

23           WHEREAS, Bush LLC, Pine LLC, the Recreation and Park Department and the City  
24 Attorney’s office developed documentation (the “Square Expansion Documentation”) for Bush  
25 LLC and Pine LLC to: (1) improve the Square Expansion for public park use in accordance

1 with plans approved by the Recreation and Park Commission; (2) convey to the City a fee  
2 interest in the Square Expansion as improved for public park use only, subject to a condition  
3 subsequent whereby if the City takes any final legal action pursuant to the San Francisco  
4 Charter and applicable laws: (a) to stop using the Square Expansion for public park or public  
5 recreation purposes or (b) that would be incompatible with providing code-compliant public  
6 access to the Square Expansion, ownership of the Square Expansion will revert to the owners  
7 of the Pine Project and the Bush Project (the "Building Owners"); and (3) establish (a) the  
8 responsibilities of the owners of the Bush Project and the Pine Project for maintenance,  
9 insurance, entry gate operation and other matters for the operation of the Square Expansion;  
10 (b) easements for emergency egress, operation, structural support and other matters; (c) use  
11 restrictions; and (d) reimbursement by Bush LLC and Pine LLC for the time of the staff of the  
12 Recreation and Park Department, City Attorney's office, and any other City employees in  
13 developing these arrangements; and,

14 WHEREAS, A list identifying the proposed Square Expansion Documentation and  
15 copies of the proposed Square Expansion Documentation are on file with the Clerk of the  
16 Board of Supervisors in File No. \_\_\_\_\_, and are hereby declared to be a part of this  
17 resolution as if set forth fully herein; and,

18 WHEREAS, The Square Expansion Documentation includes limited indemnification by  
19 the City in connection with (1) the City contesting any tax or assessment affecting the Square  
20 Expansion, and (2) the City's covenant related to the use of hazardous materials on the  
21 Square Expansion. The Square Expansion Documentation also contains commercially  
22 standard mediation and arbitration provisions for the prompt resolution of disputes related to  
23 defaults under the Square Expansion Documentation; and,

24 WHEREAS, In Planning Commission Motion Nos. 16113 and 16272, copies of which  
25 are on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and are hereby

1 declared to be a part of this resolution as if set forth fully herein, the Planning Commission  
2 found that the Pine Project and the Bush Project (including the transfer of the Square  
3 Expansion) are in conformance with the General Plan and the Eight Priority Policies of  
4 Planning Section 101.1; and,

5 WHEREAS, The Director of Planning, by letter dated \_\_\_\_\_ 2003, further found  
6 that the transfer of the Square Expansion contemplated by the Square Expansion  
7 Documentation, is consistent with the City's General Plan, and with the Eight Priority Policies  
8 of City Planning Code Section 101.1, which letter is on file with the Clerk of the Board of  
9 Supervisors in File No. \_\_\_\_\_, and is hereby declared to be a part of this resolution as  
10 if set forth fully herein (the "General Plan Conformity Letter"); and

11 WHEREAS, The Recreation and Park Commission, by Resolution No. 0305-014, a  
12 copy of which is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and  
13 is hereby declared to be a part of this resolution as if set forth fully herein, recommended that  
14 this Board authorize and approve the acceptance by the City of the conveyance and the  
15 Square Expansion Documentation; and,

16 WHEREAS, The Board of Supervisors by Resolution No. \_\_\_\_\_ made findings  
17 regarding the Pine Building and the Bush Project (including the Square Expansion), pursuant  
18 to the provisions of the California Environmental Quality Act and the CEQA Guidelines; and,

19 WHEREAS, The development of the Bush Project requires the following additional  
20 approvals from the Board of Supervisors (the "Board of Supervisors Approvals"): (1) the  
21 approvals provided herein; and (2) the approval of an ordinance amending the text of  
22 Appendix B to Article 11 – Category II Buildings of the Planning Code in order to allow the 350  
23 Bush Street office project to incorporate Mining Exchange Building with a setback of between  
24 60 and 30 feet over the Mining Exchange Building; and,

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1           WHEREAS, The City has a substantial need to create and maintain affordable housing  
2 for the residents of San Francisco; and,

3           WHEREAS, In addition to complying with all approvals related to the Pine Project and  
4 Bush Project, Bush LLC voluntarily placed \$400,000 (the “Initial Contribution”) into an escrow  
5 account for release to a non-profit organization for the organizing of tenants in single room  
6 occupancy housing and to the City for use by the Mayor’s Office of Affordable Housing  
7 according to the schedule set forth in this resolution; and,

8           WHEREAS, \$280,000 of the Initial Contribution will be released to the City for use by  
9 the Mayor’s Office of Affordable Housing (the remainder of the Initial Contribution will be  
10 released to the non-profit organization) within two (2) days after the later of the Board of  
11 Supervisors Approvals and the issuance of demolition permits for the three unreinforced  
12 masonry buildings located at 447, 451-453 and 465-69 Pine Street; and,

13           WHEREAS, \$720,000 (the “Subsequent Contribution”) will be contributed voluntarily by  
14 Bush LLC to the City for use by the Mayor’s Office of Affordable Housing within two (2)  
15 business days after the issuance of a site permit for the Bush Project; and,

16           WHEREAS, Bush LLC provided that the \$1,000,000 voluntary contribution (being a  
17 portion of the Initial Contribution and the Subsequent Contribution) to the City shall be used by  
18 the Mayor’s Office of Housing to support efforts within the City to create, rehabilitate or  
19 otherwise make available affordable single room occupancy housing with a preference to be  
20 given to those neighborhoods that are within the vicinity of the Bush Property; now, therefore,  
21 be it

22           RESOLVED, That the Board of Supervisors hereby finds that the Square Expansion  
23 Documentation and the transactions contemplated thereby are consistent with the General  
24 Plan and the Eight Priority Policies of Planning Section 101.1 as set forth in Planning  
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1 Commission Motion Nos. 16113 and 16272, and the General Plan Conformity Letter, the  
2 findings of which are hereby adopted and incorporated herein by this reference; and, be it

3 FURTHER RESOLVED, That in accordance with the recommendation of the  
4 Recreation and Park Commission, the Board of Supervisors hereby accepts the Square  
5 Expansion for use as a public park, subject to the condition subsequent that if the City takes  
6 any final legal action pursuant to the San Francisco Charter and applicable laws: (1) to stop  
7 using the Square Expansion for public park or public recreation purposes or (2) that would be  
8 incompatible with providing code complying public access to the Square Expansion,  
9 ownership of the Square Expansion will revert to the owners of the Pine Project and the Bush  
10 Project; and, be it

11 FURTHER RESOLVED, That in accordance with the recommendation of the  
12 Recreation and Park Commission, the Board of Supervisors hereby resolves that following the  
13 finalization and execution by all parties of the Square Expansion Documentation and the  
14 conveyance of record of the Square Expansion to the City for public park purposes, the  
15 Square Expansion shall be placed under the jurisdiction of the Recreation and Park  
16 Commission and administered by the Recreation and Park Department, pursuant to San  
17 Francisco Charter § 4.113; and, be it

18 FURTHER RESOLVED, That in accordance with the recommendation of the  
19 Recreation and Park Commission, the Board of Supervisors hereby approves the form and  
20 substance of the Square Expansion Documentation and the transactions contemplated  
21 thereby, and authorizes the execution of documentation on substantially the same terms and  
22 conditions as set forth in the copy of the Square Expansion Documentation; and, be it

23 FURTHER RESOLVED, That the Square Expansion Documentation may include  
24 clauses (substantially in the form on file with the Clerk of the Board of Supervisors in File No.  
25 \_\_\_\_\_ and approved by the City Attorney) indemnifying and holding the other parties to

1 the Square Expansion Documentation from, and agreeing to defend such parties against, any  
2 and all claims, costs and losses, including without limitation, reasonable attorneys' fees,  
3 incurred or suffered by the indemnified party as a result of (1) City contesting any tax or  
4 assessment affecting the Square Expansion, and (2) any default or breach by City of its  
5 obligations related to City's covenant regarding the use of hazardous materials on the Square  
6 Expansion; and be it

7 FURTHER RESOLVED, That the Square Expansion Documentation may include a  
8 mediation and arbitration provision (substantially in the form on file with the Clerk of the Board  
9 of Supervisors in File No. \_\_\_\_\_ and approved by the City Attorney) for the prompt  
10 resolution of disputes related to defaults under the Square Expansion Documentation; and be  
11 it

12 FURTHER RESOLVED, That the Director of Property is hereby authorized and urged,  
13 in the name, and on behalf of, the City and County of San Francisco, to accept the deed to the  
14 Square Expansion on substantially the same terms and conditions as set forth in the copy of  
15 the Square Expansion Documentation; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes the General  
17 Manager of the Recreation and Park Department, the Director of Property and any other  
18 officers, agents or employees of the City to enter into any additions, amendments or other  
19 modifications to the Square Expansion Documentation (including without limitation, the  
20 exhibits, and any amendments thereto) and to take any and all steps (including, but not limited  
21 to, the execution and delivery of any and all certificates, agreements, notices, consents,  
22 escrow instructions, memorandum, closing documents and other instruments or documents)  
23 that the General Manager determines, in consultation with the City Attorney's Office, are in the  
24 best interest of the Recreation and Park Department or City, do not materially increase the  
25 obligations or liabilities of the City, and are necessary or advisable to complete the transaction



1 contemplated in the Square Expansion Documentation and effectuate the purpose and intent  
2 of this resolution, such determination to be conclusively evidenced by the execution and  
3 delivery by the City of such documentation; and, be it

4 FURTHER RESOLVED, That any actions taken by any City official or employee with  
5 respect to the Square Expansion Documentation are hereby ratified and affirmed; and, be it

6 FURTHER RESOLVED, That this Board of Supervisors does hereby authorize the City  
7 to accept and the Mayor's Office of Affordable Housing to expend the \$1,000,000 voluntary  
8 contribution (being a portion of the Initial Contribution and the Subsequent Contribution)  
9 pursuant to the terms and conditions and for the purpose set forth in this resolution, and to  
10 take any and all steps (including, but not limited to, the execution and delivery of any and all  
11 certificates, agreements, notices, consents, and other instruments or documents) that the  
12 Mayor's Office of Affordable Housing determines, in consultation with the City Attorney's  
13 Office, are necessary or advisable to effectuate the purpose and intent of this resolution and  
14 are consistent herewith, such determination to be conclusively evidenced by the execution  
15 and delivery by the City of such documentation.

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