

1 [Street Encroachment Permit - 12th Street Plaza - 90-12th Street]

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3 **Resolution granting revocable permission to Otis Property Owner, LLC, to occupy and**
4 **maintain the 12th Street Plaza on 12th Street at the corner of South Van Ness Avenue**
5 **fronting 90-12th Street (Assessor’s Parcel Block No. 3505, Lot No. 012); approving a**
6 **nonexclusive public sidewalk easement for pedestrian access, passage, ingress, and**
7 **egress for public sidewalk purposes; adopting environmental findings under the**
8 **California Environmental Quality Act; and making findings of consistency with the**
9 **General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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11 WHEREAS, Pursuant to Public Works Code Sections 786 et seq., Otis Property
12 Owner, LLC (hereafter referred to as “Permittee”) requested permission to occupy a portion of
13 the public right-of-way to maintain the 12th Street Plaza along 12th Street at the corner of
14 South Van Ness Avenue fronting 90 12th Street (Assessor’s Parcel Block No. 3505, Lot
15 No. 012); and

16 WHEREAS, The improvements include a 7,200 square foot public plaza at the
17 northwest corner of the intersection of 12th Street, South Van Ness Avenue, and Otis Street,
18 which includes: irrigation lines, a warped sidewalk, concrete hardscape finishes, concrete
19 sculptural features, and railings in front of the adjacent property; pedestrian throughway areas
20 along South Van Ness Avenue and the adjacent building edge; and stairs and an accessible
21 ramp to transition pedestrians from the plaza's two different elevations (collectively referred to
22 as the “Encroachments”); and

23 WHEREAS, The Permittee has constructed the Encroachments in conjunction with
24 its 30 Otis Project, which includes 416 residential units, 2,199 square feet of retail, 15,993

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1 square feet of arts activities space, and a theater to be occupied by the City Ballet School;
2 and

3 WHEREAS, The Permittee has proposed to maintain the Encroachments for the life of
4 the permit; and

5 WHEREAS, The Encroachments shall be constructed in substantial conformity with the
6 accompanying documents and plans, copies of which are on file in the office of the Clerk of
7 the Board of Supervisors in File No. 230419 and incorporated herein by reference; and

8 WHEREAS, The Planning Commission, on September 27, 2018, in Resolution
9 No. 20293, determined that the actions contemplated in this Resolution comply with the
10 California Environmental Quality Act (California Public Resources Code Sections 21000 et
11 seq.) and adopted findings in regard to the Encroachments (“Environmental Findings”); and

12 WHEREAS, The Planning Commission determination and Environmental Findings are
13 on file with the Clerk of the Board of Supervisors in File No. 230419 and incorporated herein
14 by reference; and

15 WHEREAS, On June 22, 2021, the Board of Supervisors conditionally accepted an
16 offer of dedication of a nonexclusive public sidewalk easement for pedestrian access,
17 passage, ingress, and egress for public sidewalk purposes (the “Sidewalk Easement”) on the
18 12th Street Plaza, subject to subsequent approval by the Board of Supervisors; and

19 WHEREAS, A copy of the Sidewalk Easement is on file with the Clerk of the Board of
20 Supervisors in File No. 230419 and incorporated herein by reference; and

21 WHEREAS, The Planning Department, in a letter dated December 4, 2023, found that
22 the Encroachments and Sidewalk Easement are within the scope of the project evaluated in
23 the Environmental Impact Report for the project, are in conformity with the General Plan, and
24 are consistent with the eight priority policies of Planning Code Section 101.1; and

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1 WHEREAS, A copy of said letter is on file with the Clerk of the Board of Supervisors in
2 File No. 230419 and incorporated herein by reference; and

3 WHEREAS, The Permittee has submitted an irrevocable offer of improvements for the
4 subject Permit in accordance with the terms of a Planning Commission In-Kind Agreement,
5 dated January 21, 2021 (the "In-Kind Agreement"); and

6 WHEREAS, Copies of the Planning Commission Resolution approving the In-Kind
7 Agreement and the irrevocable offer are on file with the Clerk of the Board of Supervisors in
8 File No. 230419 and incorporated herein by reference; and

9 WHEREAS, The Transportation Advisory Staff Committee, at its meeting of
10 August 27, 2020, recommended approval of the proposed Encroachments; and,

11 WHEREAS, After a public hearing on November 23, 2022, Public Works recommended
12 to the Board of Supervisors ("Board") that it approve a street encroachment permit and
13 associated encroachment permit and maintenance agreement (collectively, "Permit") for the
14 maintenance of the Encroachments; and

15 WHEREAS, This recommendation is contained in PW Order No. 207438, dated
16 December 2, 2022, a copy of which is on file with the Clerk of the Board of Supervisors in File
17 No. 230419 and incorporated herein by reference; and

18 WHEREAS, The Permit is on file with the Clerk of the Board of Supervisors in File
19 No. 230419 and incorporated herein by reference; and

20 WHEREAS, The final approved Permit shall be in substantially the same form as that in
21 the Clerk of the Board of Supervisor's file; and

22 WHEREAS, In Public Works Order No. 207438, the Director determined under Public
23 Works Code Section 786.7 that the public right-of-way occupancy assessment fee shall be
24 waived because the Encroachments provide a public benefit contemplated in the In-Kind
25 Agreement; and

1 WHEREAS, The Permit for the Encroachments shall not become effective until:

2 (1) The Permittee executes and acknowledges the Permit and delivers said
3 Permit and all required documents and fees to Public Works, and

4 (2) Public Works records the Permit ensuring maintenance of the
5 Encroachments in the County Recorder's Office; and

6 WHEREAS, The Permittee, at its sole expense and as is necessary as a result of this
7 permit, shall make the following arrangements:

8 (1) To provide for the support and protection of facilities under the jurisdiction of
9 Public Works, the SFPUC, the San Francisco Fire Department, other City Departments, and
10 public utility companies;

11 (2) To provide access to such facilities to allow said entities to construct,
12 reconstruct, maintain, operate, or repair such facilities as set forth in the Permit;

13 (3) To remove or relocate such facilities if installation of Encroachments
14 requires said removal or relocation and to make all necessary arrangements with the owners
15 of such facilities, including payment for all their costs, should said removal or relocation be
16 required;

17 (4) The Permittee shall assume all costs for the maintenance and repair of the
18 Encroachments pursuant to the Permit and no cost or obligation of any kind shall accrue to
19 Public Works by reason of this permission granted; and

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

22 RESOLVED, The Board adopts the Environmental Findings and the further CEQA
23 determination set forth in the December 4, 2023 letter of the Planning Department as its own;
24 and, be it
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1 FURTHER RESOLVED, That the Board finds that the Permit and Sidewalk Easement
2 are consistent with the General Plan for the reasons set forth in the December 4, 2023
3 determination of the Planning Department; and, be it

4 FURTHER RESOLVED, Pursuant to Public Works Code Sections 786 et seq., the
5 Board hereby grants revocable, personal, non-exclusive, and non-possessory permission to
6 the Permittee, Otis Property Owner, LLC, to occupy the public right-of-way with the
7 Encroachments and maintain said Encroachments under the terms of the Permit; and, be it

8 FURTHER RESOLVED, The Board accepts the recommendations of the PW Order
9 No. 207438 and approves the Permit with respect to the Encroachments; and, be it

10 FURTHER RESOLVED, The Board hereby approves a nonexclusive public sidewalk
11 easement for pedestrian access, passage, ingress, and egress for public sidewalk purposes
12 as described in the motion in Board File No. 210718, and delegates to the Director of Property
13 the authority to approve and record said easement agreement with Permittee on substantially
14 the same terms as the draft on file with the Clerk of the Board in Board File No. 230419 and
15 incorporated herein by reference; and, be it

16 FURTHER RESOLVED, That the Board directs the Director of Property to submit a
17 copy of the recorded Sidewalk Easement agreement within 30 days of its recordation to the
18 Clerk of the Board; and, be it

19 FURTHER RESOLVED, The Board hereby authorizes the Director of Property to
20 modify or amend the terms of said easement agreement in a manner that the Director of
21 Property, in consultation with the City's Risk Manager and the City Attorney, deems necessary
22 or advisable and in the City's best interests; and, be it

23 FURTHER RESOLVED, The Board also authorizes the Director of Public Works to
24 perform and exercise the City's rights and obligations with respect to the Encroachments
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1 under the Permit and to enter into any amendments or modifications to the Permit with
2 respect to the Encroachments; and, be it

3 FURTHER RESOLVED, Such actions may include without limitation, those
4 amendments or modifications that the Director of Public Works, in consultation with the City
5 Attorney, determines are in the best interest of the City, do not materially increase the
6 obligations or liabilities of the City or materially decrease the obligations of the Permittee or its
7 successors, are necessary or advisable to effectuate the purposes of the Permit or this
8 resolution with respect to the Encroachments, and are in compliance with all applicable laws;
9 and, be it

10 FURTHER RESOLVED, The Board, under Public Works Code Section 786.7,
11 acknowledges waiver of the public right-of-way occupancy assessment fee in accordance with
12 the Public Works Director's determination.

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