

1 [Grant Easement to, and Acceptance of Easement Purchase and Sale Agreement and
2 Delivery Truck Easement Agreement - Avalon Ocean Avenue, L.P. - Phelan Bus Loop]

3 **Resolution approving the execution of an Easement Purchase and Sale Agreement,**
4 **together with a Delivery Truck Easement Agreement, by and between the City and**
5 **County of San Francisco, acting by and through the Municipal Transportation Agency,**
6 **and Avalon Ocean Avenue, L.P., a Delaware Limited Partnership for the Phelan Bus**
7 **Loop.**

8 WHEREAS, The SFMTA has jurisdiction over a portion of City Property known as the
9 Phelan Loop near the intersection of Phelan Avenue and Ocean Avenue, San Francisco,
10 California (“City Property”), and SFMTA operates a bus loop on the City Property; and

11 WHEREAS, Avalon Ocean Avenue, L. P. (“Avalon”) is constructing a commercial
12 development project (“Avalon Project”) with a ground floor grocery store (“Grocery”) on its
13 property (“Avalon Property”), which abuts the City Property; and

14 WHEREAS, The Planning Commission approval of the Avalon Project under Planning
15 Commission Motion No. 17885 (“Motion”) requires Avalon to construct an extension to Lee
16 Avenue on both a portion of the Avalon Property and the adjacent City Property (“Lee Avenue
17 Extension”); and

18 WHEREAS, In a General Plan Referral recommendation dated November 5, 2010, the
19 City’s Planning Department found that granting of this and other Easements are consistent
20 with the City’s General Plan and with Planning Code Section 101.1(b). A copy of such letter is
21 on file with the Clerk of the Board of Supervisors in File No. 110115 and is incorporated herein
22 by reference; and

23 WHEREAS, The Motion further requires Avalon to obtain SFMTA permission to use a
24 portion of the City Property comprised of approximately 3,360 square feet (“Easement Area”)
25

1 so delivery trucks servicing Grocery can pull into the Easement Area and back across the Lee
2 Avenue Extension and onto the Avalon Property to make deliveries to the Grocery; and

3 WHEREAS, Avalon wishes to acquire the Easement for such purposes pursuant to the
4 terms of an Easement Purchase and Sale Agreement (“EPSA”) and a Delivery Truck
5 Easement Agreement (“Easement Agreement”), copies of both of which are on file with the
6 Clerk of the Board of Supervisors in File No. 110599; and

7 WHEREAS, SFMTA intends to relocate its bus loop and sell a portion of the City
8 Property comprised of approximately 25,772 square feet (“Housing Parcel”) to the San
9 Francisco Redevelopment Agency (“SFRA”) for an affordable housing project (“Housing
10 Project”) pursuant to SFMTA Board of Directors approval of Resolution No. 09-196 on
11 November 17, 2009 and SFRA Commission approval of Resolution No. 115-2009 on October
12 20, 2009, and the approval of Ordinance No. 49-11 by the Board of Supervisors and Mayor on
13 March 16, 2011. Copies of such Resolutions are on file with the Clerk of the Board of
14 Supervisors in File No. 110115 and are incorporated herein by reference; and

15 WHEREAS, The Housing Parcel would be affected by the Easement, and SFRA has
16 consented to the Easement if Avalon pays SFRA \$706,832 (“SFRA Price”) for the anticipated
17 increased Housing Project construction and maintenance costs that will result from Avalon’s use of the
18 Easement Area if SFRA buys the Housing Parcel and develops the Housing Project; and

19 WHEREAS, Under the EPSA, Avalon will pay \$171,360 (“Purchase Price”) to the City
20 and County of San Francisco for the Easement and deliver the SFRA Price to SFRA pursuant
21 to a Capitalized Operating and Construction Cost Agreement between SFRA and Avalon; and

22 WHEREAS, The Easement Agreement will be recorded in the Official Records of San
23 Francisco County on the closing date specified in the EPSA, but the Easement will not
24 become effective unless Avalon receives a temporary certificate of occupancy for the Grocery
25 and the City Engineer makes a Determination of Completeness for the Lee Avenue Extension

1 and other public improvements under a Public Improvement Agreement between City and
2 Avalon; and

3 WHEREAS, Should the Easement become effective, it will have a term of fifty-five (55)
4 years, be subject to requirements related to San Francisco Public Utilities Commission
5 underground pipelines in the Easement Area, and be subject to additional mitigation
6 measures to minimize impacts to existing SFMTA bus loop operations in the area;

7 WHEREAS, The SFMTA Board of Directors has approved the EPSA and Easement
8 Agreement and authorized the Director of Property to submit legislation to the City's Mayor
9 and Board of Supervisors seeking review and approval of same, pursuant to Resolution No.
10 11-030, adopted March 1, 2011, a copy of which is on file with the Clerk of the Board of
11 Supervisors in File No. 110599; now therefore, be it

12 RESOLVED, That the Board of Supervisors hereby adopts the findings set forth in the
13 Planning Commission Motion No. 17885 that the granting of the Easement is consistent with
14 the City's General Plan and the Eight Priority Policies of City Planning Code Section 101.1
15 and hereby incorporates such findings by reference as though fully set forth in this Resolution;
16 and be it

17 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Easement
18 Agreement and EPSA and the transaction contemplated thereby and authorizes the Executive
19 Director/CEO of the SFMTA and the Director of Property to enter into any additions,
20 amendments or other modifications to the Easement Agreement or EPSA (including, without
21 limitation, the attached exhibits) that the Director of Property and Executive Director/CEO of
22 SFMTA, in joint consultation with the City Attorney, determines are in the best interest of the
23 City, do not decrease the sales prices noted therein or otherwise materially increase the
24 obligations or liabilities of the City, and are necessary or advisable to complete the transaction
25 contemplated in the Easement Agreement and EPSA and effectuate the purpose and intent of

1 this Resolution, such determination to be conclusively evidenced by the execution and
2 delivery by the Director of Property and Executive Director/CEO of SFMTA of the Agreements
3 and any amendments thereto; and be it

4 FURTHER RESOLVED, That the Director of Property and Executive Director/CEO of
5 the SFMTA are hereby authorized and urged, in the name and on behalf of the City and
6 County, to execute and deliver the Easement upon the closing in accordance with the terms
7 and conditions of the Agreements, and to take any and all steps (including, but not limited to,
8 the execution and delivery of any and all certificates, agreements, notices, consents, escrow
9 instructions, closing documents and other instruments and documents) as the Director of
10 Property deems necessary or appropriate in order to consummate the conveyance pursuant
11 to the Agreements, or to otherwise effectuate the purpose and intent of this Resolution, such
12 determination to be conclusively evidences by the execution and delivery by the Director of
13 Property and/or the Executive Director/CEO of the SFMTA of any such documents.

14

15

16 RECOMMENDED:

17

18

19

John Updike

20

Acting Director of Property

21

22

23

24

25