

1 [Authorizing the Acquisition and Conveyance of a Below Market Rate Unit under
2 Foreclosure - 1160 Mission Street, Unit 812]

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3 **Resolution approving and authorizing the acquisition of a below market rate**
4 **condominium located at 1160 Mission Street, Unit 812, San Francisco (“the Property”)**
5 **for up to \$300,000 to hold the Property for resale under the City’s Below Market Rate**
6 **Inclusionary Housing Program (“Program”); adopting findings that the conveyance is**
7 **consistent with the General Plan, and the eight priority policies of Planning Code,**
8 **Section 101.1; and authorizing and directing the execution of any documents**
9 **necessary to implement this Resolution, as defined herein.**

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11 WHEREAS, Pursuant to San Francisco Planning Code, Section 415, the City’s Below
12 Market Rate Inclusionary Housing Program (“Program”) creates housing more affordable to
13 low and middle income residents by requiring housing developers to set aside a certain
14 percentage of units in new buildings to be rented or sold at a below market rate (“BMR”); and

15 WHEREAS, The Mayor’s Office of Housing and Community Development (“MOHCD”)
16 administers the Program by facilitating the purchase of BMR units by low to middle income
17 buyers at an affordable price if they meet the Program requirements and agree to abide by the
18 restrictions and conditions of the Program; and

19 WHEREAS, The Property was designated as a BMR unit by the San Francisco
20 Planning Commission on December 4, 2003, in Planning Commission Motion No. 16692, and
21 a "Notice of Special Restrictions under the Planning Code" ("NSR") was recorded against title
22 of the Property on August 21, 2006, which is on file with the Clerk of the Board in File
23 No. 180525; and

24 WHEREAS, Gregory Garver (“Owner”) purchased the Property directly from the Soma
25 Grand developer in December 2008 at a BMR price through the Program and received a

1 down payment assistance loan in the principal amount of \$33,255, with share of appreciation
2 of \$10,587, from MOHCD (“DALP Loan”), which is on file with the Clerk of the Board in File
3 No. 180525; and

4 WHEREAS, Owner has used the Property as a rental income property in violation of
5 the NSR, the Program requirements, and the San Francisco Planning Code, and has
6 committed unlawful and unfair business practice, within the meaning of Business and
7 Professional Code, Sections 17200-17209; and

8 WHEREAS, On August 23, 2017, the City, filed a Complaint against Owner alleging
9 causes of action for violations of the San Francisco Planning Code and the NSR, violations of
10 the Unfair Competition Law (Business and Professions Code, Section 17200, et al.), and for
11 public nuisance; and

12 WHEREAS, A Notice of Trustee’s Sale was recorded by the first mortgage lender,
13 Selene Finance (the “Bank”), as Doc#2018-K574186-00 on January 31, 2018 in the Official
14 Records of San Francisco County to sell the Property at public auction, which is on file with
15 the Clerk of the Board in File No. 180525, and the trustee sale is scheduled for June 25, 2018;
16 and

17 WHEREAS, The DALP Loan is in a junior lien position and the entire outstanding DALP
18 Loan could be eliminated if the Property is acquired by the Bank; and

19 WHEREAS, On April 12, 2018, the City Attorney’s Office obtained a Default
20 Judgment of \$209,104.30 against Owner for civil penalties, attorneys' fees, and costs
21 related to Owner’s violations of the Planning Code and unfair business practices, which
22 is on file with the Clerk of the Board in File No. 180525; and

23 WHEREAS, Pursuant to the California Civil Code, the Property must be sold at a
24 public auction when there is a non-judicial foreclosure, and MOHCD cannot facilitate
25 the transfer of the Property to a qualified homebuyer at the public auction; and

1 WHEREAS, MOHCD estimates that the current maximum BMR price for the
2 Property is Three Hundred Thousand Dollars and No/100 (\$300,000.00), which is
3 based on MOHCD's formula of an affordable price for a low income household (the
4 "Current BMR Price"); and

5 WHEREAS, The Board declares that preserving the City's affordable housing
6 stock is a high priority during the current housing crisis for maintaining opportunities for
7 low and moderate income households to live in the City; and

8 WHEREAS, MOHCD desires to acquire the Property at the Trustee sale, up to
9 the Current BMR Price, to preserve the Property as affordable housing under the
10 Program and convey the Property to a new qualified household approved by MOHCD;
11 and

12 WHEREAS, The Board determines that an appraisal of the Property is not
13 required based on the NSR restricting the BMR price below the estimated market
14 value, and MOHCD's desire to only hold the Property for resale to a qualified
15 household; and

16 WHEREAS, The Planning Department, by letter dated June 4, 2018, found that
17 the acquisition of the Property is not considered a project under the California
18 Environmental Quality Act ("CEQA", Pub. Resources Code, Section 21000 et seq.)
19 pursuant to CEQA Guidelines, Section 15060 and Chapter 31 of the City's
20 Administrative Code, and is consistent with the General Plan, and the eight priority
21 policies of Planning Code, Section 101.1, which letter is on file with the Clerk of the
22 Board of Supervisors in File No. 180525, and incorporated herein by this reference;
23 now, therefore, be it

24 RESOLVED, That the Board of Supervisors hereby finds that the acquisition of
25 the Property is consistent with the City's General Plan, and with the eight priority

1 Policies under Planning Code, Section 101.1, for the same reasons set forth in the
2 letter of the Department of City Planning dated June 4, 2018, and hereby incorporates
3 such findings by reference as though fully set forth in this Resolution; and, be it

4 FURTHER RESOLVED, That in accordance with the recommendations of the
5 Director of Property and the Director of MOHCD, the Board of Supervisors hereby
6 approves the acquisition of the Property for up to Three Hundred Thousand Dollars
7 (\$300,000), under the jurisdiction of MOHCD, and authorizes the Director of Property
8 (or designee) and the Director of MOHCD (or designee) to execute any documents that
9 are necessary or advisable to complete the acquisition of the Property, and to
10 effectuate the purpose and intent of this Resolution; and, be it

11 FURTHER RESOLVED, That the Director of Property is hereby authorized, in the
12 name and on behalf of the City and County of San Francisco, to accept the deed to the
13 Property from the trustee upon a successful bid by MOHCD, to place the Property under the
14 jurisdiction of MOHCD, and to take any and all steps as the Director of Property deems
15 necessary or appropriate in order to consummate the conveyance of the Property, or to
16 otherwise effectuate the purpose and intent of this Resolution, such determination to be
17 conclusively evidenced by the execution and delivery by the Director of Property of any such
18 documents; and, be it

19 FURTHER RESOLVED, That the Director of Property (or designee) and the Director of
20 MOHCD (or designee) is hereby authorized to convey the Property to a qualified buyer
21 approved by MOHCD and pursuant to the requirements of the Program; and, be it

22 FURTHER RESOLVED, That all actions authorized and directed by this
23 Resolution and heretofore taken are hereby ratified, approved and confirmed by this
24 Board of Supervisors; and, be it

1 FURTHER RESOLVED, That within thirty (30) days of MOHCD acquiring the
2 Property at the trustee sale, MOHCD shall provide the final documents of such
3 acquisition to the Clerk of the Board for inclusion into the official file.
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\$300,000 available
Fund: _____
Project: _____
Approximate Amount: \$300,000

Ben Rosenfield
Controller

RECOMMENDED:

John Updike, Director of Property

Kate Hartley, Director, Mayor's Office of Housing and Community Development