

1 [Ground Lease and Loan Agreement - The Kelsey Civic Center, L.P. - 100% Affordable
2 Housing - 240 Van Ness Avenue - Ground Lease with Base Rent of \$15,000 - Loan Not to
3 Exceed \$24,684,459]

4 **Resolution 1) approving and authorizing the Director of Property and the Mayor's**
5 **Office of Housing and Community Development ("MOHCD") to enter into a Ground**
6 **Lease for real property owned by the City located at 240 Van Ness Avenue ("Property")**
7 **with The Kelsey Civic Center, L.P. for a lease term of 75 years and one 24-year option**
8 **to extend and an annual base rent of \$15,000 ("Ground Lease") in order to construct a**
9 **100% affordable, 112-unit multifamily rental housing development affordable to low-**
10 **income households, including 28 units for people with disabilities who are eligible to**
11 **receive home and community-based services, and two resident manager units (the**
12 **"Project"); 2) approving and authorizing a Loan Agreement in an amount not to exceed**
13 **\$24,684,459 for a minimum loan term of 57 years ("Loan Agreement") to finance the**
14 **development and construction of the Project; 3) adopting findings declaring that the**
15 **Property is "exempt surplus land" pursuant to the California Surplus Lands Act; 4)**
16 **determining that the less than market rent payable under the Ground Lease will serve a**
17 **public purpose by providing affordable housing for low-income households in need, in**
18 **accordance with Administrative Code, Section 23.3; 5) adopting findings that the**
19 **Project and proposed transactions are consistent with the General Plan, and the eight**
20 **priority policies of Planning Code, Section 101.1; 6) authorizing the Director of Property**
21 **to execute the Ground Lease and the Director of MOHCD to execute the Loan**
22 **Agreement, and make certain modifications to such agreements, as defined herein, and**
23 **take certain actions in furtherance of this Resolution, as defined herein; and 7) to**
24 **authorize the Director of Property and/or Director of MOHCD to enter into any**
25 **additions, amendments, or other modifications to the Ground Lease and the Loan**

1 **Agreement respectively, that do not materially increase the obligations or liabilities to**
2 **the City and are necessary to effectuate the purposes of the Ground Lease and the**
3 **Loan Agreement or this Resolution.**

4
5 WHEREAS, The City and County of San Francisco (“City”) owns certain real property
6 located at 240 Van Ness Avenue in San Francisco, California, which is comprised of
7 approximately 13,850 square feet and known as Assessor's Parcel Block No. 0811,
8 Lot No. 204 (the “Property”); and

9 WHEREAS, Pursuant to Resolution No. 95-21, the City conveyed a portion of City-
10 owned real property, located at 240 Van Ness Avenue, in exchange for the real property
11 located at 234 Van Ness Avenue with 245 Van Ness, LLC, in order to reconfigure the
12 properties to deliver a single developable parcel to the City for the purpose of building
13 affordable housing; and

14 WHEREAS, The City, acting through the Mayor’s Office of Housing and Community
15 Development (MOHCD), administers a variety of housing programs that provide financing for
16 the development of new affordable housing and the rehabilitation of single- and multi-family
17 housing for low- and moderate-income households and resources for homeowners in San
18 Francisco; and

19 WHEREAS, MOHCD enters into loan agreements with affordable housing developers
20 and operators; administers loan agreements; reviews annual audits and monitoring reports;
21 monitors compliance with affordable housing requirements in accordance with capital funding
22 regulatory agreements; and if necessary, takes appropriate action to enforce compliance; and

23 WHEREAS, The City offered the underutilized, irregular shaped parcel for disposition
24 through an international design competition by the San Francisco Real Estate Division with
25 support from the Department of Environment, and The Kelsey, a California nonprofit public

1 benefit corporation and Mercy Housing California, a California nonprofit public benefit
2 corporation, were selected at the end of 2019 to develop the Property, and as the selected
3 developer of the Property, entered into an Exclusive Negotiating Agreement acting by and
4 through the Director of Property, dated November 30, 2019, to construct the Affordable
5 Project, a copy of which is on file with the Clerk of the Board in File No. 191111 on the parcels
6 at 155 Grove Street, 165 Grove Street and 240 Van Ness Avenue which were reconfigured to
7 become the subject parcel through the land exchange; and

8 WHEREAS, The Kelsey and Mercy Housing CA have established The Kelsey Civic
9 Center, L.P., a California limited partnership (the “Developer”), as a separate entity under
10 which to develop and construct the Project; and

11 WHEREAS, On June 3, 2021, by Notice of Final Approval of an SB 35 Project,
12 the Planning Department by Case No. 2020-010648PRJ determined that the
13 development of the Project met all the standards of the Planning Code and would be
14 eligible for ministerial approval under California Government Code, Section 65913.4
15 (Senate Bills 35 and 765), California Public Resources Code, Section 21080, and the
16 CEQA Guidelines, Sections 15002(i)(1), 15268 and 15369, and would therefore not be
17 subject to the California Environmental Quality Act (“CEQA”); a copy of the Notice of
18 Final Approval of an SB 35 Project is on file with the Clerk of the Board of Supervisors
19 in File No. 230063, and is incorporated herein by reference; and

20 WHEREAS, The Planning Department determined that the Project is consistent with
21 the General Plan, and eight priority policies of Planning Code, Section 101.1 (the “General
22 Plan Referral”); a copy of the Planning Department’s General Plan Referral is on file with the
23 Clerk of the Board of Supervisors in File No. 230063, and is incorporated herein by reference;
24 and

1 WHEREAS, The Property is “exempt surplus land,” as defined in California
2 Government Code, Section 54221(f)(1), because the Project will restrict 100% of the
3 residential units to low-income persons and families, pursuant to California Government Code,
4 Section 54221(f)(1)(F)(i); and

5 WHEREAS, MOHCD and the Director of Property have approved the form of the
6 Ground Lease between the City and the Developer, pursuant to which the City will lease the
7 Property to the Developer for a term of 75 years and one 24-year option to extend and a base
8 rent of \$15,000 per year, in exchange for the Developer’s agreement, among other things, to
9 construct and operate the Project with rent levels affordable to households up to 80% of
10 unadjusted San Francisco Area Median Income (AMI); a copy of the substantially final form of
11 Ground Lease is on file with the Clerk of the Board of Supervisors in File No. 230063, and is
12 incorporated herein by reference; and

13 WHEREAS, The proposed rent of the Ground Lease is less than Market Rent (as
14 defined in Administrative Code, Section 23.2), but the lower rent will serve a public purpose by
15 providing affordable housing for low-income households in need; and

16 WHEREAS, MOHCD is also providing the Developer with financial assistance to
17 combine with other funding sources in order for Developer to construct the Project; and

18 WHEREAS, On December 16, 2022, the Citywide Affordable Housing Loan
19 Committee, consisting of MOHCD, Department of Homeless and Supportive Housing, the
20 Office of Community Investment and Infrastructure, and the Controller’s Office of Public
21 Finance recommended approval to the Mayor of a loan to the Developer for the Project in an
22 amount not to exceed \$24,684,459 in local funds (the “Loan”); and

23 WHEREAS, The City, through MOHCD, will make the Loan to the Developer under a
24 Loan Agreement and evidenced by a promissory note with the following material terms: (i) a
25 minimum term of 57 years; (ii) an interest rate of up to three percent (3%); (iii) annual

1 repayment of the Loan by Developer through residual receipts from the Project; (iv) the
2 Project shall be restricted for life of the Project as affordable housing to low-income
3 households with annual maximum rent and income established by MOHCD; and (v) the Loan
4 Agreement shall be secured by a deed of trust recorded against the Developer's leasehold
5 interest in the Property; a copy of the substantially final forms of the Loan Agreement,
6 promissory note, deed of trust, and declaration of restrictions is on file with the Clerk of the
7 Board of Supervisors in File No. 230063, and is incorporated herein by reference; now,
8 therefore, be it

9 RESOLVED, That the Board of Supervisors hereby finds that the Project (and
10 associated actions necessary to effectuate the Project) is consistent with the General Plan,
11 and with the eight priority policies of Planning Code, Section 101.1, for the same reasons as
12 set forth in the General Plan Referral, and hereby incorporates such findings by reference as
13 though fully set forth in this Resolution; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors hereby finds, in consideration
15 of the foregoing, that the Property is "exempt surplus land," as defined in California
16 Government Code, Section 54221(f)(1), because the Project will restrict 100% of the
17 residential units to low-income persons and families, pursuant to California Government Code,
18 Section 54221(f)(1)(F)(i); and

19 FURTHER RESOLVED, That in accordance with the recommendation of the Director
20 of MOHCD and the Director of Property, the Board of Supervisors approves the Ground
21 Lease in substantially the form presented to the Board, and authorizes the Director of
22 Property (or the Director's designee, as used throughout) and Director of MOHCD (or the
23 Director's designee, as used throughout), to execute and deliver the Ground Lease, in
24 substantially the form presented to the Board, and any such other documents or agreements
25 (including such agreements to provide adequate or additional security or indemnities as

1 required by lenders to consummate the financing of the Project or lease of the Property) that
2 are necessary or advisable, in consultation with the City Attorney, to complete the transaction
3 contemplated by the Ground Lease and to effectuate the purpose and intent of this
4 Resolution, and determines that the less than Market Rent payable under the Ground Lease
5 will serve a public purpose by providing affordable housing for low-income households in
6 need; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Loan
8 Agreement and the transaction contemplated thereby in substantially the form presented to
9 the Board, and authorizes the Mayor and the Director of MOHCD, to execute and deliver the
10 Loan Agreement and any such other documents that are necessary or advisable to complete
11 the transaction contemplated by the Loan Agreement and to effectuate the purpose and intent
12 of this Resolution; and, be it

13 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
14 Property and/or Director of MOHCD, in consultation with the City Attorney, to enter into any
15 additions, amendments, or other modifications to the Ground Lease and the Loan Agreement,
16 respectively and any other documents or instruments necessary in connection therewith
17 (including, without limitation, any notice of special restrictions required by the Planning
18 Department and preparation and attachment or, or changes to, any of all of the exhibits and
19 ancillary agreements), that the Director of Property and/or Director of MOHCD determine are
20 in the best interests of the City, do not materially decrease the benefits to the City with respect
21 to the Property, do not materially increase the obligations or liabilities of the City, and are
22 necessary or advisable to complete the transaction contemplated in the Ground Lease and
23 the Loan Agreement, and that effectuate the purpose and intent of this Resolution, such
24 determination to be conclusively evidenced by the execution and delivery by the Director of
25

1 Property and/or the Director of MOHCD of any such additions, amendments, or other
2 modifications; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes and
4 delegates to the Director of MOHCD and/or the Director of Property, the authority to
5 undertake any actions necessary to protect the City's financial security in the Property and
6 enforce the affordable housing restrictions, which may include, without limitation, acquisition
7 of the Property upon foreclosure and sale at a trustee sale, acceptance of a deed in lieu of
8 foreclosure, or curing the default under a senior loan; and, be it

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

12 FURTHER RESOLVED, That within thirty (30) days of the Ground Lease and the Loan
13 Agreement being fully executed by all parties, MOHCD shall provide the final agreements to
14 the Clerk of the Board for inclusion into the official file.

15 RECOMMENDED:

16

17

18 /s/
Andrico Q. Penick, Director of Property

19

20

21 /s/
Eric D. Shaw, Director
22 Mayor's Office of Housing and Community Development

23

24

25