

1 [Restated Option Agreement - Sale of Surplus Real Property in Mountain View to MV
2 Urban Village Homes, LLC - \$8,100,000]

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4 **Resolution approving a Restated Option Agreement for the sale of surplus lands under**
5 **the jurisdiction of the San Francisco Public Utilities Commission (SFPUC) located in**
6 **Mountain View, Santa Clara County, California near the intersection of Whisman and**
7 **Tyrella Avenues, to MV Urban Village Homes, LLC, a California limited liability company**
8 **(Optionee), a joint venture between KMJ Urban Communities, LLC (KMJ), and**
9 **SummerHill Homes, LLC (SummerHill) in the amount of \$8,100,000, and reserving an**
10 **easement to the SFPUC; authorizing the Director of Property or the SFPUC’s General**
11 **Manager to execute documents, make modifications, and take actions in furtherance of**
12 **this Resolution; and adopting findings that the transactions contemplated by the**
13 **Restated Option Agreement are consistent with the City’s General Plan and with the**
14 **Eight Priority Policies of City Planning Code Section 101.1.**

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16 WHEREAS, The City and County of San Francisco (“City”) owns certain real
17 property under the jurisdiction of the SFPUC located at Whisman and Tyrella Way in
18 Mountain View, California and also known as a portion of Parcels 189, 190, 191 and
19 192 ("Property"); and

20 WHEREAS, the Property is part of the SFPUC right of way for, and contains,
21 Bay Division Pipelines (BDPL) Nos. 3 and 4 used for the transmission of water
22 through Santa Clara County; and

23 WHEREAS, By SFPUC Resolution 04-0215, the SFPUC determined in 2004
24 that the Property, except for an eighty (80)-foot wide portion containing BDPL Nos. 3 and
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1 4's right of way ("Pipeline Interests") , is no longer required for SFPUC operational
2 needs; and that, the SFPUC shall reserve an easement for the Pipeline Interests; and

3 WHEREAS, The SFPUC published a Request for Qualifications/Proposals on
4 February 13, 2004 seeking proposals to purchase the Property; and

5 WHEREAS, KMJ and its predecessor-in-interest, MasterDevCo, submitted a high
6 bid of Eight Million One Hundred Thousand Dollars (\$8,100,000) and the SFPUC
7 selected KMJ to enter into an option agreement for the sale of the Property to KMJ; and

8 WHEREAS, The SFPUC approved the form of an option agreement and the
9 transactions contemplated thereby pursuant to SFPUC Resolution No. 04-1215; and

10 WHEREAS, On March 10, 2006, the Board of Supervisors adopted Resolution No.
11 120-06 to authorize the Director of Real Property or the General Manager of the SFPUC
12 to enter into an option agreement with KMJ providing for the sale of the Property to KMJ,
13 a copy of which is on file with the Clerk of the Board of Supervisors in File No. 060119;
14 and

15 WHEREAS, City and KMJ signed an option agreement in 2006 ("Former Option
16 Agreement"), which was amended by six amendments approved by the SFPUC, whereby
17 (i) KMJ agreed to pay City Eight Million One Hundred Thousand Dollars (\$8,100,000) as
18 the purchase price for the Property, (ii) City was to reserve a permanent eighty (80)-foot
19 easement across the Property that would allow City to access, maintain, replace, and
20 repair its Pipeline Interests, (iii) KMJ paid City the aggregate sum of Six Hundred
21 Thousand Dollars (\$600,000) as a non-refundable deposit to be applied against the
22 purchase price for the Property, and (iv) KMJ had until December 30, 2010 to (a) pay City
23 the additional sum of One Hundred Fifty Thousand Dollars (\$150,000) due as a further
24 non-refundable deposit to be applied against the purchase price for the Property, and (b)
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1 to exercise its option to purchase the Property. A copy of the Former Option Agreement
2 is on file with the Clerk of the Board of Supervisors in File No. 060119; and

3 WHEREAS, Prior to December 30, 2010, City and KMJ engaged in negotiations
4 regarding a further extension of the option exercise date and the date upon which KMJ
5 was to pay City additional amounts as further non-refundable deposits against the total
6 purchase price. City and KMJ reached no further agreement and, accordingly, the
7 Former Option Agreement expired by its terms on December 30, 2010; and

8 WHEREAS, Since the termination of the Former Option Agreement, KMJ and
9 SummerHill formed Optionee to demonstrate to City that KMJ has sufficient financial
10 resources to satisfy Optionee' s obligations arising under the proposed option and sale
11 transaction; and

12 WHEREAS, City and Optionee have engaged in negotiations whereby Optionee
13 has reaffirmed its desire to acquire an option to purchase the Property for Eight Million
14 One Hundred Thousand Dollars (\$8,100,000) and pursuant to substantially the same
15 terms as provided in the Former Option Agreement; and

16 WHEREAS, City obtained an independent appraisal of the Property dated June
17 11, 2012, that stated that the market value of the Property is Six Million Six Hundred
18 Thousand Dollars (\$6,600,000), assuming the reservation of a permanent eighty (80)-foot
19 easement that allows City to access, maintain, replace, and repair its Pipeline Interests
20 over and across the Property; and

21 WHEREAS, It is impractical to rebid this option and sale transaction because the
22 SFPUC has conducted extensive negotiations first with KMJ and then with, Optionee,
23 and Optionee has a thorough understanding of the Property and the prospects for
24 development entitlements thus increasing the probability that Optionee will exercise the
25 Restated Option at the purchase price of \$8,100,000, which is in excess of the most

1 recent appraised value, which might not be the case if new proposals were solicited, and
2 additional SFPUC and City Attorney staff time and resources would be required to re-bid
3 the Property with no real guarantee such effort would result in a higher purchase price;
4 and

5 WHEREAS, The SFPUC now proposes and recommends that the City enter into a
6 restated option agreement with Optionee (“Restated Option Agreement”), a copy of which,
7 together with all exhibits thereto, is on file with the Clerk of the Board of Supervisors in
8 File No. 130658, pursuant to which, among other provisions, (i) City will grant Optionee an
9 option to purchase the Property for a purchase price of Eight Million One Hundred
10 Thousand Dollars (\$8,100,000), (ii) Optionee’s obligation to pay the purchase price will be
11 reduced by the Six Hundred Thousand Dollars (\$600,000) previously paid by KMJ
12 pursuant to the Former Option Agreement, (iii) Optionee will deposit a further Three
13 Hundred Thousand Dollars (\$300,000) to be credited against the purchase price at the
14 time of the closing of the sale of the Property, and (iv) City will reserve pursuant to the
15 Declaration of Covenants, Conditions, and Restrictions and Grant of Easement attached
16 as an exhibit to the Restated Option Agreement (the “Easement Agreement”) a permanent
17 eighty (80)-foot easement across the Property for the Pipeline Interests to allow the City to
18 access, maintain, replace, and repair its Pipeline Interests; and

19 WHEREAS, The SFPUC approved the transactions contemplated by the Restated
20 Option Agreement pursuant to SFPUC Resolution No. 12-0104; and

21 WHEREAS, On December 19, 2012, in Planning Department Case No.
22 2012.1508E, the Environmental Review Officer in the Department of City Planning found
23 that sale of the Property, is categorically exempt from the requirements of the California
24 Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15312. A
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1 copy of such determination is on file with the Clerk of the Board of Supervisors, in File
2 No. 130658; and

3 WHEREAS, The City's Planning Department has found that the transactions
4 contemplated by the Restated Option Agreement are consistent with the City's General
5 Plan and with the Eight Priority Policies of City Planning Code Section 101.1, a copy of
6 these findings are on file with the Clerk of the Board of Supervisors under File No.
7 060119, and are incorporated herein by this reference; now, therefore be it

8 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
9 finds, based on the record before it and in its independent judgment, that the transactions
10 contemplated by the Restated Option Agreement are consistent with the City's General Plan
11 and with the Eight Priority Policies of City Planning Code Section 101.1; and, be it

12 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
13 Francisco, in accordance with the recommendations of the SFPUC and the Director of
14 Property hereby approves the terms and conditions of the Restated Option Agreement for
15 sale of the Property between the City and County of San Francisco and MV Urban Village
16 Homes, LLC, and, together with all attached exhibits, including without limitation, the
17 Easement Agreement, and approves the transaction contemplated thereby; and, be it

18 FURTHER RESOLVED, That the Director of Property or the SFPUC General Manager
19 shall be authorized to enter into any amendments or modifications of the Restated Option
20 Agreement, including, without limitation, completion and execution of the Restated Option
21 Agreement's exhibits, and to take all steps, including, but not limited to the execution and
22 delivery of all certificates, notices, consents, agreements, memoranda, and other documents,
23 that the Director of Property or the SFPUC General Manager determines, in consultation with
24 the City Attorney, are in the best interests of the City, and do not materially increase the
25 obligations or liabilities of the City, are necessary or advisable to complete the transaction

1 contemplated in the Restated Option Agreement and effectuate the purpose and intent of the
2 Restated Option Agreement or this resolution are in compliance with all applicable laws,
3 including the City's Charter, with such determination to be conclusively evidenced by the
4 execution and delivery by the Director of Property or the SFPUC General Manager of the
5 Restated Option Agreement, together with all exhibits, including without limitation, the
6 Easement Agreement and all its amendments; and, be it

7 FURTHER RESOLVED, That the Director of Property or the SFPUC General Manager
8 is hereby authorized and directed to execute the Restated Option Agreement for the sale of
9 the Property and all of its exhibits, including, without limitation, the Easement Agreement, and
10 to execute and deliver the deed to the Property to Urban Village Homes, LLC, a California
11 limited liability company, or its successors or assigns, upon the closing in accordance with the
12 terms and conditions of the Restated Option Agreement, and to take all steps, including, but
13 not limited to, the execution and delivery of all certificates, notices, consents, agreements,
14 memoranda, and other documents that the Director of Property or the SFPUC General
15 Manager deems necessary or appropriate in order to consummate the conveyance of the
16 Property pursuant to the Restated Option Agreement, or to otherwise effectuate the purpose
17 and intent of this resolution, such determination to be conclusively evidenced by the execution
18 and delivery by the Director of Property or the SFPUC General Manager of any such
19 documents.

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1 RECOMMENDED:

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4 John Updike
5 Director of Property

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8 Harlan L. Kelly, Jr.
9 SFPUC General Manager

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