

1 [On-Site Affordable Housing Units Agreement - 1400 Mission Street, L.P. - 1400 Mission  
2 Street]

3 **Resolution approving an agreement with 1400 Mission Street, L.P., to provide on-site**  
4 **affordable housing units at the development proposed at 1400 Mission Street**  
5 **(Assessor’s Block No. 3507, Lot No. 042), and authorizing the Director of Planning to**  
6 **execute the Agreement on behalf of the City and County of San Francisco in order to**  
7 **ensure the continued affordability of 23 on-site below market rate rental units under**  
8 **Planning Code, Section 124(f).**

9

10 WHEREAS, Planning Code, Section 415 establishes procedures and requirements for  
11 the City to enter into an agreement with a private developer to memorialize the provision of  
12 on-site inclusionary rental units by the developer and to acknowledge, as to the inclusionary  
13 units only, an exception to the Costa-Hawkins Rental Housing Act’s (the “Act”) limitations on  
14 rent restrictions on the basis of certain concessions and incentives provided by the City; and

15 WHEREAS, Planning Code, Section 124(f) allows a project sponsor in certain zoning  
16 districts to apply for a conditional use authorization from the Planning Commission in order to  
17 obtain additional square footage above that permitted by the base floor area ratio limits for  
18 construction of on-site dwelling units affordable for 20 years to households whose incomes  
19 are within 150 percent of the median income; and

20 WHEREAS, Planning Code, Section 124(f) does not include the same authorization set  
21 forth in Planning Code Section 415 with respect to entering into an agreement with a private  
22 developer to memorialize the provision of the rent restricted units and acknowledgment of an  
23 exception to the Act; and

24 WHEREAS, On January 17, 2013, pursuant to Motion Nos. 18783 and 18784, a copy  
25 of which is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, the Planning

1 Commission approved the development of 1400 Mission Street with 190 for-sale units, 164 of  
2 which would serve as the off-site, below-market-rate units under Planning Code, Section 415,  
3 for the market rate project to be built at 201 Folsom Street, and the remaining 26 units to  
4 serve as designated units under Planning Code, Section 124(f) (the "Project"); and

5 WHEREAS, 1400 Mission Acquisition L.P., the developer of 1400 Mission Street (the  
6 "Developer") subsequently desired to provide 23 of the 26 designated Section 124(f) units as  
7 rental units; and

8 WHEREAS, In order to allow the rent-restricted rental units to be provided under  
9 Section 124(f), the City and Developer negotiated an agreement consistent with the type of  
10 agreement required under Planning Code Section 415 (the "Agreement"); and

11 WHEREAS, A copy of the Agreement is on file with the Clerk of the Board of  
12 Supervisors in File No. \_\_\_\_\_, which is hereby declared to be a part of this resolution as if  
13 set forth fully herein ("Agreement"); and

14 WHEREAS, The Mayor's Office of Housing and Community Development has  
15 reviewed the Agreement and recommends its approval; and

16 WHEREAS, Developer has agreed to the terms and conditions of the Agreement and  
17 to provide 23 affordable rental units on-site at the 1400 Mission Street development pursuant  
18 to Planning Code, Section 124(f); and

19 WHEREAS, The Board of Supervisors has reviewed the Agreement and finds that it is  
20 consistent with and furthers the purpose of Planning Code, Section 124(f); and

21 WHEREAS, The Board of Supervisors finds that the City would not be willing to permit  
22 the additional square footage above that permitted by the base floor area ratio limits absent  
23 the developer's representations in the Agreement, including the provision of on-site affordable  
24 units and the fact that, due to assistance in the form of concessions and incentives described  
25 in Government Code, Section 65915 et seq. provided to the Developer by the City, the

1 affordable units fit within the exception to the Costa Hawkins Rental Housing Act set forth in  
2 Civil Code, Section 1954.52(b); and

3 WHEREAS, Pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the San  
4 Francisco Administrative Code, the third Addendum to the Final Environmental Impact Report  
5 (“FEIR”) for the “Tenth/Market/Mission Streets Mixed-Use Project at 1400 Mission Street and  
6 1455 Mission Street” (Case No. 2003.0262E) was published on August 8, 2012; and

7 WHEREAS, It found that (1) the Project has not been substantially revised so as to  
8 result in new significant impacts or a worsening of significant impacts identified in the FEIR;  
9 (2) the background conditions under which the Project would be constructed have not  
10 changed substantially from those conditions described in the FEIR; and, (3) no new  
11 information of substantial importance has surfaced; and

12 WHEREAS, The Project remains subject to the Mitigation and Monitoring Reporting  
13 Program adopted in 2004 as part of the FEIR; and

14 WHEREAS, The relevant CEQA documents, including the findings in Motions No.  
15 18783 and 18784 can be found in Board of Supervisors File No. \_\_\_\_\_ and are on file  
16 with the Clerk of the Board and are incorporated herein by reference; and

17 WHEREAS, The Planning Director has the authority to enforce and implement the  
18 Planning Code, which includes but is not limited to Section 124(f); now, therefore, be it

19 RESOLVED, That the Board of Supervisors hereby approves the Agreement for 1400  
20 Mission Street on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and  
21 authorizes the Planning Director to execute the Agreement on behalf of the City and County of  
22 San Francisco.