

1 [Development Agreement - KR Flower Mart, LLC - Flower Mart - Fifth and Brannan Streets]

2 **Ordinance approving a Development Agreement between the City and County of San**
 3 **Francisco and KR Flower Mart, LLC, a Delaware limited liability company, for the**
 4 **development of an approximately 6.5-acre site located at 5th Street and Brannan Street,**
 5 **with various public benefits including a new on-site or off-site wholesale flower market;**
 6 **making findings under the California Environmental Quality Act, findings of conformity**
 7 **with the General Plan, and with the eight priority policies of Planning Code, Section**
 8 **101.1(b); approving the receipt and expenditure of funds for an off-site new wholesale**
 9 **flower market as set forth in the Development Agreement, as applicable; approving the**
 10 **development impact fees for the project and waiving certain Planning Code fees and**
 11 **requirements for a temporary flower market; confirming compliance with or waiving**
 12 **certain provisions of Administrative Code, Chapter 56; and ratifying certain actions**
 13 **taken in connection therewith, as defined herein.**

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 15 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
 16 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 17 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 18 **Board amendment additions** are in double-underlined Arial font.
 19 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 20 **Asterisks (* * * *)** indicate the omission of unchanged Code
 21 subsections or parts of tables.

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 23 Be it ordained by the People of the City and County of San Francisco:

24 Section 1. Project Findings.

25 The Board of Supervisors makes the following findings:

(a) California Government Code Section 65864 et seq. authorizes any city, county,
 or city and county to enter into an agreement for the development of real property within the

1 jurisdiction of the city, county, or city and county.

2 (b) Chapter 56 of the San Francisco Administrative Code ("Chapter 56") sets forth
3 certain procedures for the processing and approval of development agreements in the City
4 and County of San Francisco (the "City").

5 (c) KR Flower Mart, LLC, a Delaware limited liability company ("Developer") owns
6 and operates an approximately 6.5-acre site generally along Brannan Street between Fifth
7 and Sixth Streets currently composed of 141,992 square feet of flower market use, along with
8 approximately 4,900 square feet of retail use, and 45,549 square feet of vacant PDR spaces,
9 and surface parking lot areas (the "Project Site").

10 (d) On June 3, 2019, Developer filed an application with the City's Planning
11 Department for approval of a development agreement relating to the Project Site (the
12 "Development Agreement") under Chapter 56. A copy of the Development Agreement is on
13 file with the Clerk of the Board in File No. 190682. Developer also filed applications with the
14 Department for certain activities described in Exhibit B.1 (the "Flower Mart On-Site Project")
15 and Exhibit B.2 (the "Project Variant") to the Development Agreement (collectively, the
16 "Project").

17 (e) The Flower Mart On-Site Project is a large multi-phase and mixed-use
18 development that includes office, retail, wholesale, privately-owned public open space,
19 parking, and related uses. Specifically, the Project includes approximately 2,032,165 gross
20 square feet of office uses, 83,459 square feet of retail space (including 10,000 rentable
21 square feet of flower retail space), and a new wholesale flower market consisting of 115,000
22 rentable square feet of flower vendor space, 769 vehicle parking spaces, 30 loading spaces,
23 410 Class 1 bicycle parking spaces, 86 Class 2 bicycle parking spaces, and 40,655 square
24 feet of on-site and off-site privately-owned public open space, all as more particularly
25 described in the Development Agreement. The Project Variant is generally the same as the

1 Project except that the permanent new wholesale flower market would be built at an
2 alternative, off site location. Accordingly, the Project Variant includes approximately
3 2,061,380 gross square feet of office uses, 90,976 square feet of retail space, 22,690 square
4 feet of child care space (including dedicated outdoor activity area), 632 vehicle parking
5 spaces, 9 loading spaces, 516 Class 1 bicycle parking spaces, and 92 Class 2 bicycle parking
6 spaces (together with the off-site new wholesale flower market), all as more particularly
7 described in the Development Agreement.

8 (f) The Development Agreement includes a process for the selection of the Flower
9 Mart On-Site Project versus the Project Variant, which begins with an election by the San
10 Francisco Flower Market Tenants' Association (the "Tenant Association"), with the ultimate
11 decision made by the City to ensure that any location requested by the Tenant Association is
12 viable. If the City elects the Flower Mart On-Site Project, Developer will, at no cost to the City
13 or the flower vendors, relocate the vendors to a temporary off-site location, build the new
14 flower market on site, and then move vendors back to the Project Site when new flower
15 market is completed. If the City selects the Project Variant, Developer will pay all of the
16 predevelopment costs for new off-site flower market, and will subsidize the construction of the
17 new building off-site in accordance with a payment formula attached to the Development
18 Agreement. The payment formula will result in a upfront payment amount (the "New Market
19 Payment"), payable to the City, that is designed to ensure that the new flower market can be
20 built at the off-site location, based on the actual building design or alternatively on specific
21 criteria described in the Development Agreement, using only set flower vendor rents, a
22 Developer rent subsidy, a third party loan, and such additional Developer subsidy as needed
23 to support the third party loan. As Developer will be required to pay some or all of standard
24 owner equity at the new location without the benefit of owning the building, this equity portion
25 of the Developer subsidy will be reimbursed without interest, as a subordinated payment

1 made by the building owner after debt and operating expenses are paid, to the extent funds
2 are available.

3 (g) The commitments made to the flower vendors, including the significant rent
4 subsidies through the date of completion of the new flower market and continuing for 15 years
5 thereafter, are also contained in a tri-party agreement between Developer, the San Francisco
6 Flower Mart LLC, and the San Francisco Flower Market Tenants' Association, as amended
7 (the "Tri-Party Agreement").

8 (h) In addition to the flower market commitments and the significant jobs, housing,
9 urban revitalization, and economic benefits to the City from the Project, the City has
10 determined that development of the Project under the Development Agreement will provide
11 additional benefits to the public that could not be obtained through application of existing City
12 ordinances, regulations, and policies. Additional public benefits include the dedication of a
13 minimum 14,000-square-foot affordable housing site within the boundaries of the Central
14 SoMa, Eastern SoMa or Western SoMa Area Plans, with no developer impact fee credit for
15 such dedication, completion of a subsidized child care center if the Project Variant is built,
16 open space, community space, and workforce commitments, and transportation and other
17 public improvements, all as described in the Development Agreement. The Development
18 Agreement will eliminate uncertainty in the City's land use planning for the Project and secure
19 orderly development of the Project Site.

20 (i) The Project is anticipated to generate an annual average of approximately 8,050
21 construction jobs, an approximately \$29.9 million annual increase in general fund revenues to
22 the City and approximately \$9.3 million annual increase in non-general fund revenues to the
23 City, and approximately \$175.2 million in direct, one-time, construction-related revenue to the
24 City, including \$166 million in development impact fees and \$9.2 million in gross receipts and
25 sales tax revenue.

1 (j) Concurrently with this Ordinance, the Board is taking a number of actions in
2 furtherance of the Project, as generally described in the Development Agreement, including
3 Exhibit K to the Development Agreement.

4 Section 2. CEQA Findings.

5 On July 3, 2019, the Environmental Review Officer ("ERO") issued a Community Plan
6 Exemption ("CPE") and Addendum for the Project, Project Variant, and the Temporary Site
7 pursuant to the California Environmental Quality Act (California Public Resources Code
8 Section 21000 et seq.) ("CEQA"). Copies of the CPE and Addendum are on file with the Clerk
9 of the Board of Supervisors in File No. 190681. On July 18, 2019, by Motion No. 20484, the
10 Planning Commission adopted findings pursuant to CEQA and a Mitigation Monitoring and
11 Reporting Program ("MMRP"). This Motion is on file with the Clerk of the Board of
12 Supervisors in File No. 190681. This Board has reviewed the CPE, Addendum, and related
13 documents, and adopts and incorporates by reference as though fully set forth herein the
14 CEQA Findings and the MMRP.

15 Section 3. General Plan and Planning Code Section 101.1 (b) Findings.

16 (a) The Board of Supervisors finds that the Development Agreement will serve the
17 public necessity, convenience, and general welfare for the reasons set forth in Planning
18 Commission Resolution No. 20486 and incorporates those reasons herein by reference.

19 (b) The Board of Supervisors finds that the Development Agreement is in conformity
20 with the General Plan, as proposed to be amended and when effective, and the eight priority
21 policies of Planning Code Section 101.1 for the reasons set forth in Planning Commission
22 Resolution No. 20486. The Board hereby adopts the findings set forth in Planning
23 Commission Resolution No. 20486 and incorporates those findings herein by reference.

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25 Section 4. Development Agreement.

1 (a) The Board of Supervisors approves all of the terms and conditions of the
2 Development Agreement, in substantially the form on file with the Clerk of the Board of
3 Supervisors in File No. 190682.

4 (b) The Board of Supervisors approves and authorizes the execution, delivery, and
5 performance by the City of the Development Agreement as follows: (i) the Director of Planning
6 and (other City officials listed thereon) are authorized to execute and deliver the Development
7 Agreement and consents thereto, and (ii) the Director of Planning and other applicable City
8 officials are authorized to take all actions reasonably necessary or prudent to perform the
9 City's obligations under the Development Agreement in accordance with the terms of the
10 Development Agreement. The Director of Planning, at his or her discretion and in consultation
11 with the City Attorney, is authorized to enter into any additions, amendments, or other
12 modifications to the Development Agreement that the Director of Planning determines are in
13 the best interests of the City and that do not materially increase the obligations or liabilities of
14 the City or materially decrease the benefits to the City as provided in the Development
15 Agreement.

16 (c) The Board of Supervisors authorizes the Controller to accept the New Market
17 Payment and any other payments made by the Developer under the Development
18 Agreement. The City shall hold the New Market Payment for costs relating to the construction
19 of the new flower market under the Project Variant. Any payments may be commingled with
20 other funds of the City for purposes of investment and safekeeping, but the City's Controller
21 shall maintain records as part of the City's accounting system to account for all the
22 expenditures and the remaining balance.

23 (d) The Board of Supervisors authorizes the City's Controller to make payments,
24 using the funds received from Developer, to the Tenant Association or the Alternative
25 Landlord or their contractors and agents, consistent with the Development Agreement. The

1 City waives or overrides any ordinances or processes that would otherwise prevent the City
2 from making the payments contemplated by this Agreement.

3 Section 5. Development Impact Fees

4 For the Project, the Board of Supervisors approves the development impacts fees and
5 the use of the fees as set forth in the Development Agreement, and waives any inconsistent
6 provision in Planning Code Article 4. For the construction of a temporary flower market, the
7 Board of Supervisors waives all development impact fee requirements under Planning Code
8 Article 4.

9 Section 6. City Administrative Code Conformity.

10 The Development Agreement shall prevail in the event of any conflict between the
11 Development Agreement and Chapter 56, and without limiting the generality of the foregoing
12 clause, for purposes of the Development Agreement only, the provisions of Chapter 56 are
13 waived or its provisions deemed satisfied as follows:

14 (a) KR Flower Mart, LLC shall constitute a permitted "Applicant/Developer" for
15 purposes of Chapter 56, Section 56.3(b).

16 (b) The Project comprises approximately 6.5 acres and is the type of large multi-
17 phase and/or mixed-use development contemplated by the City Administrative Code and
18 therefore is satisfies the provisions of Chapter 56, Section 56.3(g).

19 (c) The provisions of the Development Agreement, including the attached
20 Workforce Agreement, apply and satisfy the requirements of City Administrative Code
21 Chapter 14B, Section 14B.20 and Chapter 56, Section 56.7(c).

22 (d) The provisions of the Development Agreement regarding any amendment or
23 termination, including those relating to "Material Change," shall apply in lieu of the provisions
24 of Chapter 56, Section 56.15.

1 (e) The provisions of Chapter 56, Section 56.20 have been satisfied by the
2 Memorandum of Understanding between Developer and the Mayor's Office of Economic and
3 Workforce Development for the reimbursement of City costs, a copy of which is on file with the
4 Clerk of the Board of Supervisors in File No. 190682.

5 Section 7. Chapter 56 Waiver; Ratification.

6 (a) In connection with the Development Agreement, the Board of Supervisors finds
7 that the requirements of Chapter 56, as modified hereby, have been substantially complied
8 with and waives any procedural or other requirements of Chapter 56 if and to the extent that
9 they have not been strictly complied with.

10 (b) All actions taken by City officials in preparing and submitting the Development
11 Agreement to the Board of Supervisors for review and consideration are hereby ratified and
12 confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken
13 by City officials consistent with this Ordinance.

14 Section 8. Effective and Operative Date.

15 This ordinance shall become effective 30 days from the date of passage. This
16 Ordinance shall become operative only on (and no rights or duties are affected until) the later

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1 of (a) 30 days from the date of its passage, or (b) the date that Ordinance No. _____
2 has become effective. A copy of said Ordinance is on file with the Clerk of the Board of
3 Supervisors in File No. 190681.

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5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

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9 By: _____
10 Charles Sullivan
11 Deputy City Attorney
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