

1 [Development Agreement - KR Flower Mart, LLC - Flower Mart - 5th and Brannan Streets]

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

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.

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

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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,

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1 or city and county to enter into an agreement for the development of real property within the
2 jurisdiction of the city, county, or city and county.

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

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

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

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

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

9 (f) The Development Agreement includes a process for the selection of the Flower
10 Mart On-Site Project versus the Project Variant, which begins with an election by the San
11 Francisco Flower Market Tenants' Association (the "Tenant Association"), with the ultimate
12 decision made by the City to ensure that any location requested by the Tenant Association is
13 viable. If the City elects the Flower Mart On-Site Project, Developer will, at no cost to the City
14 or the flower vendors, relocate the vendors to a temporary off-site location, build the new
15 flower market on site, and then move vendors back to the Project Site when the new flower
16 market is completed. If the City selects the Project Variant, Developer will, at no cost to the
17 City or the flower vendors, construct the new off-site flower market and move the vendors to
18 the ~~pay all of the predevelopment costs for new off-site flower market, and will subsidize the~~
19 ~~construction of the new building off-site in accordance with criteria specified in a payment~~
20 ~~formula attached to the Development Agreement. The payment formula will result in a upfront~~
21 ~~payment amount (the "New Market Payment"), payable to the City, that is designed to ensure~~
22 ~~that the new flower market can be built at the off-site location, based on the actual building~~
23 ~~design or alternatively on specific criteria described in the Development Agreement, using~~
24 ~~only set flower vendor rents, a Developer rent subsidy, a third party loan, and such additional~~
25 ~~Developer subsidy as needed to support the third party loan. As Developer will be required to~~

1 pay some or all of standard owner equity at the new location without the benefit of owning the
2 building, this equity portion of the Developer subsidy will be reimbursed without interest, as a
3 subordinated payment made by the building owner after debt and operating expenses are
4 paid, to the extent funds are available.

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

10 (h) In addition to the construction of a new wholesale flower market, ~~flower market~~
11 ~~commitments~~ and the significant jobs, housing, urban revitalization, and economic benefits to
12 the City from the Project, the City has determined that development of the Project under the
13 Development Agreement will provide additional benefits to the public that could not be
14 obtained through application of existing City ordinances, regulations, and policies. Additional
15 public benefits include ~~the dedication of a minimum 14,000-square-foot affordable housing~~
16 ~~site within the boundaries of the Central SoMa, Eastern SoMa or Western SoMa Area Plans,~~
17 ~~with no developer impact fee credit for such dedication,~~ protection of the San Francisco
18 wholesale flower market as a vital and historic PDR use, completion of a subsidized child care
19 center if the Project Variant is built, construction of a San Francisco Filipino Cultural Heritage
20 District gateway marker, additional contributions of \$5,100,000 to an affordable housing
21 developer for costs related to the Sunnydale Hub project and \$2,000,000 to support street
22 cleaning efforts in the South of Market Area, open space, community space, and workforce
23 commitments, and transportation and other public improvements, all as described in the
24 Development Agreement. The Development Agreement will eliminate uncertainty in the City's
25 land use planning for the Project and secure orderly development of the Project Site.

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2 (i) The Project is anticipated to generate an annual average of approximately 8,050
3 construction jobs, an approximately \$29.9 million annual increase in general fund revenues to
4 the City and approximately \$9.3 million annual increase in non-general fund revenues to the
5 City, and approximately \$175.2 million in direct, one-time, construction-related revenue to the
6 City, including ~~\$166~~211 million in development impact fees and \$9.2 million in gross receipts
7 and sales tax revenue.

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

11 Section 2. CEQA Findings.

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

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

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

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

7 Section 4. Development Agreement.

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

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

23 ~~(c) The Board of Supervisors authorizes the Controller to accept the New Market
24 Payment and any other payments made by the Developer under the Development
25 Agreement. The City shall hold the New Market Payment for costs relating to the construction~~

1 of the new flower market under the Project Variant. Any payments may be commingled with
2 other funds of the City for purposes of investment and safekeeping, but the City's Controller
3 shall maintain records as part of the City's accounting system to account for all the
4 expenditures and the remaining balance.

5 (d) — The Board of Supervisors authorizes the City's Controller to make payments,
6 using the funds received from Developer, to the Tenant Association or the Alternative
7 Landlord or their contractors and agents, consistent with the Development Agreement. The
8 City waives or overrides any ordinances or processes that would otherwise prevent the City
9 from making the payments contemplated by this Agreement.

10 Section 5. Development Impact Fees

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

16 Section 6. City Administrative Code Conformity.

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

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

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

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

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

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

12 Section 7. Chapter 56 Waiver; Ratification.

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

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

21 Section 8. Effective and Operative Date.

22 This ordinance shall become effective 30 days from the date of passage. This
23 Ordinance shall become operative only on (and no rights or duties are affected until) the later
24 of (a) 30 days from the date of its passage, or (b) the date that Ordinance No. _____

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1 has become effective. A copy of said Ordinance is on file with the Clerk of the Board of
2 Supervisors in File No. 190681.

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

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8 By: _____
9 Elizabeth A. Dietrich
10 Deputy City Attorney
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