

1 [Authorizing the execution and delivery of the Agreement of Purchase and Sale for Real  
2 Estate, as amended, for property located at 30 Van Ness Avenue, San Francisco and  
3 financing said purchase with certificates of participation.]

4 **Resolution authorizing the execution and delivery of the Agreement of Purchase and**  
5 **Sale for Real Estate (the "Original Agreement"), as amended by a First Amendment to**  
6 **Agreement of Purchase and Sale for Real Estate (the "First Amendment" and together**  
7 **with Original Agreement, the "Purchase Agreement"), between the City and County of**  
8 **San Francisco (the "City"), as buyer, and the Herbst Foundation, Inc. (the "Seller"), as**  
9 **seller (including certain indemnities contained therein), for the purchase of real**  
10 **property and improvements thereon consisting of a five-story office building located at**  
11 **30 Van Ness Avenue, San Francisco (collectively, the "Property"); approving the forms**  
12 **of an office lease between the City, as landlord, and the Seller, as tenant (the "Herbst**  
13 **Lease") and an office lease between the City, as landlord, and Merriman Brothers, as**  
14 **tenant (the "Merriman Lease") (collectively, the "Office Leases"); approving the**  
15 **execution and delivery of certificates of participation to finance the acquisition of and**  
16 **improvements to the Property; approving the form of the Project Lease between the**  
17 **City and a Trustee (including certain indemnities contained therein); authorizing the**  
18 **selection of a Trustee; approving the form of the Trust Agreement between the City and**  
19 **a Trustee (including certain indemnities contained therein); approving the form of the**  
20 **Official Notice of Sale and Notice of Intention to Sell for the Series 2001A Certificates**  
21 **and Taxable Series 2001B Certificates (as defined herein); approving the form of the**  
22 **Official Statement in preliminary and final form; approving the form of a Continuing**  
23 **Disclosure Certificate; authorizing the filing of a validation action validating the**  
24 **execution and delivery of the certificates of participation; authorizing reimbursement of**  
25 **certain expenditures; authorizing the payment of costs of issuance; adopting findings**

1 under the California Environmental Quality Act and findings pursuant to the City  
2 Planning Code Section 101.1; and ratifying previous actions taken in connection  
3 therewith.  
4

5 WHEREAS, The Board of Supervisors (the "Board") desires to purchase real property  
6 and improvements thereon which consist of a five-story office building located at 30 Van Ness  
7 Avenue, San Francisco, California; and,

8 WHEREAS, In order to consummate the purchase, the Board desires to authorize the  
9 execution and delivery of the Purchase Agreement; and,

10 WHEREAS, The Purchase Agreement includes a limited indemnification by the City in  
11 connection with the entry onto the Property for purposes of conducting due diligence  
12 investigations, inquiries and studies; and,

13 WHEREAS, The First Amendment extends the "Signing Date" (as defined in the  
14 Purchase Agreement) and various time periods for performance of certain obligations under  
15 the Purchase Agreement; and,

16 WHEREAS, As a condition of the Purchase Agreement, City, as landlord, shall enter  
17 into the Office Leases, with the term of each such Office Lease to commence as of the date of  
18 the close of escrow contemplated in the Purchase Agreement; and,

19 WHEREAS, The Board desires to finance the acquisition of and improvements to the  
20 Property with certificates of participation (the "Certificates"); and,

21 WHEREAS, In connection with the execution and delivery of the Certificates, the City  
22 shall enter into a Project Lease and a Trust Agreement, and certain other related documents;  
23 and,

24 WHEREAS, It is anticipated that the Certificates will be sold by competitive sale  
25 pursuant to the Official Notice of Sale; and,

1           WHEREAS, The City reasonably expects to reimburse certain expenditures incurred  
2 prior to the execution and delivery of the Certificates with proceeds of such Certificates; and,

3           WHEREAS, On February 12, 2001, the Department of City Planning adopted and  
4 issued a General Plan Consistency Finding, a copy of which is on file with the Clerk of the  
5 Board, wherein the Department of City Planning found that the acquisition of the Property, the  
6 Purchase Agreement and the Office Leases are consistent with the City's General Plan and  
7 with the Eight Priority Policies under Planning Code Section 101.1; and,

8           WHEREAS, On February 12, 2001, the Department of City Planning found that the  
9 Property is categorically exempt from Environmental Review under Class 1(a), minor interior  
10 and exterior alternation, and 1(d), restoration or rehabilitation of existing structures, of State  
11 Environmental Review guidelines, a copy of which finding is on file with the Clerk of the  
12 Board; now, therefore, be it

13           RESOLVED, BY THIS BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF  
14 SAN FRANCISCO AS FOLLOWS:

15           Section 1.   Approval of the Purchase Agreement and Office Leases. The Purchase  
16 Agreement and Office Leases, as presented to this Board, copies of which are on file with the  
17 Clerk of the Board, are each hereby approved. The Director of Property (or his designee) at  
18 his discretion is hereby authorized to execute the Purchase Agreement and Office Leases,  
19 and to enter into an escrow arrangement to facilitate and implement the purchase of the  
20 Property, and at the close of escrow to convey the Property to a third party to facilitate the  
21 financing of the acquisition of and improvements to the Property.

22           Section 2.   Approval of the Certificates. The Board hereby approves the execution  
23 and delivery of the Certificates which shall be executed and delivered in accordance with the  
24 Trust Agreement as the same is finally executed and delivered. The Certificates shall be  
25 comprised of and be designated as "City and County of San Francisco Certificates of

1 Participation (30 Van Ness Property), Series 2001A" (the "Series 2001A Certificates") and  
2 "City and County of San Francisco Certificates of Participation (30 Van Ness Property),  
3 Taxable Series 2001B" (the "Taxable Series 2001B Certificates"). The Series 2001A  
4 Certificates shall have an aggregate principal amount not to exceed \$35,950,000, with an  
5 interest rate not to exceed twelve percent (12%) per annum. The Taxable Series 2001B  
6 Certificates shall have an aggregate principal amount not to exceed \$1,880,000, with an  
7 interest rate not to exceed twelve percent (12%) per annum. To the extent deemed  
8 necessary by the Director of Public Finance (or her designee), this Board authorizes the  
9 procurement of credit enhancement for the Certificates, including, but not limited to, municipal  
10 bond insurance or a debt service reserve fund surety bond. Notwithstanding Section 13  
11 hereof, the documents authorized herein may be modified or amended to permit the  
12 procurement of credit enhancement for the Certificates, to the extent deemed necessary by  
13 the Director of Public Finance (or her designee), upon consultation with the City Attorney.

14 Section 3. Approval of the Trust Agreement and Authorization of Selection of the  
15 Trustee. The form of the Trust Agreement, as presented to this Board, a copy of which is on  
16 file with the Clerk of the Board, is hereby approved. The Mayor (or his designee) is hereby  
17 authorized to execute the Trust Agreement, and the Clerk of the Board (or her designee) is  
18 hereby authorized to attest to and affix the seal of the City on the Trust Agreement, with such  
19 changes, additions and modifications as the Mayor may make or approve in accordance with  
20 Section 13 hereof. The Director of Public Finance (or her designee) is hereby authorized to  
21 select a trustee to serve as trustee under the Trust Agreement (the "Trustee").

22 Section 4. Approval of the Project Lease. The form of the Project Lease between  
23 the City and the Trustee, providing for the financing of the Property, as presented to this  
24 Board, a copy of which is on file with the Clerk of the Board, is hereby approved. The Mayor  
25 (or his designee) is hereby authorized to execute the Project Lease, and the Clerk of the

1 Board (or her designee) is hereby authorized to attest and to affix the seal of the City on the  
2 Project Lease with such changes, additions and modifications as the Mayor may make or  
3 approve in accordance with Section 13, hereof, provided however, that the maximum Base  
4 Rental (as defined in the Project Lease) scheduled to be paid under the Project Lease in any  
5 fiscal year shall not exceed \$3,000,000 and the term of the Project Lease shall not extend  
6 beyond 2032.

7 Section 5. Approval of Form of Official Notice of Sale. The form of the Official  
8 Notice of Sale relating to the Certificates, as presented to this Board, a copy of which is on file  
9 with the Clerk of the Board, is hereby approved. The Director of Public Finance (or her  
10 designee) is hereby authorized to approve the distribution of an Official Notice of Sale for the  
11 Certificates, with such changes, additions modifications or deletions as the Director of Public  
12 Finance (or her designee) may approve upon consultation with the City Attorney; such  
13 approval to be conclusively evidenced by the distribution of the Official Notice of Sale to  
14 potential purchasers of the Certificates.

15 Section 6. Approval of Notice of Intention to Sell relating to the Certificates. The  
16 form of the Notice of Intention to Sell relating to the Certificates, as presented to this Board, a  
17 copy of which is on file with the Clerk of the Board, is hereby approved. The Director of Public  
18 Finance (or her designee) is hereby authorized to approve the publication of the Notice of  
19 Intention to Sell relating to the Certificates, with such changes, additions, modifications or  
20 deletions as the Director of Public Finance (or her designee) may approve upon consultation  
21 with the City Attorney; such approval to be conclusively evidenced by the publication of the  
22 Notice of Intention to Sell relating to the Certificates.

23 Section 7. Approval of the Official Statement in Preliminary and Final Form. The  
24 form of the Official Statement relating to the Certificates, as presented to this Board, a copy of  
25 which is on file in preliminary form with the Clerk of the Board, is hereby approved. The

1 Director of Public Finance (or her designee) is hereby authorized to approve the distribution of  
2 the preliminary Official Statement for the Certificates, with such changes, additions,  
3 modifications or deletions as the Director of Public Finance (or her designee) may approve  
4 upon consultation with the City Attorney; such approval to be conclusively evidenced by the  
5 distribution of the preliminary Official Statement to potential purchasers of the Certificates.  
6 The Controller of the City (or his designee) is hereby authorized to execute, and the Director  
7 of Public Finance (or her designee) is hereby further authorized to approve the distribution of,  
8 the Official Statement for the Certificates in final form.

9 Section 8. Approval of the Continuing Disclosure Certificate. The form of the  
10 Continuing Disclosure Certificate of the City, as presented to this Board, a copy of which is on  
11 file with the Clerk of the Board, is hereby approved. The Controller (or his designee) is hereby  
12 authorized to execute the Continuing Disclosure Certificate, with such modifications, changes  
13 or additions as the Controller (or his designee) may approve upon consultation with the City  
14 Attorney; such approval to be conclusively evidenced by the execution and delivery of the  
15 Continuing Disclosure Certificate.

16 Section 9. Authorization of Validation Action. The City Attorney is hereby requested  
17 and authorized to file a validation action validating the City's authority to enter into the Project  
18 Lease and the Trust Agreement, and to finance the Property, as such legal action is  
19 authorized by Chapter 9, Title 10, Division 5 of the California Code of Civil Procedure.

20 Section 10. Approval of Reimbursement. Pursuant to Treasury Regulation Section  
21 1.150-2, the City hereby declares its intent to reimburse from proceeds of the sale of the  
22 Certificates capital expenditures of the Property paid within sixty (60) days prior to the date of  
23 adoption of this Resolution, costs of issuance of the Certificates and other expenditures  
24 permitted to be reimbursed pursuant to Treasury Regulation Section 1.150-2. Any  
25 reimbursement allocation of proceeds of the Certificates to be made with respect to

1 expenditures incurred prior to the execution and delivery of the Certificates (excluding certain  
2 de minimis expenditures and preliminary expenditures in an amount not to exceed twenty  
3 percent (20%) of the issue price of the Certificates) will occur not later than eighteen (18)  
4 months after the later of (i) the date on which the expenditure is paid, or (ii) the date on which  
5 the facilities are placed in service, but in to event more than three (3) years after the  
6 expenditure is paid.

7 Section 11. Payment of Costs of Issuance. The Board hereby authorizes the  
8 expenditure of a portion of the proceeds of the Certificates, not to exceed \$749,800 (or such  
9 higher amount deemed reasonable by the Director of Public Finance, or her designee), for the  
10 payment of certain costs of issuance incurred in connection with the execution and delivery of  
11 the Certificates.

12 Section 12. General Authority. The Mayor, the City Attorney, the Controller, the City  
13 Administrator, the Director of Property, the Director of Public Finance, the Clerk of the Board  
14 and other officers of the City and their duly authorized deputies and agents are hereby  
15 authorized and directed, jointly and severally, to take such actions and to execute and delivery  
16 such certificates, agreements, escrow holdback agreement (as described in the Purchase  
17 Agreement), requests or other documents as they may deem necessary or desirable, to  
18 facilitate the purchase of the Property, to validate the proposed financing through the  
19 execution and delivery of the Certificates, to enter into the Office Leases, to enter into the  
20 Project Lease and the Trust Agreement, to facilitate the execution and delivery of the  
21 Certificates and, to obtain bond insurance or other credit enhancements with respect to the  
22 financing of the Property and otherwise to carry out the provisions of this Resolution.

23 Section 13. Modifications, Changes and Additions. The Mayor is hereby authorized  
24 to approve and make such modifications, changes or additions to the Project Lease or the  
25 Trust Agreement, upon consultation with the City Attorney, as may be necessary or desirable

1 in the interests of the City, and which changes do not materially increase the obligations of the  
2 City under the Project Lease or the Trust Agreement. The Mayor's approval of such  
3 modifications, changes or additions shall be conclusively evidenced by the execution and  
4 delivery by the Mayor and the Clerk of the Board (or their respective designees) of the Project  
5 Lease and the Trust Agreement.

6 Section 14. Adoption of Findings of Department of City Planning. The Board hereby  
7 adopts and incorporates herein by reference the findings of the Department of City Planning in  
8 the General Plan Consistency Finding that the proposed Property is in conformity with the  
9 Master Plan and is consistent with the Eight Priority Policies of Planning Code Section 101.1.  
10 The Board further adopts and incorporates by reference the findings of the Department of City  
11 Planning that the acquisition of the Property is exempt from Environmental Review under  
12 Class 1(a) and 1(d) of State Environmental Review guidelines.

13 Section 15. Ratification of Prior Actions. All actions authorized and directed by this  
14 Resolution and heretofore taken are hereby ratified, approved and confirmed by this Board.

15 Section 16. File Documents. All documents referred to as on file with the Clerk of the  
16 Board are in File No. 010669.

17 APPROVED AS TO FORM:

18 LOUISE H. RENNE  
19 City Attorney

20  
21 By: Theresa Alvarez  
22 THERESA ALVAREZ  
23 Deputy City Attorney  
24  
25





# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Tails

### Resolution

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**File Number:** 010669

**Date Passed:**

Resolution authorizing the execution and delivery of the Agreement of Purchase and Sale for Real Estate (the "Original Agreement"), as amended by a First Amendment to Agreement of Purchase and Sale for Real Estate (the "First Amendment" and together with Original Agreement, the "Purchase Agreement"), between the City and County of San Francisco (the "City"), as buyer, and the Herbst Foundation, Inc. (the "Seller"), as seller (including certain indemnities contained therein), for the purchase of real property and improvements thereon consisting of a five-story office building located at 30 Van Ness Avenue, San Francisco (collectively, the "Property"); approving the forms of an office lease between the City, as landlord, and the Seller, as tenant (the "Herbst Lease") and an office lease between the City, as landlord, and Merriman Brothers, as tenant (the "Merriman Lease") (collectively, the "Office Leases"); approving the execution and delivery of certificates of participation to finance the acquisition of and improvements to the Property; approving the form of the Project Lease between the City and a Trustee (including certain indemnities contained therein); authorizing the selection of a Trustee; approving the form of the Trust Agreement between the City and a Trustee (including certain indemnities contained therein); approving the form of the Official Notice of Sale and Notice of Intention to Sell for the Series 2001A Certificates and Taxable Series 2001B Certificates (as defined herein); approving the form of the Official Statement in preliminary and final form; approving the form of a Continuing Disclosure Certificate; authorizing the filing of a validation action validating the execution and delivery of the certificates of participation; authorizing reimbursement of certain expenditures; authorizing the payment of costs of issuance; adopting findings under the California Environmental Quality Act and findings to the City Planning Code Section 101.1; and ratifying previous actions taken in connection therewith.

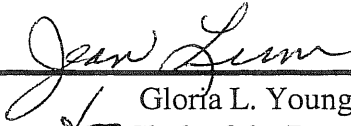
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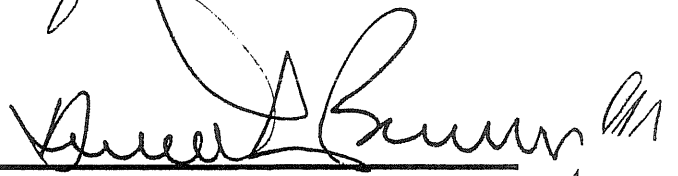
May 7, 2001 Board of Supervisors — ADOPTED

Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick,  
Newsom, Peskin, Sandoval, Yee

File No. 010669

I hereby certify that the foregoing Resolution was ADOPTED on May 7, 2001 by the Board of Supervisors of the City and County of San Francisco.

  
\_\_\_\_\_  
Gloria L. Young  
for Clerk of the Board

  
\_\_\_\_\_  
Mayor Willie L. Brown Jr.

MAY 9 - 2001  
Date Approved