



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary DOWNTOWN PROJECT AUTHORIZATION AMENDMENT DEVELOPMENT AGREEMENT

HEARING DATE: OCTOBER 16, 2014

Date: October 2, 2014
Case No.: 2014.1399WX
Project Address: 181 Fremont Street
Project Site Zoning: C-3-O (SD) (Downtown, Office: Special Development)
700-S-2 Height and Bulk District
Transit Center C-3-O (SD) Commercial Special Use District
Transbay C-3 Special Use District
Block/Lot: 3719/010, 011 (181 Fremont Street)
Project Sponsor: Janette D'Elia
c/o Jay Paul Company, LLC
Four Embarcadero Center, Suite 3620
San Francisco, CA 94111
Staff Contact: Kevin Guy – (415) 558-6163
kevin.guy@sfgov.org
Recommendation: **Approval with Conditions**

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PROJECT BACKGROUND:

At the hearing on December 6, 2012, the Planning Commission ("Commission") approved a Downtown Project Authorization and Requests for Exceptions pursuant to Planning Code Section ("Section") 309 (Motion No. 18765), an allocation of office space pursuant to Sections 320 through 325 (Annual Office Development Limitation Program (Motion No. 18764), and findings regarding shadow impacts to Union Square (Motion No. 18763), in connection with a proposal to demolish an existing three-story building and an existing two-story building, and to construct a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space. The building also includes a bridge to the future elevated City Park situated on top of the Transit Center. At the same hearing on December 6, 2012, the Zoning Administrator indicated an intent to grant a requested Variance from Section 140 to allow dwelling units on the north, east, and south portions of the proposed building without the required dwelling unit exposure. On March 15, 2013, the Zoning Administrator issued a Variance Decision Letter formally granting the requested Variance (collectively, "Project", Case No. 2007.0456EBKXV).

The Project is situated within the Transbay C-3 Special Use District (“SUD”, Section 249.28), which generally applies to the privately-owned parcels within Transbay Redevelopment Plan Project Area and corresponds to the boundaries of “Zone 2” of the Project Area. The SUD sets forth regulations regarding active ground-floor uses, streetscape improvements, and procedures for payment of fees. In addition, the SUD specifies that all residential developments must provide a minimum of 15% of all the dwelling units as affordable to, and occupied by, qualifying persons and families as defined by the Transbay Redevelopment Plan. The SUD further requires that all inclusionary units must be built on-site, and that off-site construction or in-lieu fee payment are not permitted to satisfy these requirements. These requirements would result in 11 affordable dwelling units in the Project.

PROPOSED AMENDMENT:

The Project Sponsor proposes to amend the conditions of approval for the Downtown Project Authorization (Motion No. 18765) associated with the Project, to enable the payment of an in-lieu fee toward the development of affordable housing in the Transbay Redevelopment Project Area. In addition, the Project Sponsor proposes to enter into a Development Agreement with the City and County of San Francisco (pursuant to Chapter 56 of the San Francisco Administrative Code) to exempt the Project from the requirements of the Transbay C-3 SUD (Planning Code Section 249.28) to provide affordable dwelling units on-site. In addition, the Development Agreement would specify the terms for payment of the in-lieu fee.

SITE DESCRIPTION AND PRESENT USE

The Project Site is an irregularly shaped property formed by two parcels measuring a total of 15,313 square feet, located on the east side of Fremont Street, between Mission and Howard Streets. The Project Site is within the C-3-O (SD) District, the 700-S-2 Height and Bulk District, the Transit Center C-3-O (SD) Commercial Special Use District, and the Transbay C-3 Special Use District. The two buildings which previously occupied the Project Site have been demolished, and foundation and site-preparation activities are underway for the construction of the Project.

SURROUNDING PROPERTIES & NEIGHBORHOOD

The Project Site is located in an area characterized by dense urban development. There are many high-rise structures containing dwellings, offices and other commercial uses. The Project Site is surrounded by a number of high-rise buildings. The Millennium (301 Mission Street) is a residential development consisting of a 60-story residential building and an 11-story tower, located to the north. 50 Beale Street (a 23-story office building), 45 Fremont Street (a 34-story office building) and 50 Fremont Street (a 43-story office building) are situated further to the north. 199 Fremont street (a 27-story office building) is located immediately to the east. There are numerous smaller commercial buildings in the area as well. The future Transit Center and the Transbay Tower are currently under construction immediately to the north of the Project Site. The Transit Center is planned to accommodate local and inter-city bus service, as well as Caltrain and California High Speed Rail service. The roof of the Transit Center will also feature a 5.4-acre public park called “City Park.”

The Project Site is located within the “Zone 2” of the Transbay Redevelopment Plan Project Area, as well as the larger Transit Center District Plan (TCDP) area. The City adopted the TCDP and related implementing ordinances in August 2012. Initiated by a multi-year public and cooperative interagency planning process that began in 2007, the Plan is a comprehensive vision for shaping growth on the

southern side of Downtown. Broadly stated, the goals of the TCDP are to focus regional growth toward downtown San Francisco in a sustainable, transit-oriented manner, sculpt the downtown skyline, invest in substantial transportation infrastructure and improvements to streets and open spaces, and expand protection of historic resources.

Adoption of the Plan included height reclassification of numerous parcels in the area to increase height limits, including the site of the Transbay Tower with a height limit of 1,000 feet, and several other nearby sites with height limits ranging from 600 to 850 feet.

ENVIRONMENTAL REVIEW

On September 28, 2011, the Department published a draft Environmental Impact Report (EIR) for the TCDP for public review. The draft EIR was available for public comment until November 28, 2011. On November 3, 2011, the Planning Commission ("Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to solicit comments regarding the draft EIR. On May 10, 2012 the Department published a Comments and Responses document, responding to comments made regarding the draft EIR prepared for the Project. On May 24, 2012, the Commission reviewed and certified the Final EIR. The Board of Supervisors affirmed this certification on July 24, 2012.

On November 9, 2012, the Planning Department, in a Community Plan Exemption certificate, determined that the original Project did not require further environmental review under Section 15183 of the CEQA Guidelines and Public Resources Code Section 21083.3. The original Project was consistent with the adopted zoning controls in the Transit Center District Plan and was encompassed within the analysis contained in the Transit Center District Plan Final EIR.

The actions contemplated in this Motion do not constitute a project under the California Environmental Quality Act ("CEQA"), CEQA Guidelines (California Code of Regulations Title 14) Sections 15378 (b)(4) and 15378(b)(5) because it merely creates a government funding mechanism that does not involve any commitment to a specific project and is an administrative activity of the government with no physical impact.

HEARING NOTIFICATION REQUIREMENTS

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Classified News Ad	20 days	September 26, 2016	September 26, 2016	20 days
Posted Notice	20 days	September 26, 2016	September 26, 2016	20 days
Mailed Notice	10 days	October 6, 2014	September 26, 2014	20 days

PUBLIC COMMENT

To date, the Department has received no comments regarding the proposed actions.

ISSUES AND OTHER CONSIDERATIONS

The Transbay Redevelopment Plan requires that, in accordance with State law (Public Resources Code Section 5027.1), at least 35% of all new housing within the Project Area be affordable to low- and

moderate-income households. It is anticipated that this goal will be achieved through a combination of constructing stand-alone affordable housing projects, increasing affordable housing requirements for development of the publicly-owned parcels in "Zone 1", and requiring on-site affordable units for developments on privately-owned parcels containing residential uses.

The Office of Community Investment and Infrastructure (OCII), in consultation with the Mayor's Office of Housing and Community Development (MOHCD), has analyzed the implications of applying the on-site requirement of the SUD to the Project. The units within the Project are relatively large, and are situated within the uppermost floors of the tower with abundant views. Given these characteristics, the 11 affordable units within the Project would need to be steeply discounted compared with the market-rate units. In addition, it is estimated that the homeowner's association ("HOA") fees for these units will likely exceed \$2,000 per month. These HOA fees would impose a substantial financial burden on residents whose income levels would allow them to qualify for an affordable unit within the Project. Therefore, OCII and MOHCD staff have concluded that the resources necessary to create affordable units within the Project could be better leveraged to create other affordable housing opportunities elsewhere in the Redevelopment Plan Area.

The Project Sponsor proposes to enter into a Development Agreement (pursuant to Chapter 56 of the San Francisco Administrative Code) to exempt the Project from the requirements of Section 249.28 to provide affordable dwelling units on-site. If the Development Agreement is approved by the Board of Supervisors, the Project Sponsor would contribute \$13.85 million toward the development of affordable housing in the Redevelopment Plan Area. OCII staff estimates that this fee would be capable of creating approximately 69 affordable housing units, a net gain of 58 affordable units compared to the 11 affordable units that would be provided within the Project. In order for this Development Agreement to proceed, the Commission must amend the conditions of approval for the previously-granted Downtown Project Authorization to eliminate the requirement for on-site affordable dwelling units. For comparative purposes, if the Project Sponsor were to pay the in-lieu affordable housing fee established in the Planning Code, the fee amount would be approximately \$5.5 million.

Because the City is entering into a Development Agreement with the Project Sponsor addressing, among other issues, the amount of the Project Sponsor's affordable housing contribution, this Project is consistent with Charter Section 16.110(h)(1)(B)(i) (adopted as part of the Housing Trust Fund, Proposition C, November 6, 2012).

On October 10, 2014, the OCII Commission will consider a variation to the Transbay Redevelopment Plan's on-site affordable housing requirement and acceptance of a future payment of \$13.85 million to fulfill affordable housing obligations in the Project Area. Staff will verbally present the outcome of the OCII Commission hearing to the Planning Commission at the hearing on October 16, 2014.

REQUIRED ACTIONS

In order for the project to proceed, the Commission must 1) Approve an amendment to the previously-granted Downtown Project Authorization (Motion No. 18756) to eliminate the requirement of Section 249.28 for on-site affordable dwelling units, and 2) Recommend that the Board of Supervisors approve a Development Agreement to exempt the Project from the requirements of Section 249.28 to provide

affordable dwelling units on-site, and to enable the payment of a fee toward the development of affordable housing in the Redevelopment Plan Area.

BASIS FOR RECOMMENDATION

- The proposed Development Agreement and amended Downtown Project Authorization would allow the payment of an in-lieu fee which will enable the creation of a greater affordable housing opportunities in the Transbay Redevelopment Plan Project Area than would be achieved through on-site affordable units within the Project.
- Residents of these future affordable units would be located within close proximity of the Project Site, and would be able to enjoy the walkability, abundant transit services, and vibrant urban character of the area.

RECOMMENDATION: Approval with Conditions
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Attachments:

- Draft Motion for amended Downtown Project Authorization
- Planning Commission Motion No. 18756 (dated December 6, 2012)
- Draft Development Agreement Resolution
- Draft Development Agreement Ordinance
- Draft Development Agreement
- Block Book Map
- Aerial Photograph
- Zoning District Map

Exhibit Checklist

- | | |
|---|--|
| <input checked="" type="checkbox"/> Executive Summary | <input type="checkbox"/> Project sponsor submittal |
| <input checked="" type="checkbox"/> Draft Motion | Drawings: <u>Existing Conditions</u> |
| <input checked="" type="checkbox"/> Environmental Determination | <input type="checkbox"/> Check for legibility |
| <input checked="" type="checkbox"/> Zoning District Map | Drawings: <u>Proposed Project</u> |
| <input checked="" type="checkbox"/> Height & Bulk Map | <input type="checkbox"/> Check for legibility |
| <input checked="" type="checkbox"/> Parcel Map | |
| <input checked="" type="checkbox"/> Sanborn Map | |
| <input checked="" type="checkbox"/> Aerial Photo | |
| <input type="checkbox"/> Context Photos | |
| <input type="checkbox"/> Site Photos | |

Exhibits above marked with an "X" are included in this packet

Planner's Initials



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- | | |
|---|---|
| <input checked="" type="checkbox"/> Affordable Housing (Sec. 415) | <input checked="" type="checkbox"/> First Source Hiring (Admin. Code) |
| <input checked="" type="checkbox"/> Jobs Housing Linkage Program (Sec. 413) | <input checked="" type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input checked="" type="checkbox"/> Downtown Park Fee (Sec. 412) | <input checked="" type="checkbox"/> Other |

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Planning Commission Draft Motion Section 309

HEARING DATE: OCTOBER 16, 2014

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Case No.: **2014.1399W~~X~~**
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Project Site Zoning: C-3-O (SD) (Downtown, Office: Special Development)
700-S-2 Height and Bulk District
Transit Center C-3-O (SD) Commercial Special Use District
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Block/Lot: 3719/010, 011 (181 Fremont Street)
Project Sponsor: Janette D'Elia
c/o Jay Paul Company, LLC
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San Francisco, CA 94111
Staff Contact: Kevin Guy – (415) 558-6163
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ADOPTING FINDINGS RELATED TO THE APPROVAL OF A DOWNTOWN PROJECT AUTHORIZATION UNDER PLANNING CODE SECTION 309 TO AMEND THE CONDITIONS OF APPROVAL FOR A PREVIOUSLY-APPROVED PROJECT TO DEMOLISH AN EXISTING THREE STORY BUILDING AND AN EXISTING TWO-STORY BUILDING AND CONSTRUCT A NEW 52-STORY BUILDING REACHING A MAXIMUM HEIGHT OF APPROXIMATELY 700 FEET, WITH A DECORATIVE SCREEN REACHING A MAXIMUM HEIGHT OF APPROXIMATELY 745 FEET AND A SPIRE REACHING A MAXIMUM HEIGHT OF APPROXIMATELY 800 FEET, CONTAINING APPROXIMATELY 404,000 SQUARE FEET OF OFFICE USES, APPROXIMATELY 74 DWELLING UNITS, APPROXIMATELY 2,000 SQUARE FEET OF RETAIL SPACE, AND APPROXIMATELY 68,000 SQUARE FEET OF SUBTERRANEAN AREA WITH OFF-STREET PARKING, LOADING, AND MECHANICAL SPACE. THE PROJECT SITE IS LOCATED WITHIN THE C-3-O(SD) (DOWNTOWN OFFICE, SPECIAL DEVELOPMENT) DISTRICT, THE 700-S-2 HEIGHT AND BULK DISTRICT, THE TRANSIT CENTER C-3-O(SD) COMMERCIAL SPECIAL USE DISTRICT, AND THE TRANSBAY C-3 SPECIAL USE DISTRICT.

PREAMBLE

On December 6, 2012, the Planning Commission ("Commission") conducted a duly noticed public hearing at a regularly scheduled meeting and approved a Downtown Project Authorization and Requests for Exceptions pursuant to Planning Code Section ("Section") 309 (Motion No. 18765), an allocation of office space pursuant to Sections 320 through 325 (Annual Office Development Limitation Program (Motion No. 18764), and findings regarding shadow impacts to Union Square (Motion No. 18763), in connection with a proposal to demolish an existing three-story building and an existing two-story building, and to construct a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space, located at 181 Fremont Street, Lots 010 and 011 in Assessor's Block 3719 ("Project Site"), within the C-3-O (SD) (Downtown Office, Special Development) District, the 700-S-2 Height and Bulk District, the Transbay C-3 Special Use District, and the Transit Center C-3-O(SD) Commercial Special Use District. At the same hearing on December 6, 2012, the Zoning Administrator indicated an intent to grant a requested Variance from Section 140 to allow dwelling units on the north, east, and south portions of the proposed building without the required dwelling unit exposure. On March 15, 2013, the Zoning Administrator issued a Variance Decision Letter formally granting the requested Variance (collectively, "Project", Case No. 2007.0456EBKXV). A site permit has been issued for the Project, and the building is currently under construction.

Pursuant to the requirements of Section 249.28, a minimum of 15% of the dwelling units in the project would have been required to be affordable to, and occupied by, qualifying persons and families as defined by the Transbay Redevelopment Plan. On September 18, 2014, Janette D'Elia, acting on behalf of Jay Paul Company, LLC ("Project Sponsor") applied for a Downtown Project Authorization, pursuant to Section 309, in order to amend the conditions of approval for the previously-granted Downtown Project Authorization (Motion No. 18765) to enable the payment of an in-lieu fee toward the development of affordable housing in the Transbay Redevelopment Project Area. In addition the Project Sponsor proposes to enter into a Development Agreement (pursuant to Chapter 56 of the San Francisco Administrative Code) to exempt the Project from the requirements of Section 249.28 to provide affordable dwelling units on-site (collectively, "Proposed Amendment", Case No. 2014.1399WX).

On May 24, 2012, the Planning Commission held a duly advertised public hearing and recommended approval of the Transit Center District Plan ("TCDP" or "Plan") and related implementing Ordinances to the Board of Supervisors. The result of a multi-year public and cooperative interagency planning process that began in 2007, the Plan is a comprehensive vision for shaping growth on the southern side of Downtown to respond to and support the construction of the new Transbay Transit Center project, including the Downtown Rail Extension. Implementation of the Plan would result in generation of up to \$590 million for public infrastructure, including over \$400 million for the Downtown Rail Extension. Adoption of the Plan included height reclassification of numerous parcels in the area to increase height limits, including a landmark tower site in front of the Transit Center with a height limit of 1,000 feet and several other nearby sites with height limits ranging from 600 to 850 feet.

On July 24, 2012, the Board of Supervisors held a duly noticed public hearing, affirmed the Final EIR and approved the Plan, as well as the associated ordinances to implement the Plan on first reading.

On July 31, 2012, the Board of Supervisors held a duly noticed public hearing, and approved the Plan, as well as the associated ordinances to implement the Plan on final reading.

On August 8, 2012, Mayor Edwin Lee signed into law the ordinances approving and implementing the Plan, which subsequently became effective on September 7, 2012.

The environmental effects of the original Project were determined by the Department to have been fully reviewed under the Transit Center District Plan Environmental Impact Report (hereinafter "EIR"). The EIR was prepared, circulated for public review and comment, and, at a public hearing on May 24, 2012, by Motion No. 18628, certified by the Commission as complying with the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., (hereinafter "CEQA"). The Commission has reviewed the Final EIR, which has been available for this Commission's review as well as public review.

The Transit Center District Plan EIR is a Program EIR. Pursuant to CEQA Guideline 15168(c)(2), if the lead agency finds that no new effects could occur or no new mitigation measures would be required of a proposed project, the agency may approve the project as being within the scope of the project covered by the program EIR, and no additional or new environmental review is required. In approving the Transit Center District Plan, the Commission adopted CEQA Findings in its Motion No. 18629 and hereby incorporates such Findings by reference.

Additionally, State CEQA Guidelines Section 15183 provides a streamlined environmental review for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, except as might be necessary to examine whether there are project-specific effects which are peculiar to the project or its site. Section 15183 specifies that examination of environmental effects shall be limited to those effects that (a) are peculiar to the project or parcel on which the project would be located, (b) were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent, (c) are potentially significant off-site and cumulative impacts which were not discussed in the underlying EIR, or (d) are previously identified in the EIR, but which are determined to have a more severe adverse impact than that discussed in the underlying EIR. Section 15183(c) specifies that if an impact is not peculiar to the parcel or to the proposed project, then an EIR need not be prepared for that project solely on the basis of that impact.

On November 9, 2012, the Department determined that the application for the original Project did not require further environmental review under Section 15183 of the CEQA Guidelines and Public Resources Code Section 21083.3. The Project was consistent with the adopted zoning controls in the Transit Center District Plan and was encompassed within the analysis contained in the Transit Center District Plan Final EIR. Since the Transit Center District Plan Final EIR was finalized, there were no substantial changes to the Transit Center District Plan and no substantial changes in circumstances that would require major revisions to the Final EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIR. The file for this project,

including the Transit Center District Plan Final EIR and the previously issued Community Plan Exemption certificate, is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California.

Planning Department staff prepared a Mitigation Monitoring and Reporting Program (MMRP) setting forth mitigation measures that were identified in the Transit Center District Plan EIR that are applicable to the project. These mitigation measures are set forth in their entirety in the MMRP, attached to Motion No. 18675 as Exhibit C, and were made conditions of approval of the original Project.

The Planning Commission's actions to amend the conditions of approval under Planning Code Section 309 and the recommendation concerning the development agreement do not compel any changes to the project that the Planning Commission previously approved. Rather, these actions merely authorize the Commission on Community Investment and Infrastructure, Planning Commission and Board of Supervisors to remove the on-site affordable housing requirement from the project. Thus, these actions and authorization of the acceptance of \$13.85 million for affordable housing subsidy within Zone 1 of the Transbay Redevelopment Plan do not constitute a project under the California Environmental Quality Act ("CEQA"), CEQA Guidelines (California Code of Regulations Title 14) Section 15378 (b)(4) because it merely creates a government funding mechanism that does not involve any commitment to a specific project.

The Planning Commission has reviewed and considered reports, studies, plans and other documents pertaining to the Proposed Amendment.

The Planning Commission has heard and considered the testimony presented at the public hearing and has further considered the written materials and oral testimony presented on behalf of the Project Sponsor, Department staff, and other interested parties.

On October 16, 2014, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Case No. 2014.1399WX. The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, the Planning Department staff, and other interested parties.

MOVED, that the Commission hereby approves the Proposed Amendment, as requested in Application No. 2014.1399X, subject to conditions of approval contained in Exhibit A of Motion No. 18765 and to the Mitigation, Monitoring and Reporting Program contained in Exhibit C of Motion No. 18765 (incorporated by reference as though fully set forth herein), based on the following findings:

FINDINGS

Having reviewed the materials identified in the recitals above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and also constitute findings of this Commission.
2. **Site Description and Present Use.** The Project Site is an irregularly shaped property formed by two parcels measuring a total of 15,313 square feet, located on the east side of Fremont Street, between Mission and Howard Streets. The Project Site is within the C-3-O (SD)

District, the 700-S-2 Height and Bulk District, the Transit Center C-3-O (SD) Commercial Special Use District, and the Transbay C-3 Special Use District. The two buildings which previously occupied the Project Site have been demolished, and foundation and site-preparation activities are underway for the construction of the Project.

3. **Surrounding Properties and Neighborhood.** The Project Site is located in an area characterized by dense urban development. There are many high-rise structures containing dwellings, offices and other commercial uses. The Project Site is surrounded by a number of high-rise buildings. The Millennium (301 Mission Street) is a residential development consisting of a 60-story residential building and an 11-story tower, located to the north. 50 Beale Street (a 23-story office building), 45 Fremont Street (a 34-story office building) and 50 Fremont Street (a 43-story office building) are situated further to the north. 199 Fremont street (a 27-story office building) is located immediately to the east. There are numerous smaller commercial buildings in the area as well. The future Transit Center and the Transbay Tower are currently under construction immediately to the north of the Project Site. The Transit Center is planned to accommodate local and inter-city bus service, as well as Caltrain and California High Speed Rail service. The roof of the Transit Center will also feature a 5.4-acre public park called "City Park."

The Project Site is located within the "Zone 2" of the Transbay Redevelopment Plan Project Area, as well as the larger Transit Center District Plan (TCDP) area. The City adopted the TCDP and related implementing ordinances in August 2012. Initiated by a multi-year public and cooperative interagency planning process that began in 2007, the Plan is a comprehensive vision for shaping growth on the southern side of Downtown. Broadly stated, the goals of the TCDP are to focus regional growth toward downtown San Francisco in a sustainable, transit-oriented manner, sculpt the downtown skyline, invest in substantial transportation infrastructure and improvements to streets and open spaces, and expand protection of historic resources.

Adoption of the Plan included height reclassification of numerous parcels in the area to increase height limits, including the site of the Transbay Tower with a height limit of 1,000 feet, and several other nearby sites with height limits ranging from 600 to 850 feet.

4. **Project Background and Proposed Amendment.** As approved, the Project would demolish an existing three-story building and an existing two-story building, and to construct a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space. The building also includes a bridge to the future elevated City Park situated on top of the Transit Center.

The Project Sponsor proposes to amend the conditions of approval for the Downtown Project Authorization (Motion No. 18765) associated with the Project, to enable the payment of an in-lieu fee toward the development of affordable housing in the Transbay Redevelopment

Project Area. In addition, the Project Sponsor proposes to enter into a Development Agreement with the City and County of San Francisco (pursuant to Chapter 56 of the San Francisco Administrative Code) to exempt the Project from the requirements of the Transbay C-3 Special Use District (“SUD”, Section 249.28) to provide affordable dwelling units on-site (collectively, “Proposed Amendment”). In addition, the Development Agreement would specify the terms for payment of the in-lieu fee.

5. **Public Comment.** To date, the Department has received no comments regarding the Proposed Amendment.
6. **Planning Code Compliance.** The Commission finds that the Proposed Amendment is consistent with the relevant provisions of the Planning Code in the following manner:
 - A. **Transbay C-3 SUD (Section 249.28).** The boundaries of the Transbay C-3 SUD generally apply to the privately-owned parcels within Transbay Redevelopment Plan Project Area, corresponding to the boundaries of “Zone 2” of the Project Area. The SUD sets forth regulations regarding active ground-floor uses, streetscape improvements, and procedures for payment of fees. In addition, the SUD specifies that all residential developments must provide a minimum of 15% of all the dwelling units as affordable to, and occupied by, qualifying persons and families as defined by the Transbay Redevelopment Plan. The SUD further requires that all inclusionary units must be built on-site, and that off-site construction or in-lieu fee payment are not permitted to satisfy these requirements.

The Transbay Redevelopment Plan requires that, in accordance with State law (Public Resources Code Section 5027.1), at least 35% of all new housing within the Project Area be affordable to low- and moderate-income households. It is anticipated that this goal will be achieved through a combination of constructing stand-alone affordable housing projects, increasing affordable housing requirements for development of the publicly-owned parcels in “Zone 1”, and requiring on-site affordable units for developments on privately-owned parcels containing residential uses.

The Office of Community Investment and Infrastructure (OCII), in consultation with the Mayor’s Office of Housing and Community Development (MOHCD), has analyzed the implications of applying the on-site requirement of the SUD to the Project. The units within the Project are relatively large, and are situated within the uppermost floors of the tower with abundant views. Given these characteristics, the 11 affordable units within the Project would need to be steeply discounted compared with the market-rate units. In addition, it is estimated that the homeowner’s association (“HOA”) fees for these units will likely exceed \$2,000 per month. These HOA fees would impose a substantial financial burden on residents whose income levels would allow them to qualify for an affordable unit within the Project. Therefore, OCII and MOHCD staff have concluded that the resources necessary to create affordable units within the Project could be better leveraged to create other affordable housing opportunities elsewhere in the Redevelopment Plan Area.

The Project Sponsor proposes to enter into a Development Agreement (pursuant to Chapter 56 of the San Francisco Administrative Code) to exempt the Project from the requirements of Section 249.28 to provide affordable dwelling units on-site. If approved by the Board of Supervisors, the Project Sponsor would contribute \$13.85 million toward the development of affordable housing in the Redevelopment Plan Area. OCII staff estimates that this fee would be capable of creating approximately 69 affordable housing units, a net gain of 58 affordable units compared to the 11 affordable units that would be provided within the Project.

- B. **Inclusionary Affordable Housing Program.** Planning Code Section 415 sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. At the time of Project approval in 2012, Planning Code Section 415.3 applied these requirements to projects that consist of five or more units, where the first application (EE or BPA) was applied for on or after July 18, 2006. Within the Transbay C-3 SUD, developments containing residential uses must satisfy these requirements by provided 15% of the proposed dwelling units on-site as affordable.

The conditions of approval for the Project in 2012 reflected the regulations of Sections 249.28 and 415 by requiring that 11 of the 74 dwelling units in the project be affordable. As discussed in Item #6A above, the Project Sponsor proposes to enter into a Development Agreement to exempt the Project from the on-site requirements of Section 249.28, and to enable an in-lieu contribution of \$13.85 million toward the development of affordable housing in the Redevelopment Plan Area. For comparative purposes, if the Project Sponsor were to pay the in-lieu affordable housing fee established in the Planning Code, the fee amount would be approximately \$5.5 million. In order for this Development Agreement to proceed, the Commission must amend the conditions of approval for the Project (Motion No. 18756) to eliminate the requirement for on-site affordable dwelling units.

7. **General Plan Conformity.** The Proposed Amendment would affirmatively promote the following objectives and policies of the General Plan:

HOUSING ELEMENT:

Objectives and Policies

OBJECTIVE 1

TO PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT DEMAND.

Policy 1.1:

Encourage higher residential density in areas adjacent to downtown, in underutilized commercial and industrial areas proposed for conversion to housing, and in neighborhood commercial districts where higher density will not have harmful effects, especially if the higher density provides a significant number of units that are affordable to lower income households.

Policy 1.3:

Identify opportunities for housing and mixed-use districts near downtown and former industrial portions of the City.

Policy 1.4:

Locate in-fill housing on appropriate sites in established residential neighborhoods.

OBJECTIVE 4

FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.

Policy 4.5:

Ensure that new permanently affordable housing is located in all of the City's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

OBJECTIVE 7

SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING, INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON TRADITIONAL MECHANISMS OR CAPITAL.

Policy 7.5:

Encourage the production of affordable housing through process and zoning accommodations, and prioritize affordable housing in the review and approval processes.

OBJECTIVE 8

BUILD PUBLIC AND PRIVATE SECTOR CAPACITY TO SUPPORT, FACILITATE, PROVIDE AND MAINTAIN AFFORDABLE HOUSING.

Policy 8.1:

Support the production and management of permanently affordable housing.

The Proposed Amendment would allow the payment of an in-lieu fee which will enable the creation of a greater affordable housing opportunities in the Transbay Redevelopment Plan Project Area than would be achieved through on-site affordable units within the Project. Affordable units created within the Project would be subject to HOA fees that would likely exceed \$2,000 per month. These HOA fees would impose a substantial financial burden on residents whose income levels would allow them to qualify for an affordable unit within the Project. The funds provided by the in-lieu fee will be utilized to create affordable units on other parcels in the Project Area. OCII staff estimates that the in-lieu fee would create a net gain of 58 affordable dwelling units over the 11 affordable units that would be provided in the Project under the

existing requirements. Residents of these future affordable units would be located within close proximity of the Project Site, and would be able to enjoy the walkability, abundant transit services, and vibrant urban character of the area.

8. **Priority Policy Findings.** Section 101.1(b) establishes eight priority planning policies and requires the review of permits for consistency with said policies. The Proposed Amendment complies with these policies, on balance, as follows:

- A. That existing neighborhood-serving retail/personal services uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.

The Project would include retail services at the ground-floor and at the fifth floor adjacent to City Park. These uses would provide goods and services to downtown workers, residents, and visitors, while creating ownership and employment opportunities for San Francisco residents. The addition of office and residential uses would bring new employees and residents to area, strengthening the customer base of other businesses in the vicinity. The Proposed Amendment would have no effect on the retail services in the Project.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

- C. That the City's supply of affordable housing be preserved and enhanced.

No housing has been removed for the construction of the Project, and the Project would provide 74 dwelling units. The Proposed Amendment would enable the payment of an in-lieu fee that will be utilized to create affordable housing on other parcels in the Project Area. OCII staff estimates that the in-lieu fee would create a net gain of 58 affordable dwelling units over the 11 affordable units that would be required in the Project under the existing requirements.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The Project Site is situated in the downtown core and is well served by public transit. The Project Site is located immediately adjacent to the future Transit Center, which will provide direct access to a significant hub of local, regional, and Statewide transportation. The Project is also located two blocks from Market Street, a major transit corridor that provides access to various Muni and BART lines. The Project implements the vision of the Transit Center District Plan to direct regional growth to a location that is served by abundant transit options, in order to facilitate travel by means other than private automobile. The Proposed Amendment would have no negative effect on transit services and circulation in the area.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project includes retail spaces at the first and fifth floors, preserving service sector employment opportunities. The Proposed Amendment would have no effect on the retail services in the Project.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project will comply with all current structural and seismic requirements under the San Francisco Building Code. The Proposed Amendment would have no effect on the physical construction of the Project.

- G. That landmarks and historic buildings be preserved.

The existing buildings that were demolished on the Project Site were not considered to be historic resources. The Proposed Amendment would not affect any landmark or historic building.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

At the hearing for the Project on December 6, 2012, the Planning Commission adopted Motion No. 18763, finding that the shadows cast by the Project on Union Square would not be adverse to the use of the park. The Proposed Amendment would not affect the physical form of the Project, and therefore, would not change the shadow impacts to Union Square.

9. The Proposed Amendment is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
10. The Commission hereby finds that approval of the Proposed Amendment would promote the health, safety, and welfare of the City.

DECISION

Based upon the whole record, the submissions by the Project Sponsor, the staff of the Department, and other interested parties, the oral testimony presented to the Commission at the public hearing, and all other written materials submitted by all parties, in accordance with the standards specified in the Code, the Commission hereby **APPROVES Application No. 2014.1399X**, pursuant to Section 309, subject to the following conditions attached hereto as "EXHIBIT A", and subject to the conditions of approval of Planning Commission Motion No. 18765, which are amended by this approval and are incorporated herein by reference as though fully set forth, on file in Case Docket No. 2007.0456X.

The actions contemplated in this Motion do not constitute a project under the California Environmental Quality Act ("CEQA"), CEQA Guidelines (California Code of Regulations Title 14) Sections 15378 (b)(4) and 15378(b)(5) because it merely creates a government funding mechanism that does not involve any commitment to a specific project and is an administrative activity of the government with no physical impact.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Downtown Project Authorization to the Board of Appeals within fifteen (15) days after the date of this Motion. The effective date of this Motion shall be the date of this Motion if not appealed OR the date of the decision of the Board of Appeals if appealed to the Board of Appeals. For further information, please contact the Board of Appeals in person at 1650 Mission Street, Room 304 or call (415) 575-6880.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting on October 16, 2014.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: October 16, 2014

EXHIBIT A

AUTHORIZATION

This authorization is modify the previous approval granted by Motion No. 18765 to eliminate the requirement of on-site affordable dwelling units and to enable the payment of an in-lieu contribution toward the development of affordable housing in the Transbay Redevelopment Plan Project Area, in association with a previously-approved project to demolish an existing three-story building and an existing two-story building, and to construct a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space, as well as a bridge to the future elevated City Park situated on top of the Transit Center, at a Project Site located within the C-3-O(SD) (Downtown Office, Special Development) District, the 700-S-2 Height and Bulk District, the Transit Center C-3-O(SD) Commercial Special Use District, and the Transbay C-3 Special Use District, in general conformance with plans dated December 6, 2012 and stamped "EXHIBIT B" included in the docket for Case No. 2007.0456X, subject to the conditions of approval reviewed and approved by the Commission on December 6, 2012 under Motion No. 18765, as amended by the Planning Commission on October 16, 2014 under Motion No. XXXXX. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on December 6, 2012 under Motion No. 18765, as amended by the Planning Commission on October 16, 2014 under Motion No. XXXXX.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. XXXXX shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Planning Code Section 309 Downtown Project Authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys

no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Planning Code Section 309 Downtown Project Authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting PERFORMANCE

1. Additional Project Authorization. The Project Sponsor must obtain approval from the Board of Supervisors for a Development Agreement between the Project Sponsor and the City and County of San Francisco to exempt the Project from the requirements of Section 249.28 to provide affordable dwelling units on-site, and to enable the payment of an in-lieu fee from the Project Sponsor to OCII for the development of affordable housing in the Redevelopment Plan Area. Consequently, this approval is conditioned upon a final and effective Development Agreement under which the Project Sponsor has complied with all of its terms. Failure to satisfy this condition shall result in the Project Authorization reverting to the project authorization in Planning Commission Motion 18765 dated December 6, 2012.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

PROVISIONS

2. Affordable Units. Condition #36 within Exhibit A of Motion No. 18765, requiring that the Project provide 15% of the dwelling units as affordable to qualifying households, shall no longer apply to the Project. The Project Sponsor shall contribute an in-lieu fee to the Office of Community Investment and Infrastructure ("OCII") for the creation of affordable housing opportunities within the Transbay Redevelopment Plan Project Area, in accordance with the terms of the proposed Development Agreement between the Project Sponsor and the City and County of San Francisco.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing
- Childcare Requirement
- Jobs Housing Linkage Program
- Downtown Park Fee
- Public Art
- Public Open Space
- First Source Hiring (Admin. Code)
- Transit Impact Development Fee
- Other

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415.558.6377

Planning Commission Motion 18765 Section 309

HEARING DATE: DECEMBER 6, 2012

Date: November 19, 2012
Case No.: **2007.0456EBKXV**
Project Address: **181 Fremont Street**
Project Site Zoning: C-3-O (SD) (Downtown, Office: Special Development)
 700-S-2 Height and Bulk District
 Transit Center C-3-O (SD) Commercial Special Use District
 Transbay C-3 Special Use District
Block/Lot: 3719/010, 011 (181 Fremont Street)
 0308/001 (Union Square)
Project Sponsor: SKS Fremont Managing Member, LLC
 c/o Daniel Kingsley
 601 California Street, Suite 1310
 San Francisco, CA 94108
Staff Contact: Kevin Guy – (415) 558-6163
kevin.guy@sfgov.org

ADOPTING FINDINGS RELATED TO THE APPROVAL OF A SECTION 309 DETERMINATION OF COMPLIANCE AND REQUEST FOR EXCEPTIONS FOR SEPARATION OF TOWERS (PLANNING CODE SECTION 132.1), STREETWALL BASE (PLANNING CODE SECTION 132.1), REAR YARD (PLANNING CODE SECTION 134), REDUCTION OF GROUND-LEVEL WIND CURRENTS IN C-3 DISTRICTS (PLANNING CODE SECTION 148), LIMITATIONS ON RESIDENTIAL ACCESSORY PARKING (PLANNING CODE SECTION 151.1), GENERAL STANDARDS FOR OFF-STREET PARKING AND LOADING (PLANNING CODE SECTION 155(r)), AND UNOCCUPIED BUILDING HEIGHT (PLANNING CODE SECTION 260(b)), FOR A PROJECT TO DEMOLISH AN EXISTING THREE STORY BUILDING AND AN EXISTING TWO-STORY BUILDING AND CONSTRUCT A NEW 52-STORY BUILDING REACHING A MAXIMUM HEIGHT OF APPROXIMATELY 700 FEET, WITH A DECORATIVE SCREEN REACHING A MAXIMUM HEIGHT OF APPROXIMATELY 745 FEET AND A SPIRE REACHING A MAXIMUM HEIGHT OF APPROXIMATELY 800 FEET, CONTAINING APPROXIMATELY 404,000 SQUARE FEET OF OFFICE USES, APPROXIMATELY 74 DWELLING UNITS, APPROXIMATELY 2,000 SQUARE FEET OF RETAIL SPACE, AND APPROXIMATELY 68,000 SQUARE FEET OF SUBTERRANEAN AREA WITH OFF-STREET PARKING, LOADING, AND MECHANICAL SPACE, AND ADOPTING FINDINGS UNDER THE

CALIFORNIA ENVIRONMENTAL QUALITY ACT. THE PROJECT SITE IS LOCATED WITHIN THE C-3-O(SD) (DOWNTOWN OFFICE, SPECIAL DEVELOPMENT) DISTRICT, THE 700-S-2 HEIGHT AND BULK DISTRICT, THE TRANSIT CENTER C-3-O(SD) COMMERCIAL SPECIAL USE DISTRICT, AND THE TRANSBAY C-3 SPECIAL USE DISTRICT.

PREAMBLE

On March 7, 2012, SKS Fremont Managing Member, LLC ("Project Sponsor"), submitted a request (Case No. 2007.0456X) with the City and County of San Francisco Planning Department ("Department") for a Determination of Compliance pursuant to Section 309 with requested Exceptions from Planning Code ("Code") requirements for "Separation of Towers", "Streetwall Base", "Rear Yard", "Limitations on Residential Accessory Parking", "Reduction of Ground-Level Wind Currents in C-3 Districts", "General Standards for Off-Street Parking and Loading" to create a curb cut on Fremont Street, and "Unoccupied Building Height" to demolish an existing three-story building and an existing two-story building, and to construct a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space, located at 181 Fremont Street ("Project Site"), within the C-3-O (SD) (Downtown Office, Special Development) District, the 700-S-2 Height and Bulk District, and the Transit Center C-3-O(SD) Commercial Special Use District (collectively, "Project").

On May 24, 2012, the Planning Commission held a duly advertised public hearing and recommended approval of the Transit Center District Plan ("TCDP" or "Plan") and related implementing Ordinances to the Board of Supervisors. The result of a multi-year public and cooperative interagency planning process that began in 2007, the Plan is a comprehensive vision for shaping growth on the southern side of Downtown to respond to and support the construction of the new Transbay Transit Center project, including the Downtown Rail Extension. Implementation of the Plan would result in generation of up to \$590 million for public infrastructure, including over \$400 million for the Downtown Rail Extension. Adoption of the Plan included height reclassification of numerous parcels in the area to increase height limits, including a landmark tower site in front of the Transit Center with a height limit of 1,000 feet and several other nearby sites with height limits ranging from 600 to 850 feet.

On July 24, 2012, the Board of Supervisors held a duly noticed public hearing, affirmed the Final EIR and approved the Plan, as well as the associated ordinances to implement the Plan on first reading.

On July 31, 2012, the Board of Supervisors held a duly noticed public hearing, and approved the Plan, as well as the associated ordinances to implement the Plan on final reading.

On August 8, 2012, Mayor Edwin Lee signed into law the ordinances approving and implementing the Plan, which subsequently became effective on September 7, 2012.

The environmental effects of the Project were determined by the Department to have been fully reviewed under the Transit Center District Plan Environmental Impact Report (hereinafter "EIR"). The EIR was prepared, circulated for public review and comment, and, at a public hearing on May 24, 2012, by Motion

No. 18628, certified by the Commission as complying with the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., (hereinafter "CEQA"). The Commission has reviewed the Final EIR, which has been available for this Commission's review as well as public review.

The Transit Center District Plan EIR is a Program EIR. Pursuant to CEQA Guideline 15168(c)(2), if the lead agency finds that no new effects could occur or no new mitigation measures would be required of a proposed project, the agency may approve the project as being within the scope of the project covered by the program EIR, and no additional or new environmental review is required. In approving the Transit Center District Plan, the Commission adopted CEQA Findings in its Motion No. 18629 and hereby incorporates such Findings by reference.

Additionally, State CEQA Guidelines Section 15183 provides a streamlined environmental review for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, except as might be necessary to examine whether there are project-specific effects which are peculiar to the project or its site. Section 15183 specifies that examination of environmental effects shall be limited to those effects that (a) are peculiar to the project or parcel on which the project would be located, (b) were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent, (c) are potentially significant off-site and cumulative impacts which were not discussed in the underlying EIR, or (d) are previously identified in the EIR, but which are determined to have a more severe adverse impact than that discussed in the underlying EIR. Section 15183(c) specifies that if an impact is not peculiar to the parcel or to the proposed project, then an EIR need not be prepared for that project solely on the basis of that impact.

On November 9, 2012, the Department determined that the proposed application did not require further environmental review under Section 15183 of the CEQA Guidelines and Public Resources Code Section 21083.3. The Project is consistent with the adopted zoning controls in the Transit Center District Plan and was encompassed within the analysis contained in the Transit Center District Plan Final EIR. Since the Transit Center District Plan Final EIR was finalized, there have been no substantial changes to the Transit Center District Plan and no substantial changes in circumstances that would require major revisions to the Final EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIR. The file for this project, including the Transit Center District Plan Final EIR and the Community Plan Exemption certificate, is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California.

Planning Department staff prepared a Mitigation Monitoring and Reporting Program (MMRP) setting forth mitigation measures that were identified in the Transit Center District Plan EIR that are applicable to the project. These mitigation measures are set forth in their entirety in the MMRP attached to the draft Motion as Exhibit C.

On March 7, 2012, the Project Sponsor applied for an allocation of 364,000 square feet of net additional office space (subtracting the area of existing office space uses to be demolished on the site) to the Project pursuant to Sections 320 through 325 (Annual Office Development Limitation Program) (Case No.

2012.0257B). The application was subsequently amended to request an allocation of 361,038 square feet of net additional office space to the Project.

On November 2, 2012, the Project Sponsor applied for a Variance from the requirements of Section 140 (Dwelling Unit Exposure).

On December 12, 2011, the Project Sponsor submitted a request for review of a development exceeding 40 feet in height, pursuant to Section 295, analyzing the potential shadow impacts of the Project to properties under the jurisdiction of the Recreation and Parks Department (Case No. 2007.0456K). Department staff prepared a shadow fan depicting the potential shadow cast by the development and concluded that the Project could have a potential impact to properties subject to Section 295. A technical memorandum, prepared by Environmental Science Associates, concluded that the Project would cast approximately 2,131 square-foot-hours of new shadow on Union Square, equal to approximately 0.0005% of the theoretically available annual sunlight ("TAAS") on Union Square.

On February 7, 1989, the Recreation and Park Commission and the Planning Commission adopted criteria establishing absolute cumulative limits ("ACL") for additional shadows on fourteen parks throughout San Francisco (Planning Commission Resolution No. 11595), as set forth in a February 3, 1989 memorandum (the "1989 Memo"). The ACL for each park is expressed as a percentage of the Theoretically Available Annual Sunlight ("TAAS") on the Park (with no adjacent structures present).

On October 11, 2012, the Planning Commission and the Recreation and Park Commission held a duly noticed joint public hearing and adopted Planning Commission Resolution No. 18717 and Recreation and Park Commission Resolution No. 1201-001 amending the 1989 Memo and raising the absolute cumulative shadow limits for seven open spaces under the jurisdiction of the Recreation and Park Department that could be shadowed by likely cumulative development sites in the Transit Center District Plan ("Plan") Area, including the Project. In revising these ACLs, the Commissions also adopted qualitative criteria for each park related to the characteristics of shading within these ACLs that would not be considered adverse, including the duration, time of day, time of year, and location of shadows on the particular parks. Under these amendments to the 1989 Memo, any consideration of allocation of "shadow" within these newly increased ACLs for projects must be consistent with these characteristics. The Commissions also found that the "public benefit" of any proposed project in the Plan Area should be considered in the context of the public benefits of the Transit Center District Plan as a whole.

On November 15, 2012, the Recreation and Park Commission held a duly noticed public hearing and adopted Recreation and Park Commission Resolution No. 1211-007 recommending that the General Manager of the Recreation & Park Department recommend to the Planning Commission that the shadows cast by the Project on Union Square are not adverse to the use of the park, and that the Planning Commission allocate to the Project allowable shadow from the absolute cumulative shadow limit for Union Square.

On December 6, 2012, the Planning Commission held a duly noticed public hearing and adopted Motion No. 18763, finding that the shadows cast by the Project on Union Square would not be adverse to the use of the park, and allocating ACLs to the Project for Union Square.

The Planning Commission has reviewed and considered reports, studies, plans and other documents pertaining to the Project.

The Planning Commission has heard and considered the testimony presented at the public hearing and has further considered the written materials and oral testimony presented on behalf of the Project Sponsor, Department staff, and other interested parties.

On December 6, 2012, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Case No. 2007.0456EBKXV. The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, the Planning Department staff, and other interested parties.

MOVED, that the Commission hereby approves the Section 309 Determination of Compliance and Request for Exceptions requested in Application No. 2007.0456X for the Project, subject to conditions contained in Exhibit A, and to the Mitigation, Monitoring and Reporting Program contained in Exhibit C, attached hereto and incorporated by reference, attached hereto and incorporated by reference, based on the following findings:

FINDINGS

Having reviewed the materials identified in the recitals above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and also constitute findings of this Commission.
2. **Site Description and Present Use.** The Project Site is an irregularly shaped property formed by two parcels measuring a total of 15,313 square feet, located on the east side of Fremont Street, between Mission and Howard Streets. The Project Site is within the C-3-O (SD) District, the 700-S-2 Height and Bulk District, the Transit Center C-3-O (SD) Commercial Special Use District, and the Transbay C-3 Special Use District. The Project Site is presently occupied by a two-story building and a three-story building containing approximately 43,000 square feet of office uses.
3. **Surrounding Properties and Neighborhood.** The Project Site is located in an area characterized by dense urban development. There are many high-rise structures containing dwellings, offices and other commercial uses. The Project Site is surrounded by a number of high-rise buildings. The Millennium (301 Mission Street) is a residential development consisting of a 60-story residential building and an 11-story tower, located to the north. 50 Beale Street (a 23-story office building), 45 Fremont Street (a 34-story office building) and 50 Fremont Street (a 43-story office building) are situated further to the north. 199 Fremont street (a 27-story office building) is located immediately to the east. There are numerous smaller commercial buildings in the area as well. The future Transit Center is currently under construction immediately adjacent to the Project Site to the north. The Transit Center is planned to accommodate local and inter-city bus service, as well as Caltrain and California High Speed Rail service. The roof of the Transit Center will also feature a 5.4-acre public park called "City Park."

The Project Site is located within the Transit Center District Plan (TCDP) area. The City adopted the TCDP and related implementing ordinances in August 2012. Initiated by a multi-year public and cooperative interagency planning process that began in 2007, the Plan is a comprehensive vision for shaping growth on the southern side of Downtown. Broadly stated, the goals of the TCDP are to focus regional growth (particularly employment growth) toward downtown San Francisco in a sustainable, transit-oriented manner, sculpt the downtown skyline, invest in substantial transportation infrastructure and improvements to streets and open spaces, and expand protection of historic resources.

Adoption of the Plan included height reclassification of numerous parcels in the area to increase height limits, including a landmark tower site in front of the Transit Center with a height limit of 1,000 feet and several other nearby sites with height limits ranging from 600 to 850 feet.

4. **Proposed Project.** The Project would demolish an existing three-story building and an existing two-story building, and to construct a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space. The Project also includes a bridge to the future elevated City Park situated on top of the Transit Center.
5. **Public Comment.** The Department has received several letters in support from organizations and business owners in the area which praise the transit-oriented, mixed-use nature of the Project, as well as the fee revenues which will be generated. To date, the Department has received no communications in opposition to the Project.
6. **Planning Code Compliance.** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
 - A. **Floor Area Ratio (Section 124).** Section 124 establishes basic floor area ratios (FAR) for all zoning districts. As set forth in Section 124(a), the FAR for the C-3-O (SD) District is 6.0 to 1. Under Sections 123 and 128, the FAR can be increased to 9.0 to 1 with the purchase of transferable development rights (TDR), and may exceed 9.0 to 1 without FAR limitations through participation in the Transit Center District Mello-Roos Community Facilities District, pursuant to Section 424.8.

The Project Site has a lot area of approximately 15,313 square feet. Therefore, up to 91,878 square feet of Gross Floor Area ("GFA") is allowed under the basic FAR limit, and up to 137,817 square feet of GFA is permitted with the purchase of TDR. As shown in the conceptual plans for the Project, the building would include approximately 545,556 square feet of GFA (an FAR of approximately 35.6 to 1). Conditions of approval are included to require the Project Sponsor to purchase TDR for the increment of development between 6.0 to 1 FAR and 9.0 to 1 FAR (approx. 45,939 square feet), and to participate in the Transit Center

District Mello-Roos Community Facilities District to pursue development above an FAR of 9.0 to 1.

- B. **Residential Open Space (Section 135).** Section 135 requires that a minimum of 36 square feet of private usable open space, or 47.9 square feet of common usable open space be provided for dwelling units within C-3 Districts. This Section specifies that the area counting as usable open space must meet minimum requirements for area, horizontal dimensions, and exposure.

Based on the specified ratios, the Project must provide 3,543 square feet of common open space to serve the 74 dwelling units. The Project includes a common outdoor terrace at the 37th floor that measures approximately 3,060 square feet, and meets the exposure requirements of Section 135. In addition, the Project provides a bridge connection to City Park measuring 492 sq. ft. that satisfies the residential common open space requirements of Section 135, as well as the publicly-accessible open space requirements of Section 138. The project complies with the usable residential open space requirements of the Planning Code.

- C. **Publicly Accessible Open Space (Section 138).** New buildings in the C-3-O (SD) Zoning District must provide public open space at a ratio of one sq. ft. per 50 gross square feet of all uses, except residential uses, institutional uses, and uses in a predominantly retail/personal services building. This public open space must be located on the same site as the building or within 900 feet of it within a C-3 district. Projects that provide public access to City Park via a bridge connection receive a 5,000 sq. ft. bonus toward the open space requirements of Section 138, and may also count the area of the bridge as well as area set aside for public circulation and services for visitors utilizing the park connection.

The building includes approximately 404,000 gross sq. ft. of office space, as shown in the conceptual plans for the Project. At a ratio of 1:50, 8,080 sq. ft. of open space is required. The Project would comply with the requirement by providing a publicly-accessible bridge connection to City Park through the building, qualifying for the 5,000 sq. ft. bonus. In addition, the area of circulation, food service, public restrooms, and the bridge connection itself would be credited toward meeting the open space requirements of Section 138. The creditable square footage of these features totals approximately 8,319 square feet. Therefore, the Project complies with the requirements of Section 138. The specific design of the bridge connection and associated features will be further refined throughout the building permit review process.

- D. **Streetscape Improvements (Section 138.1).** Section 138.1(b) requires that when a new building is constructed in C-3 Districts, street trees, enhanced paving, and other amenities such as lighting, seating, bicycle racks, or other street furnishings must be provided.

The Project will include appropriate streetscape improvements and will comply with this requirement. The conceptual project plans show the installation of street trees along the Fremont Street frontage of the building. The precise location, spacing, and species of the street

trees, as well as other streetscape improvements, will be further refined throughout the building permit review process.

- E. **Dwelling Unit Exposure (Section 140).** Section 140 requires that at least one room of all dwelling units face onto a public street, a rear yard, or other open area that meets minimum requirements for dimensions.

The residential portion of the building is located at the upper portion of the tower, on floors 39 through 52. Approximately one-fourth of the dwelling units have exposure onto Fremont Street, and therefore comply with the requirements of Section 140. Units on the north, east, and south sides of the building at each of the residential floors are situated near the property line, and do not face open areas on-site that meet the required minimum dimensions specified by Section 140. The Project does not comply with the exposure requirements of Section 140, therefore, the Project Sponsor is requesting a Variance.

- F. **Shadows on Public Sidewalks (Section 146).** Section 146(a) establishes design requirements for buildings on certain streets in order to maintain direct sunlight on public sidewalks in certain downtown areas during critical use periods. Section 146(c) requires that other buildings, not located on the specific streets identified in Section 146(a), shall be shaped to reduce substantial shadow impacts on public sidewalks, if it can be done without unduly creating an unattractive design and without unduly restricting development potential.

Section 146(a) does not apply to construction on Mission, Fremont, or First Streets, and therefore does not apply to the Project.

The Project would add shadows to public sidewalks in the vicinity. The amount of shadow would vary based on time of day, time of year, the height and bulk of intervening existing and proposed development, and climatic conditions (clouds, fog, or sun) on a given day. In certain cases, existing and future development would mask or subsume new shadows from the Project that would otherwise be cast on sidewalks. In addition, because the sun is a disc rather than a single point in the sky, sunlight can "pass around" elements of buildings resulting in a diffuse shadow line (rather than a hard-edged shadow) at point distant from the Project. This effect would be particularly applicable to shadows cast by the sculptural lattice at the top of the Project, given that this element is unenclosed and is comprised of a grid of relatively narrow structural elements.

Given the height of the Project, it is unavoidable that it would cast new shadows onto sidewalks in the vicinity. However, limiting the height of the Project to avoid casting sidewalks shadows would contradict a basic premise of the TCDP. That is, given the adjacency of the Project Site to the abundant transportation services in the future Transit center, it is appropriate that the Project be developed as one of the tallest buildings within the Plan area in order to create intense urban development (particularly office employment) in a transit-oriented location. In addition, the TCDP envisions that the increased height on the subject Property would, in combination with the Transbay Tower and development on other sites with increased height limits, mark the Transit Center within the urban form of the City,

and would serve as the sculptural apex of the skyline once development within the Plan area is realized.

- G. **Shadows on Public Open Spaces (Section 147).** Section 147 seeks to reduce substantial shadow impacts on public plazas and other publicly accessible open spaces other than those protected under Section 295. Consistent with the dictates of good design and without unduly restricting development potential, buildings taller than 50 feet should be shaped to reduce substantial shadow impacts on open spaces subject to Section 147. In determining whether a shadow is substantial, the following factors shall be taken into account: the area shaded, the shadow's duration, and the importance of sunlight to the area in question.

The Project would cast shadows on publicly-accessible open spaces in the area other than those protected under Section 295. The future City Park would receive shadow from mid-morning until mid-afternoon throughout the year. The future Transbay Park (located to the southwest, along Tehama Street between Beale and Main Streets) would receive shadow during the late spring and early summer in the afternoon. Minor additional shadow would also be added in the mid- to late-afternoon on Rincon Park (located between the Embarcadero and the waterfront to the east), as well as Herb Caen Way (the promenade along the Embarcadero). The Project would also cast shadows on multiple privately-owned, publicly-accessible open spaces in the vicinity, including the proposed Mission Square (adjacent to the Transbay Tower), the Poetry Garden at 199 Fremont Street, and a space at 301 Howard Street. The amount of shadow cast on each of these privately-owned, publicly-accessible open spaces would vary based on time of day, time of year, the height and bulk of intervening existing and proposed development, and climatic conditions (clouds, fog, or sun) on a given day.

Given the height of the Project, it is unavoidable that the Project would cast new shadows onto open spaces in the vicinity. As discussed in item #6F above, limiting the height of the Project to avoid casting sidewalks shadows would contradict a basic premise of the TCDP, as the Project is intended to serve as an exemplar of transit-oriented development, and will contribute to the a new sculptural apex of the City's skyline once development within the Plan area is realized.

- H. **Off-Street Parking – Non-Residential Use (Section 151.1).** Pursuant to Section 151.1, non-residential uses in C-3-O (SD) District are not required to provide off-street parking, but a parking area not to exceed 3.5% of the gross floor area of the building is permitted as accessory to non-residential uses.

With 404,000 gross square feet of non-residential uses, the Project may include up to 14,140 square feet of accessory off-street parking. The Project would have five below-grade parking levels with area for both residential and office parking. The total area of the parking for the office uses measures 14,122 sf, and complies with the 3.5% maximum allowance for accessory parking for non-residential uses.

- I. **Loading (Section 152.1).** Section 152.1 establishes minimum requirements for off-street loading. In C-3 Districts, the loading requirement is based on the total gross floor area of the structure or use. Table 152.1 requires off-street freight loading spaces to be provided at a ratio of 0.1 spaces per 10,000 square feet of gross office floor area. Notwithstanding the ratios required in Table 152.1, buildings within the C-3-O (SD) are not required to provide more than six off-street loading spaces.

The Project provides three loading spaces at the first basement level, and four service vehicle spaces at the second basement level. Section 153(a)(6) allows for the substitution of two service vehicle spaces for each required off-street freight loading space, provided that at least half of the loading spaces are provided. The Project complies with the loading requirements.

- J. **Shower and Locker Facilities (Section 155.3).** New commercial buildings whose primary use consists of offices require four showers and eight lockers when the gross floor area exceeds 50,000 square feet.

The Project would provide the required shower and locker facilities at the mezzanine level, and therefore complies with this requirement.

- K. **Bicycle Parking (Section 155.4).** For new commercial buildings whose primary use consists of offices exceeding 75,000 gross square feet, 20 Class 1 bicycle parking spaces are required, plus one Class 1 space for each 5,000 square feet in excess of 75,000 square feet. In addition, one Class 2 bicycle parking space is required for each 50,000 gross square feet.

Pursuant to the ratios specified in Section 155.4, 66 Class 1 bicycle spaces are required. The Project provides a total of 117 Class 1 bicycle spaces located within a bicycle storage facility within subterranean garage, as well as a separate storage area at the mezzanine level. The Project is also required to provide eight Class 2 bicycle spaces that are readily available for short-term use by visitors to the building. The Project proposes eight Class 2 bicycle spaces at-grade, adjacent to the curb along the Fremont Street frontage of the building. The Project complies with the bicycle parking requirements.

- L. **Height (Section 260).** Section 260 requires that the height of buildings not exceed the limits specified in the Zoning Map and defines rules for the measurement of height. The Project Site is within the 1,000-S-2 Height and Bulk District.

The Project would reach a height of 700 feet to the roof, and therefore complies with the basic height limit of the 700-S-2 Height and Bulk District. The Project also includes a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet. These spaces are unoccupied and are intended as sculptural elements and integral design features to the architecture of the Project. Section 260(b)(1)(M) allows such features to exceed the height limit through the Section 309 exception process, provided that the feature meets certain criteria. Compliance with these criteria is discussed in Item #7 below.

- M. **Bulk Limits (Section 270):** Section 270 establishes bulk controls by district. In the “S-2” Bulk District, for buildings taller than 650 feet, the following bulk controls apply: There are no bulk controls for the lower tower, defined as the bottom two-thirds of the building. The upper tower is defined as the upper one-third of the building, including unoccupied rooftop sculptural elements intended to produce a distinct visual tapering of the building (see discussion in Item #7 below). The average floor size of the upper tower shall not exceed 75 percent of the average floor size of the lower tower, and the average diagonal dimension shall not exceed 87 percent of the average diagonal dimension of the lower tower.

The lower tower has an average floorplate of approximately 12,690 square feet, while the upper tower has an average floorplate of approximately 9,251 square feet. Therefore, the average upper tower floorplate measures approximately 73% of the size of the average lower tower floorplate. The lower tower floors have an average diagonal dimension of approximately 164 feet, while the upper tower floors have an average diagonal dimension of approximately 142 square feet. Therefore, the average upper tower diagonal dimension measures approximately 87% of the size of the average lower tower diagonal dimension. The Project complies with the bulk limitations of the S-2 Bulk District.

- N. **Shadows on Parks (Section 295).** Section 295 requires any project proposing a structure exceeding a height of 40 feet to undergo a shadow analysis in order to determine if the project will result in the net addition of shadow to properties under the jurisdiction of the Recreation and Park Department.

A technical memorandum, prepared by Environmental Science Associates, concluded that the Project would cast approximately 2,131 square-foot-hours of new shadow on Union Square, equal to approximately 0.0005% of the theoretically available annual sunlight (“TAAS”) on Union Square. Approval of the Project is therefore subject to approval under the procedures of Planning Code Section 295 (also known as “Prop K”) by the Recreation & Parks and Planning Commissions.

On October 11, 2012, the Planning Commission and the Recreation and Park Commission held a duly noticed joint public hearing and adopted Planning Commission Resolution No. 18717 and Recreation and Park Commission Resolution No. 1201-001 amending the 1989 Memo and raising the absolute cumulative shadow limits for seven open spaces under the jurisdiction of the Recreation and Park Department that could be shadowed by likely cumulative development sites in the Plan area, including the Project. In revising these ACLs the Commissions also adopted qualitative criteria for each park related to the characteristics of shading within these ACLs that would not be considered adverse, including the duration, time of day, time of year, and location of shadows on the particular parks.

On November 15, 2012, the Recreation and Park Commission held a duly noticed public hearing and adopted Recreation and Park Commission Resolution No. 1211-007 recommending that the General Manager of the Recreation & Park Department recommend to the Planning Commission that the shadows cast by the Project on Union Square are not adverse to the use of the park, and that the Planning Commission allocate to the Project allowable shadow from the absolute cumulative shadow limit for Union Square.

On December 6, 2012, the Planning Commission held a duly noticed public hearing and adopted Motion No. 18763, finding that the shadows cast by the Project on Union Square would not be adverse to the use of the park, and allocating ACLs to the Project for Union Square.

- O. **Downtown Park Fund (Section 412).** A project in a C-3 District that proposes a net addition of office space is required to pay a fee which will be deposited in the Downtown Park Fund. The fee is jointly established by the Planning Commission and the Recreation and Park Commission. The purpose of the Downtown Park Fund is to provide the City with the financial resources to develop public park and recreation facilities for the enjoyment of employees and visitors in downtown San Francisco. Because the project is located within the Transbay C-3 Special Use District (Planning Code Section 249.28), the project's fees will be used within the Transbay Redevelopment Area.

The Project Sponsor would comply with this requirement by contributing the required amount.

- P. **Jobs-Housing Linkage Program (Section 413).** Large-scale development projects that contain entertainment, hotel, office, research and development, or retail/personal services uses create jobs as well as an increased demand for housing. Under Section 413, these large-scale development projects are required to pay a fee to a designated housing developer or to the City in order to help offset the cost of building additional housing. The Section 413 housing requirements apply to office projects proposing at least 25,000 square feet of new use. Because the project is located within the Transbay C-3 Special Use District (Planning Code Section 249.28), any project fees paid to the City will be used within the Transbay Redevelopment Area.

The Project is subject to Section 413, because it proposes approximately 361,038 square feet of new office use. The Project Sponsor would comply with Section 413 either by construction of the units or by payment of an in-lieu fee.

- Q. **Childcare Requirement (Section 414).** Large-scale office and hotel developments create jobs as well as an increased demand for childcare services for the employees who fill those jobs. Under Section 414, these large-scale development projects are required to (1) provide on-site childcare, (2) provide off-site childcare, (3) pay an in-lieu fee, or (4) combine the provision of on-site or off-site childcare with the payment of an in-lieu fee. This requirement applies to office development projects proposing the net addition of 50,000 or more gross square feet. Because the project is located within the Transbay C-3 Special Use District (Planning Code Section 249.28), any project in-lieu fees will be used within the Transbay Redevelopment Area.

The Project proposes approximately 361,038 sq. ft. of new office use and is subject to Section 414. The Project Sponsor would either provide the childcare facility itself, make arrangements with an appropriate organization to do so, or pay the in-lieu fee.

- R. **Inclusionary Affordable Housing Program.** Planning Code Section 415 sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, these requirements would apply to projects that consist of five or more units, where the first application (EE or BPA) was applied for on or after July 18, 2006. Pursuant to Planning Code Section 415.5 and 415.6, the Project is meeting the Inclusionary Affordable Housing Program requirement through the On-site Affordable Housing Alternative by providing 15% of the proposed dwelling units as affordable.

The Project Sponsor has demonstrated that it is eligible for the On-Site Affordable Housing Alternative under Planning Code Section 415.5 and 415.6, and has submitted a 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to satisfy the requirements of the Inclusionary Affordable Housing Program by providing the affordable housing on-site instead of through payment of the Affordable Housing Fee. In order for the Project Sponsor to be eligible for the On-Site Affordable Housing Alternative, the Project Sponsor must submit an 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the project. The Project Sponsor submitted such Affidavit on November 13, 2012. The EE application was submitted on June 8, 2007. 11 units (9 two-bedroom and 2 three-bedroom) of the 74 units provided will be affordable units. If the Project becomes ineligible to meet its Inclusionary Affordable Housing Program obligation through the On-site Affordable Housing Alternative, it must pay the Affordable Housing Fee with interest, if applicable.

- S. **Transit Center District Open Space Fee (Section 424.6).** A project in the C-3-O(SD) District that proposes a net addition of residential or non-residential use is required to pay a fee which will be deposited in the Transit Center District Open Space Fund. The purpose of this Fund is to provide the City with the financial resources to develop public park and recreation facilities for the enjoyment of employees, residents, and visitors in downtown San Francisco. For residential uses, the fee does apply only to the square footage of the Project up to an FAR of 9.0:1.

The Project proposes approximately 361,038 sq. ft. of new office use, and 135,000 sq. ft. of residential use, and is subject to Section 424.6. The Project will be required to contribute to the Open Space Fee pursuant to the Conditions of Approval.

- T. **Transit Center District Transportation and Street Improvement Fee (Section 424.7).** A project in the C-3-O(SD) District that proposes a net addition of residential or non-residential use is required to pay a fee which will be deposited in the Transit Center District Transportation and Street Improvement Fund. The purpose of this Fund is to provide the City with the financial resources to design and implement transportation improvements in downtown San Francisco.

The Project proposes approximately 361,038 sq. ft. of new office use, and 135,000 sq. ft. of residential use, and is subject to Section 424. 7. The Project will be required to contribute to

the Transportation and Street Improvement Fee pursuant to the Conditions of Approval.

- U. **Transit Center District Mello Roos Community Facilities District Program (Section 424.8).** A project in the C-3-O(SD) District that exceeds an FAR of 9.0 to 1 is required to participate in a Mello Roos Community Facilities District in order to help fund infrastructure, improvements, and services described in the Transit Center District Implementation Document.

The Project Site has a lot area of approximately 15,313 square feet. Therefore, up to 91,878 square feet of Gross Floor Area ("GFA") is allowed under the basic FAR limit, and up to 137,817 square feet of GFA is permitted with the purchase of TDR. As shown in the conceptual plans for the Project, the building would include approximately 545,556 square feet of GFA (an FAR of approximately 35.6 to 1). In accordance with Planning Code Section 424.8, conditions of approval are included to require the Project Sponsor to participate in the Transit Center District Mello-Roos Community Facilities District (CFD) and to include the Project Site in the CFD prior to the issuance of the First Temporary Certificate of Occupancy for the Project.

- V. **Public Art (Section 429).** In the case of construction of a new building or addition of floor area in excess of 25,000 square feet to an existing building in a C-3 District, Section 429 requires a project to include works of art costing an amount equal to one percent of the construction cost of the building.

The Project would comply by dedicating one percent of construction cost to works of art.

7. **Exceptions Request Pursuant to Planning Code Section 309.** The Planning Commission has considered the following exceptions to the Planning Code, makes the following findings and grants each exception as further described below:

- A. **Section 132.1(c): Streetwall Base.** In order to establish an appropriate street wall in relation to the width of the street and to adjacent structures, and to avoid the perception of overwhelming mass that would be created by a number of tall buildings built close together with unrelieved vertical rise, new buildings taller than 150 feet within the C-3-O(SD) District must establish a streetwall height between 50 and 110 feet, through the use of a horizontal relief totaling at least 10 feet for a minimum of 40 percent of the linear frontage.

The Project is designed as a tapering form, with the size of each floorplate gradually being reduced from the base to the top of the building. The Project does not incorporate a literal horizontal streetwall setback as required by Section 132.1(c), therefore an exception is required pursuant to Section 309.

Per Section 132.1(b)(1), exceptions to the streetwall base requirements may be allowed if the Commission determines that the following criteria have been met:

- i. The design of the proposed project successfully creates a clearly defined building base that establishes or maintains an appropriate streetwall at the height or height range described above.
- ii. The base is not defined solely by recessing the base.
- iii. The overall building mass tapers or steps away from the street above the streetwall reducing any sense of unrelieved vertical rise directly from the sidewalk edge.
- iv. The overall architectural expression of the proposed project is exceptional, unique, and consistent with the intent of the streetwall requirement.

The Project exterior consists of a glass curtain wall expressed as a series of faceted planes, anchored within the diagonal framework of a strongly-expressed exoskeletal structure. Within each of the faceted planes, the overlapping rows of glazing add richness and verticality to the overall composition. The tall ground floor and mezzanine levels are expressed distinctly from the floors above, with the exoskeletal structure anchored to the site at the corners, framing a gracious expanse of clear glazing into the lobby and retail spaces in the interior. This treatment creates a clearly-defined pedestrian realm which is distinct from the tower above. Furthermore, the building gradually tapers away from the sidewalk throughout the height of the building, reducing the apparent height and massing of the building when viewed from points immediately below. Considered as a whole, the design of the Project meets the intent of the streetwall base requirements of Section 132.1(c), and qualifies for an exception from the strict streetwall setback requirements, as permitted by Section 309.

- B. Section 132.1(d): Setbacks and Separation of Towers.** In order to preserve the openness of the street to the sky and to provide light and air between structures, Section 132.1(d)(1) requires all structures in the "S-2" Bulk District to provide a minimum setback of 15 feet from the interior property lines that do not abut public sidewalks and from the property lines abutting a public street or alley. This setback increases along a sloping line for building heights above 300 feet, to a maximum setback of 35 feet for building heights above 550 feet.

The tower separation requirement applies beginning at a height that is equal to 1.25 times the width of the principal street on which the building faces. The Project fronts on Fremont Street, which measures 82.5 feet in width. Therefore, the 15-foot setback requirement begins at a height of approximately 103 feet. Above 300-feet in height, the setback gradually increases to a maximum of 70 feet at a building height of 1,000 feet. For those elevations fronting on a public street, this required setback is measured from the centerline of the abutting street. The Fremont Street (west) elevation complies with the tower separation requirement, with all portions of the building set back a minimum of 70 feet from the abutting street.

The east elevation of the Project faces the existing building at 199 Fremont Street, as well as the existing Poetry Garden open space. Portions of the east elevation of the building intrude into the required interior property line setback at building heights above 103 feet (where the

setback requirement applies), with minimum setbacks ranging from approximately zero feet to five feet. At the southeast portion of the building (the area of the building built closest to the property line), the Project Site abuts the Poetry Garden, which provides ample separation between the Project and the adjacent building at 199 Fremont Street. At lower floors along the eastern property line, the encroachment into the setback is relatively minor. Along the southerly property line, the Project is separated from the adjacent "Town Hall" restaurant building by another portion of the Poetry Garden. This low-rise building is an historic resource with generous frontage along Fremont and Howard Streets, providing ample access to light and air. Given that the adjacent buildings and open spaces are unlikely to be demolished in the near future, and that these adjacent buildings are provided with adequate light, air, and separation, exceptions to the interior property line separation requirements are appropriate along the eastern and southern property lines.

Per Section 132.1(c)(2)(B), exceptions to the tower separation setback requirements may be allowed to the extent that it is determined that restrictions on adjacent properties make it unlikely that development will occur at a height or bulk which will, overall, impair access to light and air or the appearance of separation between buildings, thereby making full setbacks unnecessary. This Section specifically states that for development on lots abutting the Transit Center on Blocks 3719, 3720, and 3721, the minimum setback shall be partially or fully reduced through the Section 309 exception process.

The project is situated on Block 3719, and the building is proposed immediately adjacent to the future Transit Center. The Transit Center is currently under construction, and is a key hub of regional and Statewide transportation infrastructure. In addition, the top of the Transit Center will be developed with City Park, a 5.4 acre publicly accessible open space which will serve the dense population of workers, visitors, and residents that are anticipated due to growth within the Plan area. The width of the Transit Center and City Park itself will provide separation between the Project and the future development of taller buildings to the north, satisfying the intent of Section 132.1 (d). In addition, the tapering design of the Project will enhance the sense of separation and openness to the sky, as well as access to light for City Park. As the new Transit Center is unlikely to be redeveloped in the foreseeable future, it is appropriate to reduce the required interior property line setback for the Project as indicated in the Code provisions.

- C. **Section 134: Rear Yard.** Section 134(a)(1) of the Planning Code requires a rear yard equal to 25 percent of the lot depth to be provided at the first level containing a dwelling unit, and at every subsequent level. Per Section 134(d), exceptions to the rear yard requirements may be granted provided that the building location and configuration assure adequate light and air to the residential units and the open space provided.

Because the property fronts on Fremont Street, a complying rear yard would be situated toward the easterly portion of the lot. The distance between the building and the rear property line varies due to the tapering nature of the building design, and the irregular shape of the lot, reaching a maximum depth of approximately 42 feet at the 52nd floor (the highest residential floor). At all residential levels (39th floor through 52nd floor), the Project is taller than all other

existing and planned development on adjacent properties. It is unlikely that these adjacent properties would be redeveloped in the foreseeable future. Therefore, adequate light and separation will be provided for residential units within the Project, and it is appropriate to grant an exception from the rear yard requirements.

- D. Off-Street Parking – Residential Use (Section 151.1).** Pursuant to Section 151.1, residential uses in the C-3-O (SD) District are not required to provide off-street parking, but may provide up to .25 spaces per dwelling unit as-of-right. Residential uses may provide up to .75 spaces per dwelling unit (or up to one car for each dwelling unit with at least two bedrooms and at 1,000 square feet of floor area), if the Commission makes findings in accordance with Section 151.1(f).

With 74 dwelling units, the project may provide 19 off-street parking spaces as of right. Based on the ratios specified in Section 151.1, up to 74 spaces would be allowed to serve the Project if the Commission makes the findings specified in Section 151.1(f). These findings are as follows:

- a. For projects with 50 units or more, all residential accessory parking in excess of 0.5 parking spaces for each dwelling unit shall be stored and accessed by mechanical stackers or lifts, valet, or other space-efficient means that allows more space above-ground for housing, maximizes space efficiency and discourages use of vehicles for commuting or daily errands. The Planning Commission may authorize the request for additional parking notwithstanding that the project sponsor cannot fully satisfy this requirement provided that the project sponsor demonstrates hardship or practical infeasibility (such as for retrofit of existing buildings) in the use of space-efficient parking given the configuration of the parking floors within the building and the number of independently accessible spaces above 0.5 spaces per unit is de minimus and subsequent valet operation or other form of parking space management could not significantly increase the capacity of the parking space above the maximums in Table 151.1.

All residential parking spaces are provided in mechanical stackers or in a valet configuration.

- b. For any project with residential accessory parking in excess of 0.375 parking spaces for each dwelling unit, the project complies with the housing requirements of Sections 415 through 415.9 of this Code except as follows: the inclusionary housing requirements that apply to projects seeking conditional use authorization as designated in Section 415.3(a)(2) shall apply to the project.

The Project does not require Conditional Use authorization.

- c. Vehicle movement on or around the project site associated with the excess accessory parking does not unduly impact pedestrian spaces or movement, transit service, bicycle movement, or the overall traffic movement in the district.

While the parking is being provided at slightly less than the maximum possible 1:1 ratio, the relatively small number of 72 off-street parking spaces is not expected to generate substantial traffic that would adversely impact pedestrian, transit, or bicycle movement. Given the proximity of the Project Site to the employment opportunities and retail services of the Downtown Core, it is expected that residents will opt to prioritize walking, bicycle travel, or transit use over private automobile travel. In addition, the placement of parking in valet and stacker configurations will discourage frequent use of vehicles for shorter trips.

- d. Accommodating excess accessory parking does not degrade the overall urban design quality of the project proposal.
- e. All parking in the project is set back from facades facing streets and alleys and lined with active uses, and that the project sponsor is not requesting any exceptions or variances requiring such treatments elsewhere in this Code.
- f. Excess accessory parking does not diminish the quality and viability of existing or planned streetscape enhancements.

All parking for the Project is located within a subterranean garage and would not be visible from the public right-of-way. While the Project is requesting a Section 309 exception to allow a curb-cut on Fremont Street, this request is not driven by the quantity of parking being requested. Any quantity of subterranean parking would need to be accessed via a curb-cut and driveway on Fremont Street, since no other frontages are available for parking and loading access. The amount of parking being requested, in and of itself, would not degrade the overall urban design quality or quality of streetscape improvements of the Project.

- g. In granting approval for such accessory parking above that permitted by right, the Commission may require the property owner to pay the annual membership fee to a certified car-share organization, as defined in Section 166(b)(2), for any resident of the project who so requests and who otherwise qualifies for such membership, provided that such requirement shall be limited to one membership per dwelling unit, when the following findings are made by the Commission:
 - (i) That the project encourages additional private-automobile use, thereby creating localized transportation impacts for the neighborhood.
 - (ii) That these localized transportation impacts may be lessened for the neighborhood by the provision of car-share memberships to residents.

The Commission finds that the quantity of parking proposed may generate some additional automobile use, and that resulting impacts to the surrounding neighborhood may be lessened by the provision of car-share memberships to residents. Conditions of approval have been added requiring that the property owner provide membership to a

certified car-share organization to any resident who so requests, limited to one membership per household.

- E. **Section 155: Parking and Loading Design.** Section 155 regulates the design of parking and loading facilities. Section 155(r)(3) specifies that no curb cuts may be permitted on the segment of Fremont Street abutting the Project. Within the C-3-O(SD) District, the Planning Commission may grant an exception through the Section 309 Review process where the amount of parking proposed does not exceed the amounts permitted as accessory in Section 151.1

The Project proposes a subterranean parking area equal to 3.5% of the gross floor area of the office uses in the Project. The Project is requesting an amount of accessory parking for the residential uses that is allowed provided that the Commission makes the findings specified in Section 151.1(f). Therefore, the Project qualifies for an exception from the prohibition of curb cuts on First Street pursuant to Section 309.

The exception is appropriate given that the Project Site does not have frontage on any other public rights-of-way. The driveway has been designed as a consolidated entry for both off-street parking and loading functions, minimizing the aggregate width of curb-cuts that could result from separate parking and loading entries. Given these circumstances, Fremont Street serves as the appropriate location for a curb cut to access the subterranean off-street parking and loading functions for the Project.

- F. **Section 148: Ground-Level Wind Currents.** In C-3 Districts, buildings and additions to existing buildings shall be shaped, or other wind-baffling measures shall be adopted, so that the developments will not cause ground-level wind currents to exceed more than 10 percent of the time year round, between 7:00 a.m. and 6:00 p.m., the comfort level of 11 miles per hour equivalent wind speed in areas of substantial pedestrian use and seven miles per hour equivalent wind speed in public seating areas.

When preexisting ambient wind speeds exceed the comfort level, or when a proposed building or addition may cause ambient wind speeds to exceed the comfort level, the building shall be designed to reduce the ambient wind speeds to meet the requirements. An exception may be granted, in accordance with the provisions of Section 309, allowing the building or addition to add to the amount of time that the comfort level is exceeded by the least practical amount if (1) it can be shown that a building or addition cannot be shaped and other wind-baffling measures cannot be adopted to meet the foregoing requirements without creating an unattractive and ungainly building form and without unduly restricting the development potential of the building site in question, and (2) it is concluded that, because of the limited amount by which the comfort level is exceeded, the limited location in which the comfort level is exceeded, or the limited time during which the comfort level is exceeded, the addition is insubstantial.

Section 309(a)(2) permits exceptions from the Section 148 ground-level wind current requirements. No exception shall be granted and no building or addition shall be

permitted that causes equivalent wind speeds to reach or exceed the hazard level of 26 miles per hour for a single hour of the year.

Independent consultants analyzed ground-level wind currents in the vicinity of the Project Site. A wind tunnel analysis was conducted using a scale model of the Project Site and its immediate vicinity.

Comfort Criterion

Based on existing conditions, none of the 46 sidewalk locations tested currently exceed the pedestrian comfort level of 11 mph, with wind speeds averaging 6 mph. Five of the test points in areas that could be seating areas exceed the seven mph threshold, including four locations in the future City Park.

The Project would result in relatively modest changes in ground-level winds. The average wind speed would increase slightly from 6 to 7 mph. Wind speeds with the Project in place would not create any new exceedances of the pedestrian comfort level, but would increase the number of exceedances of the seating area comfort level from 5 to 8 possible seating locations. Increases at these locations would be minor, ranging from 1 to 4 mph. Because the Project would result in a net increase in the number of exceedances of the seating comfort criteria of Section 148, an exception is required under Planning Code Section 309.

An exception is justified under the circumstances, because the changes in wind speed and frequency due to the Project are slight and unlikely to be noticeable. In the aggregate, the average wind speed across all test points would not change substantially. While changes in wind conditions would vary depending on location, at the majority of locations, the increases in wind speeds would be small.

The Project cannot be shaped or incorporate wind-baffling measures that would reduce the wind speeds to comply with Section 148(a) without creating an unattractive building or unduly restricting the development potential of the Project Site. Construction of the Project would have a relatively small effect on wind conditions. It should be noted that the wind-tunnel testing did not account for landscaping. However, both the Poetry Garden and the future City Park are planned to include landscaping which would attenuate winds and would offset the relatively minor increases in wind speeds at the seating areas.

For these reasons, an exception from the comfort criterion is appropriate and hereby granted.

Hazard Criterion

There are no existing exceedances of the wind hazard criterion of 26 mph in the vicinity, and the Project would not create any new hazard exceedances. Therefore, the Project would comply with the hazard criterion of Section 148.

- G. **Section 260(b)(M): Unoccupied Building Height.** Buildings which exceed 550 feet in the S-2 Bulk District may include unoccupied building features, including mechanical and elevator penthouses, enclosed and unenclosed rooftop screening,

and unenclosed architectural features not containing occupied space that extend above the height limit as an exception under Section 309, if the Planning Commission determines that such features meet all of the following criteria:

(i) Such elements are demonstrated to not add more than insignificant amounts of additional shadow compared to the same building without such additional elements on any public open spaces.

(ii) In the case of a building in the 1,000-foot height district, such elements are not limited in height.

(iii) Such elements are designed as integral components of the building design, enhance both the overall silhouette of the building and the City skyline as viewed from distant public vantage points by producing an elegant and unique building top, and achieve overall design excellence.

The top of the tower is finished with a sculptural mechanical screen and spire that express the language of the angular, faceted facade planes and structural framing found on the tower below. The TCDP envisions that, within the larger context of the future skyline created by the increased building heights in the Plan area, the Project will contribute to the "downtown mound", the cluster of tall structures that will define the apex of the skyline, anchored by the Transbay Tower as the tallest point. This form serves to break the existing plateau of the existing skyline with several towers visible as spires rising above other buildings in the area. In addition, this form marks the public significance of the adjacent Transit Center as a local, regional, and statewide transportation hub. As a design component of the Project, the crown creates an elegant and distinct termination to the building, and contributes to the slender proportions of the overall tapered building form. Given that these features are not not fully solid, and are comprised of relatively narrow structural elements, they would not contribute substantial amounts of additional shadow to open spaces in the vicinity. In addition, because the sun is a disc rather than a single point in the sky, sunlight can "pass around" such narrow elements of buildings resulting in a diffuse shadow line (rather than a hard-edged shadow) at points distant from the Project.

8. **General Plan Conformity.** The Project would affirmatively promote the following objectives and policies of the General Plan:

HOUSING ELEMENT:

Objectives and Policies

OBJECTIVE 1

TO PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT DEMAND.

Policy 1.1:

Encourage higher residential density in areas adjacent to downtown, in underutilized commercial and industrial areas proposed for conversion to housing, and in neighborhood commercial districts where higher density will not have harmful effects, especially if the higher density provides a significant number of units that are affordable to lower income households.

Policy 1.3

Identify opportunities for housing and mixed-use districts near downtown and former industrial portions of the City.

Policy 1.4:

Locate in-fill housing on appropriate sites in established residential neighborhoods.

The Project would add residential units to an area that is well-served by transit, services, and shopping opportunities. The site is suited for dense residential development, where residents can commute and satisfy convenience needs without frequent use of a private automobile. The Project Site is located immediately adjacent to employment opportunities within the Financial District, and is in an area with abundant local- and region-serving transit options, including the future Transit Center.

COMMERCE ELEMENT

Objectives and Policies

The **Commerce Element** of the General Plan contains the following relevant objectives and policies:

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

The Project would provide significant benefits by increasing the supply of office space in the Downtown area, and thus would create new jobs in a location that is easily accessible by a multitude of transit services. It would result in an increase in tax revenue for the City and an increase in retail/personal services activity in the immediate neighborhood. The Project would also contribute substantial revenue toward the improvement of San Francisco's transportation network, as well as funds for new open spaces, affordable housing, and other public services.

DOWNTOWN PLAN ELEMENT

Objectives and Policies

The **Downtown Plan Element** of the General Plan contains the following relevant objectives and policies:

OBJECTIVE 2:

MAINTAIN AND IMPROVE SAN FRANCISCO'S POSITION AS A PRIME LOCATION FOR FINANCIAL, ADMINISTRATIVE, CORPORATE, AND PROFESSIONAL ACTIVITY.

Policy 2.1:

Encourage prime downtown office activities to grow as long as undesirable consequences of such growth can be controlled.

Policy 2.2:

Guide location of office development to maintain a compact downtown core and minimize displacement of other uses.

The Project would add office space to a location that is well-served by existing and future transit, and is within walking distance of substantial retail goods and services. Employees of the building would be able to walk, bike, or utilize transit to commute and access services in the vicinity.

OBJECTIVE 5:

RETAIN A DIVERSE BASE OF SUPPORT COMMERCIAL ACTIVITY IN AND NEAR DOWNTOWN.

Policy 5.1:

Provide space for support commercial activities within the downtown and in adjacent areas.

With a significant addition of new office space, the Project supports this Policy.

OBJECTIVE 7:

EXPAND THE SUPPLY OF HOUSING IN AND ADJACENT TO DOWNTOWN.

Policy 7.2:

Facilitate conversion of underused industrial and commercial areas to residential use.

The Project Site is an appropriate location for the provision of dense, residential housing in the Downtown area. The Site is within walking distance of the abundant employment and retail services situated in the Downtown Core to the north. Providing both housing and office uses within the Project balanced mix of land uses and contributes to vitality to the District during business hours, as well as during the evenings and weekends.

OBJECTIVE 9:

PROVIDE QUALITY OPEN SPACE IN SUFFICIENT QUANTITY AND VARIETY TO MEET THE NEEDS OF DOWNTOWN WORKERS, RESIDENTS, AND VISITORS.

TRANSIT CENTER DISTRICT PLAN

The **Transit Center District Plan** of the General Plan contains the following relevant objectives and policies:

Objectives and Policies

OBJECTIVE 1.1:

MAINTAIN DOWNTOWN SAN FRANCISCO AS THE REGION'S PREMIER LOCATION FOR TRANSIT-ORIENTED JOB GROWTH WITHIN THE BAY AREA.

OBJECTIVE 1.2

REINFORCE THE ROLE OF DOWNTOWN WITHIN THE CITY AS ITS MAJOR JOB CENTER BY PROTECTING AND ENHANCING THE CENTRAL DISTRICT'S REMAINING CAPACITY, PRINCIPALLY FOR EMPLOYMENT GROWTH.

OBJECTIVE 1.3:

CONTINUE TO FOSTER A MIX OF LAND USES TO REINFORCE THE 24-HOUR CHARACTER OF THE AREA.

Policy 1.1:

Increase the overall capacity of the Transit Center District for additional growth.

Policy 1.3:

Reserve the bulk of remaining space in the core Transit Center District for job growth, by limiting the amount of non-commercial uses on major opportunity sites.

In general, the downtown core of San Francisco offers relatively few remaining opportunity sites for employment growth. The TCDP seeks to maximize development intensity at these remaining opportunity sites, and to preserve such sites primarily for employment uses. The Plan seeks to address issues of regional sustainability and traffic congestion by focusing job growth within an intense, urban context in an area supported by abundant existing and planned transit services, as well as retail and service amenities. The Project implements this vision through the development of over 400,000 square feet of office space, located immediately adjacent to the future Transit Center, and within two blocks of the Market Street transit spine.

While the TCDP emphasizes preservation of development capacity for employment growth (particularly in the immediate vicinity of the Transit Center), the Plan also stresses the importance of incorporating residential uses to activate and enliven the area on evenings and weekends when workers are not present. The Project proposes residential uses at a high-density that is suitable for the walkable, transit-oriented nature of the area.

OBJECTIVE 2.2:

CREATE AN ELEGANT DOWNTOWN SKYLINE, BUILDING ON EXISTING POLICY TO CRAFT A DISTINCT DOWNTOWN “HILL” FORM, WITH ITS APEX AT THE TRANSIT CENTER, AND TAPERING IN ALL DIRECTIONS.

OBJECTIVE 2.3:

FORM THE DOWNTOWN SKYLINE TO EMPHASIZE THE TRANSIT CENTER AS THE CENTER OF DOWNTOWN, REINFORCING THE PRIMACY OF PUBLIC TRANSIT IN ORGANIZING THE CITY’S DEVELOPMENT PATTERN, AND RECOGNIZING THE LOCATION’S IMPORTANCE IN LOCAL AND REGIONAL ACCESSIBILITY, ACTIVITY, AND DENSITY.

Policy 2.1:

Establish the Transit Tower as the “crown” of the downtown core—its tallest and most prominent building—at an enclosed height of 1,000 feet.

Policy 2.2:

Create a light, transparent sculptural element to terminate the Transit Tower to enhance skyline expression without casting significant shadows. This vertical element may extend above the 1,000 foot height limit.

The existing skyline of downtown San Francisco is largely characterized by a cluster of towers that, when viewed in aggregate, form a plateau at a height of approximately 500 to 550 feet (the historic maximum zoned heights in the C-3 Districts. The TCDP envisions the creation of a new, sculpted skyline formed by height increased at selected locations to allow slender point towers that project above this plateau. Permitted heights were increased on the Project Site to allow for a taller tower which would contribute to this sculpted skyline. The design of the Project fulfills this vision, reaching the height envisioned by the Plan, and topped by a sculptural mechanical screen and spire. These features carry the architectural language of the remainder of the Project, but is open and largely transparent between the structural members, capturing and reflecting natural daylight as a distinct element of the overall architecture.

OBJECTIVE 3.11:

ENHANCE ACCESS AND MAXIMIZE THE VISIBILITY OF THE TRANSIT CENTER’S FUTURE ROOFTOP PARK FROM THE SURROUNDING NEIGHBORHOODS, ESPECIALLY NEIGHBORHOODS TO THE SOUTH.

Policy 3.17:

Ensure that highly-visible, welcoming, and grand means of public access to the Transit Center Park are provided directly from key public spaces and buildings adjacent to the Transit Center.

The Project includes the construction of a publicly-accessible bridge to allow visitors and occupants to reach City Park through the building. This amenity will contribute to the vision of the TCDP to create multiple, spontaneous opportunities for visitors to reach City Park by adding such vertical circulation within Projects that about the Transit Center.

OBJECTIVE 4.1:

THE DISTRICT'S TRANSPORTATION SYSTEM WILL PRIORITIZE AND INCENTIVIZE THE USE OF TRANSIT. PUBLIC TRANSPORTATION WILL BE THE MAIN, NON-PEDESTRIAN MODE FOR MOVING INTO AND BETWEEN DESTINATIONS IN THE TRANSIT CENTER DISTRICT.

Policy 4.5:

Support funding and construction of the Transbay Transit Center project to further goals of the District Plan, including completion of the Downtown Extension for Caltrain and High Speed Rail.

One of the goals of the Plan is to leverage increased development intensity to generate revenue that will enable the construction of new transportation facilities, including support for the new Transit Center, including the Downtown Rail Extension. These revenues will also be directed toward improvements to sidewalks and other important pedestrian infrastructure to create a public realm that is conducive to, and supportive of pedestrian travel. As the largest development within the Plan area, the Project will contribute substantial financial resources toward these improvements, and will also serve to leverage these investments by focusing intense employment growth within the core of planned transportation services.

TRANSPORTATION ELEMENT

Objectives and Policies

The **Transportation Element** of the General Plan contains the following relevant objectives and policies:

OBJECTIVE 2:

USE THE TRANSPORTATION SYSTEM AS A MEANS FOR GUIDING DEVELOPMENT AND IMPROVING THE ENVIRONMENT.

Policy 2.1:

Use rapid transit and other transportation improvements in the city and region as the catalyst for desirable development, and coordinate new facilities with public and private development.

The Project is located within an existing high-density urban context, and within the core of future local, regional, and Statewide transportation services. The area has a multitude of transportation options, and the Project Site is within walking distance of the Market Street transit spine and the Ferry Building. The Project is also located immediately adjacent to the future Transit Center, and thus would make good use of the existing transit services available in this area and would assist in maintaining the desirable urban characteristics and services of the area. The Project will contribute substantial revenue toward funding the transportation infrastructure proposed by the TCDP, including the Transit Center and the Downtown Rail Extension.

9. **Priority Policy Findings.** Section 101.1(b) establishes eight priority planning policies and requires the review of permits for consistency with said policies. The Project complies with these policies, on balance, as follows:

- A. That existing neighborhood-serving retail/personal services uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.

The Project would include retail services at the ground-floor and at the fifth floor adjacent to City Park. These uses would provide goods and services to downtown workers, residents, and visitors, while creating ownership and employment opportunities for San Francisco residents. The addition of office and residential uses would bring new employees and residents to area, strengthening the customer base of other businesses in the vicinity.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

No housing would be removed by the Project, and the Project would provide 74 dwelling units, including on-site affordable units. The Project Site is located in an area where high-rise office development predominates and is explicitly encouraged by the Downtown Plan and the Transit Center District Plan. The Project would be compatible with the character of the downtown area.

- C. That the City's supply of affordable housing be preserved and enhanced.

The Project would enhance the City's supply of affordable housing by participating in the Jobs-Housing Linkage Program pursuant to Planning Code Section 413. The residential portion of the Project is subject to the Inclusionary Housing requirements of Section 415, and will comply by providing 11 on-site affordable dwelling units.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The Project Site is situated in the downtown core and is well served by public transit. The Project Site is located immediately adjacent to the future Transit Center, which will provide direct access to a significant hub of local, regional, and Statewide transportation. The Project is also located two blocks from Market Street, a major transit corridor that provides access to various Muni and BART lines. The Project implements the vision of the Transit Center District Plan to direct regional growth to a location that is served by abundant transit options, in order to facilitate travel by means other than private automobile.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The existing buildings on the Project Site do not contain any ground-floor retail uses, and the Project includes 1,800 square feet of retail space, preserving service sector employment opportunities.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project will comply with all current structural and seismic requirements under the San Francisco Building Code.

- G. That landmarks and historic buildings be preserved.

The existing buildings to be demolished on the Project Site are not considered to be historic resources. The Project would not affect any landmark or historic building.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

A technical memorandum, prepared by Environmental Science Associates, concluded that the Project would cast approximately 2,131 square-foot-hours of new shadow on Union Square, equal to approximately 0.0005% of the theoretically available annual sunlight ("TAAS") on Union Square. Approval of the Project is therefore subject to approval under the procedures of Planning Code Section 295 (also known as "Prop K") by the Recreation & Parks and Planning Commissions.

On December 6, 2012, the Planning Commission held a duly noticed public hearing and adopted Motion No. 18763, finding that the shadows cast by the Project on Union Square would not be adverse to the use of the park, and allocating ACLs to the Project for Union Square.

10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
11. The Commission hereby finds that approval of the Section 309 Determination of Compliance and Request for Exceptions would promote the health, safety, and welfare of the City.

DECISION

Based upon the whole record, the submissions by the Project Sponsor, the staff of the Department, and other interested parties, the oral testimony presented to the Commission at the public hearing, and all other written materials submitted by all parties, in accordance with the standards specified in the Code, the Commission hereby **APPROVES Application No. 2007.0456X** and grants exceptions to Sections 132.1, 134, 148, 155(r), and 260(b) pursuant to Section 309, subject to the following conditions attached hereto as Exhibit A which are incorporated herein by reference as though fully set forth, in general conformance with the plans stamped Exhibit B and on file in Case Docket No. **2007.0456X**.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Section 309 Determination of Compliance and Request for Exceptions to the Board of Appeals within fifteen (15) days after the date of this Motion. The effective date of this Motion shall be the date of this Motion if not appealed OR the date of the decision of the Board of Appeals if appealed to the Board of Appeals. For further information, please contact the Board of Appeals in person at 1650 Mission Street, Room 304 or call (415) 575-6880.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting on December 6, 2012

Linda D. Avery
Commission Secretary

AYES: Antonini, Borden, Hillis, Moore, Sugaya, Wu

NOES:

ABSENT: Fong

ADOPTED: December 6, 2012

EXHIBIT A

AUTHORIZATION

This authorization is to grant a Planning Code Section 309 Determination of Compliance and Request for Exceptions, in connection with a proposal to demolish an existing three-story building and an existing two-story building, and to construct a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space, as well as a bridge to the future elevated City Park situated on top of the Transit Center, at a Project Site located within the C-3-O(SD) (Downtown Office, Special Development) District, the 700-S-2 Height and Bulk District, the Transit Center C-3-O(SD) Commercial Special Use District, and the Transbay C-3 Special Use District, in general conformance with plans dated December 6, 2012 and stamped "EXHIBIT B" included in the docket for Case No. 2007.0456X and subject to conditions of approval reviewed and approved by the Commission on December 6, 2012 under Motion No. 18765. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on December 6, 2012 under Motion No 18765.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18765 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Planning Code Section 309 Determination of Compliance and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Planning Code Section 309 Determination of Compliance.

Conditions of Approval, Compliance, Monitoring, and Reporting PERFORMANCE (5)

1. Validity and Expiration. The authorization and right vested by virtue of this action is valid for five years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Planning Code Section 309 Determination of Compliance is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within five (5) years of the date of the Motion approving the Project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than five (5) years have passed since the Motion was approved.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

2. Extension. This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to construct the Project is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

3. Additional Project Authorization. The Project Sponsor must obtain a Project authorization under Sections 320 through 325 to allocate office square footage, as well as findings under Section 295 as to whether the shadow cast by the project on Union Square would have an adverse impact to the park. The conditions set forth below are additional conditions required in connection with the Project. If these conditions overlap with any other requirement imposed on the Project, the more restrictive or protective condition or requirement, as determined by the Zoning Administrator, shall apply.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

DESIGN – COMPLIANCE AT PLAN STAGE

4. Final Materials. The Project Sponsor shall continue to work with the Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance. The Project Sponsor shall make best efforts to coordinate with the Planning Department and the property owner of the adjacent property at 199 Fremont Street regarding the redesign and reconstruction of the “poetry wall” and adjacent plaza, including landscaping and seating configurations.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

5. Garbage, composting and recycling storage. Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the architectural addenda. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

6. Rooftop Mechanical Equipment. Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org .

7. Downtown Streetscape Plan - C-3 Districts. Pursuant to Planning Code Section 138.1 and the Downtown Streetscape Plan, the Project Sponsor shall submit a pedestrian streetscape improvement plan to the Planning Department for review in consultation with the Department of Public Works and the Department of Parking and Traffic prior to Building Permit issuance.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org .

8. Open Space Provision - C-3 Districts. Pursuant to Planning Code Section 138, the Project Sponsor shall continue to work with Planning Department staff to refine the design and programming of the public open space so that the open space generally meets the standards of the Downtown Open Space Guidelines in the Downtown Plan of the General Plan.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org .

9. Open Space Plaques - C-3 Districts. Pursuant to Planning Code Section 138, the Project Sponsor shall install the required public open space plaques at each building entrance including the standard City logo identifying it, the hours open to the public, and contact information for building management. The plaques shall be plainly visible from the public sidewalks on Fremont Street and shall indicate that the open space is accessible to the public via the elevators in the lobby. Design of the plaques shall utilize the standard templates provided by the Planning Department, as available, and shall be approved by the Department staff prior to installation.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org .

10. Signage. The Project Sponsor shall develop a signage program for the Project which shall be subject to review and approval by Planning Department staff before submitting any building permits for construction of the Project. All subsequent sign permits shall conform to the approved signage program. Once approved by the Department, the signage program/plan information shall be submitted and approved as part of the site permit for the Project. All exterior signage shall be designed to complement, not compete with, the existing architectural character and architectural features of the building.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org .

11. Transformer Vault. The location of individual project PG&E Transformer Vault installations has significant impacts to San Francisco streetscapes when improperly located. However, they may not have any impact if they are installed in preferred locations. Therefore, the Planning Department recommends the following preference schedule in locating new transformer vaults, in order of most to least desirable:

1. On-site, in a basement area accessed via a garage or other access point without use of separate doors on a ground floor façade facing a public right-of-way;
2. On-site, in a driveway, underground;
3. On-site, above ground, screened from view, other than a ground floor façade facing a public right-of-way;
4. Public right-of-way, underground, under sidewalks with a minimum width of 12 feet, avoiding impacts on streetscape elements, such as street trees; and based on Better Streets Plan guidelines;

5. Public right-of-way, underground; and based on Better Streets Plan guidelines;
 6. Public right-of-way, above ground, screened from view; and based on Better Streets Plan guidelines;
 7. On-site, in a ground floor façade (the least desirable location).
- Unless otherwise specified by the Planning Department, Department of Public Work's Bureau of Street Use and Mapping (DPW BSM) should use this preference schedule for all new transformer vault installation requests.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org/>.

12. Overhead Wiring. The Property owner will allow MUNI to install eyebolts in the building adjacent to its electric streetcar line to support its overhead wire system if requested by MUNI or MTA.
For information about compliance, contact San Francisco Municipal Railway (Muni), San Francisco Municipal Transit Agency (SFMTA), at 415-701-4500, www.sfmta.org.

13. Noise, Ambient. Interior occupiable spaces shall be insulated from ambient noise levels. Specifically, in areas identified by the Environmental Protection Element, Map1, "Background Noise Levels," of the General Plan that exceed the thresholds of Article 29 in the Police Code, new developments shall install and maintain glazing rated to a level that insulate interior occupiable areas from Background Noise and comply with Title 24.
For information about compliance, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org.

14. Street Trees. Pursuant to Planning Code Section 138.1 (formerly 143), the Project Sponsor shall submit a site plan to the Planning Department prior to Planning approval of the building permit application indicating that street trees, at a ratio of one street tree of an approved species for every 20 feet of street frontage along public or private streets bounding the Project, with any remaining fraction of 10 feet or more of frontage requiring an extra tree, shall be provided. The street trees shall be evenly spaced along the street frontage except where proposed driveways or other street obstructions do not permit. The exact location, size and species of tree shall be as approved by the Department of Public Works (DPW). In any case in which DPW cannot grant approval for installation of a tree in the public right-of-way, on the basis of inadequate sidewalk width, interference with utilities or other reasons regarding the public welfare, and where installation of such tree on the lot itself is also impractical, the requirements of this Section 428 may be modified or waived by the Zoning Administrator to the extent necessary.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

15. City Park/Transit Center Connections. The Project Sponsor must provide to the Planning Department a letter from the Executive Director of the TJPA indicating Final approval of the design and operation of the bridge connecting the Project to City Park. Such letter shall be provided prior to approval by the Planning Department of the first architectural addendum to the site permit.
For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

PARKING AND TRAFFIC

16. Parking for Affordable Units. All off-street parking spaces shall be made available to Project residents only as a separate "add-on" option for purchase or rent and shall not be bundled with any

Project dwelling unit for the life of the dwelling units. The required parking spaces may be made available to residents within a quarter mile of the project. All affordable dwelling units pursuant to Planning Code Section 415 shall have equal access to use of the parking as the market rate units, with parking spaces priced commensurate with the affordability of the dwelling unit. Each unit within the Project shall have the first right of refusal to rent or purchase a parking space until the number of residential parking spaces are no longer available. No conditions may be placed on the purchase or rental of dwelling units, nor may homeowner's rules be established, which prevent or preclude the separation of parking spaces from dwelling units.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

17. Car Share. Pursuant to Planning Code Section 166, car share spaces shall be made available, at no cost, to a certified car share organization for the purposes of providing car share services for its service subscribers in an amount no less than two spaces, plus one additional space for each 50 spaces provided to serve non-residential uses.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

18. Car Share Memberships. Pursuant to Section 151.1(1)(f)(2), the Project Sponsor or successor property owners shall pay the annual membership fee to a certified car-share organization for any resident of the project who so requests and otherwise qualifies for such membership, provided that such requirement shall be limited to one membership per dwelling unit.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

19. Bicycle Parking . Pursuant to Planning Code Sections 155.4., the Project shall provide no fewer than 66 Class 1 bicycle parking spaces and 8 Class 2 bicycle parking spaces. The Project Sponsor shall submit to the Planning Department for approval specifications for bicycle parking racks to be used prior to installation to ensure compliance with Planning Code requirements for Class 1 and Class 2 bicycle parking.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

20. Showers and Clothes Lockers. Pursuant to Planning Code Section 155.3, the Project shall provide no fewer than four showers and eight clothes lockers.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

21. Parking Maximum. Pursuant to Planning Code Section 151.1, the size of the parking area for non-residential uses shall not exceed 3.5 percent of the Gross Floor Area of non-residential uses of the Project. In addition, the number of residential parking spaces shall not exceed one parking space per dwelling unit.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

22. Parking Rates. In order to discourage long-term commuter parking, off-street parking spaces shall maintain a rate or fee structure for their use such that the rate charge for four hours of parking duration is no more than four times the rate charge for the first hour, and the rate charge for eight or more hours of parking duration is no less than 10 times the rate charge for the first hour. Additionally, no discounted parking rate shall be permitted for weekly, monthly or similar time-specific periods.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

23. Off-street Loading. Pursuant to Planning Code Section 152, the Project will provide three off-street loading spaces and four service vehicle spaces.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

24. Managing Traffic During Construction. The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation impacts during construction of the Project.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

PROVISIONS

25. Downtown Park Fee - C-3 District. Pursuant to Planning Code Section 412, the Project Sponsor shall pay the Downtown Park Fee. The fee shall be based on drawings of the net addition of gross floor area of office to be constructed as set forth in the building permit and shall be paid prior to the issuance of a temporary certificate of occupancy.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

26. Art - C-3 District. Pursuant to Planning Code Section 429, the Project shall include work(s) of art valued at an amount equal to one percent of the hard construction costs for the Project as determined by the Director of the Department of Building Inspection. The Project Sponsor shall provide to the Director necessary information to make the determination of construction cost hereunder.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

27. Art Plaques - C-3 District. Pursuant to Planning Code Section 429(b), the Project Sponsor shall provide a plaque or cornerstone identifying the architect, the artwork creator and the Project completion date in a publicly conspicuous location on the Project Site. The design and content of the plaque shall be approved by Department staff prior to its installation.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

28. Art - C-3 District. Pursuant to Planning Code Section 429 (formerly 149), the Project Sponsor and the Project artist shall consult with the Planning Department during design development regarding the height, size, and final type of the art. The final art concept shall be submitted for review for consistency with this Motion by, and shall be satisfactory to, the Director of the Planning Department in consultation with the Commission. The Project Sponsor and the Director shall report to the Commission on the progress of the development and design of the art concept prior to the submittal of the first building or site permit application.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

29. Art - C-3 District. Pursuant to Planning Code Section 429, prior to issuance of any certificate of occupancy, the Project Sponsor shall install the public art generally as described in this Motion and make it available to the public. If the Zoning Administrator concludes that it is not feasible to install the work(s)

of art within the time herein specified and the Project Sponsor provides adequate assurances that such works will be installed in a timely manner, the Zoning Administrator may extend the time for installation for a period of not more than twelve (12) months.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

30. Jobs Housing Linkage. Pursuant to Planning Code Section 413, the Project Sponsor shall contribute to the Jobs-Housing Linkage Program (JHLP). The calculation shall be based on the net addition of gross square feet of each type of space to be constructed as set forth in the permit plans. The Project Sponsor shall provide evidence that this requirement has been satisfied to the Planning Department prior to the issuance of the first site or building permit by the Department of Building Inspection.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

31. Transit Impact Development Fee. Pursuant to Planning Code Section 411 (formerly Chapter 38 of the Administrative Code), the Project Sponsor shall pay the Transit Impact Development Fee (TIDF) as required by and based on drawings submitted with the Building Permit Application. Prior to the issuance of a temporary certificate of occupancy, the Project Sponsor shall provide the Planning Director with certification that the fee has been paid.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

32. Transportation Brokerage Services - C-3, EN, and SOMA. Pursuant to Planning Code Section 163, the Project Sponsor shall provide on-site transportation brokerage services for the actual lifetime of the project. Prior to the issuance of any certificate of occupancy, the Project Sponsor shall execute an agreement with the Planning Department documenting the project's transportation management program, subject to the approval of the Planning Director.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

33. Employment Brokerage Services - C-3 District. Pursuant to Planning Code Section 164, the Project Sponsor shall provide employment brokerage services for the actual lifetime of the project. Prior to the issuance of any certificate of occupancy, the Project Sponsor shall execute an agreement with the Planning Department documenting the project's local employment program, subject to the approval of the Planning Director.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

34. Child Care - C-3 District. Pursuant to Planning Code Section 165, the Project Sponsor shall provide on-site child-care brokerage services for the actual lifetime of the project. Prior to the issuance of any certificate of occupancy, the Project Sponsor shall execute an agreement with the Planning Department documenting the project's child-care program, subject to the approval of the Planning Director.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

35. First Source Hiring. The Project shall adhere to the requirements of the First Source Hiring Construction and Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.

For information about compliance, contact the First Source Hiring Manager at 415-401-4960, www.onestopSF.org

36. Affordable Units.

- a. **Number of Required Units.** Pursuant to Planning Code Section 415.6, the Project is required to provide 15% of the proposed dwelling units as affordable to qualifying households. The Project contains 74 units; therefore, 11 affordable units are required. The Project Sponsor will fulfill this requirement by providing the 11 affordable units on-site. If the number of market-rate units change, the number of required affordable units shall be modified accordingly with written approval from Planning Department staff in consultation with the Mayor's Office of Housing ("MOH").

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

- b. **Unit Mix.** The Project contains 58 two-bedroom units and 16 three-bedroom units; therefore, the required affordable unit mix is 9 two-bedroom units and 2 three-bedroom units. If the market-rate unit mix changes, the affordable unit mix will be modified accordingly with written approval from Planning Department staff in consultation with MOH.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

- c. **Unit Location.** The affordable units shall be designated on a reduced set of plans recorded as a Notice of Special Restrictions on the property prior to the issuance of the first construction permit.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

- d. **Phasing.** If any building permit is issued for partial phasing of the Project, the Project Sponsor shall have designated not less than fifteen percent (15%) of the each phase's total number of dwelling units as on-site affordable units.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

- e. **Duration.** Under Planning Code Section 415.8, all units constructed pursuant to Section 415.6, must remain affordable to qualifying households for the life of the project.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

- f. **Other Conditions.** The Project is subject to the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Planning Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the MOH at 1 South Van Ness Avenue or on the Planning Department or Mayor's Office of Housing's websites, including on the internet at:

<http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>.

As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

- i. The affordable unit(s) shall be designated on the building plans prior to the issuance of the first construction permit by the Department of Building Inspection ("DBI"). The affordable unit(s) shall (1) reflect the unit size mix in number of bedrooms of the market rate units, (2) be constructed, completed, ready for occupancy and marketed no later than the market rate units, and (3) be evenly distributed throughout the building; and (4) be of comparable overall quality, construction and exterior appearance as the market rate units in the principal project. The interior features in affordable units should be generally the same as those of the market units in the principal project, but need not be the same make, model or type of such item as long they are of good and new quality and are consistent with then-current standards for new housing. Other specific standards for on-site units are outlined in the Procedures Manual.
- ii. If the units in the building are offered for sale, the affordable unit(s) shall be sold to first time home buyer households, as defined in the Procedures Manual, whose gross annual income, adjusted for household size, does not exceed an average of ninety (90) percent of Area Median Income under the income table called "Maximum Income by Household Size derived from the Unadjusted Area Median Income for HUD Metro Fair Market Rent Area that contains San Francisco." The initial sales price of such units shall be calculated according to the Procedures Manual. Limitations on (i) reselling; (ii) renting; (iii) recouping capital improvements; (iv) refinancing; and (v) procedures for inheritance apply and are set forth in the Inclusionary Affordable Housing Program and the Procedures Manual.
- iii. The Project Sponsor is responsible for following the marketing, reporting, and monitoring requirements and procedures as set forth in the Procedures Manual. MOH shall be responsible for overseeing and monitoring the marketing of affordable units. The Project Sponsor must contact MOH at least six months prior to the beginning of marketing for any unit in the building.
- iv. Required parking spaces shall be made available to initial buyers or renters of affordable units according to the Procedures Manual.
- v. Prior to the issuance of the first construction permit by DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that contains these conditions of approval and a reduced set of plans that identify the affordable units satisfying the requirements of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to MOH or its successor.

- vi. The Project Sponsor has demonstrated that it is eligible for the On-site Affordable Housing Alternative under Planning Code Section 415.6 instead of payment of the Affordable Housing Fee, and has submitted the *Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415* to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the Project.
- vii. If the Project Sponsor fails to comply with the Inclusionary Affordable Housing Program requirement, the Director of DBI shall deny any and all site or building permits or certificates of occupancy for the development project until the Planning Department notifies the Director of compliance. A Project Sponsor's failure to comply with the requirements of Planning Code Section 415 et seq. shall constitute cause for the City to record a lien against the development project and to pursue any and all available remedies at law.

If the Project becomes ineligible at any time for the On-site Affordable Housing Alternative, the Project Sponsor or its successor shall pay the Affordable Housing Fee prior to issuance of the first construction permit or may seek a fee deferral as permitted under Ordinances 0107-10 and 0108-10. If the Project becomes ineligible after issuance of its first construction permit, the Project Sponsor shall notify the Department and MOH and pay interest on the Affordable Housing Fee at a rate equal to the Development Fee Deferral Surcharge Rate in Section 107A.13.3.2 of the San Francisco Building Code and penalties, if applicable.

37. Childcare Requirements for Office and Hotel Development Projects. Pursuant to Section 414, the Project Sponsor shall pay the in-lieu fee as required. The net addition of gross floor area subject to the fee shall be determined based on drawings submitted with the Building Permit Application.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

38. Transit Center District Open Space Fee. Pursuant to Section 424.6, the Project Sponsor shall pay a fee of to be deposited in the Transit Center District Open Space Fund. The purpose of this Fund is to provide the City with the financial resources to develop public park and recreation facilities for the enjoyment of employees, residents, and visitors in downtown San Francisco. The net addition of gross floor area subject to the fee shall be determined based on drawings submitted with the Building Permit Application.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

39. Transit Center District Transportation and Street Improvement Fee. Pursuant to Section 424.7, the Project Sponsor shall pay a fee which will be deposited in the Transit Center District Transportation and Street Improvement Fund. The purpose of this Fund is to provide the City with the financial resources to design and implement transportation improvements in downtown San Francisco. The net addition of gross floor area subject to the fee shall be determined based on drawings submitted with the Building Permit Application.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

40. Transferable Development Rights. Pursuant to Section 128, the Project Sponsor shall purchase the required number of units of Transferrable Development Rights (TDR) and secure a Notice of Use of TDR prior to the issuance of a site permit for all development which exceeds the base FAR of 6.0 to 1, up to an

FAR of 9.0 to 1. The net addition of gross floor area subject to the fee shall be determined based on drawings submitted with the Building Permit Application.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

41. Transit Center District Mello Roos Community Facilities District Program. Pursuant to Section 424.8, the Project Sponsor is required to participate in a Transit Center District Mello Roos Community Facilities District (CFD) and to include the Project Site in the CFD prior to issuance of the First Temporary Certificate of Occupancy for the Project. The Project Sponsor must demonstrate compliance with this requirement prior to approval of the site permit by the Planning Department.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

42. Mitigation Measures. Mitigation measures described in the MMRP attached as Exhibit C to this Motion are necessary to avoid potential significant effects of the proposed project and have been agreed to by the project sponsor. Their implementation is a condition of project approval. In addition, the MMRP contains one improvement measure: I-BI-2, Night Lighting Minimization. This improvement measure is made a condition of project approval.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

MONITORING - AFTER ENTITLEMENT

43. Enforcement. Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

44. Monitoring. The Project requires monitoring of the conditions of approval in this Motion. The Project Sponsor or the subsequent responsible parties for the Project shall pay fees as established under Planning Code Section 351(e) (1) and work with the Planning Department for information about compliance.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

45. Revocation due to Violation of Conditions. Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific Conditions of Approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

OPERATION

46. Garbage, Recycling, and Composting Receptacles. Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org/>

47. Sidewalk Maintenance. The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org/>

48. Community Liaison. Prior to issuance of a building permit application to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org.

**EXHIBIT C:
 MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval and Proposed Improvement Measures)**

1. MITIGATION MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
Cultural and Paleontological Resources				
<i>Historical Resources</i>				
<p><i>M-CP-5a. Construction Best Practices for Historical Resources.</i></p> <p>The project sponsor of a development project in the Plan area shall incorporate into construction specifications for the proposed project a requirement that the construction contractor(s) use all feasible means to avoid damage to adjacent and nearby historic buildings, including, but not necessarily limited to, staging of equipment and materials as far as possible from historic buildings to avoid direct impact damage; using techniques in demolition (of the parking lot), excavation, shoring, and construction that create the minimum feasible vibration; maintaining a buffer zone when possible between heavy equipment and historical resource(s) within 125 feet, as identified by the Planning Department; appropriately shoring excavation sidewalls to prevent movement of adjacent structures; design and installation of the new foundation to minimize uplift of adjacent soils; ensuring adequate drainage from adjacent sites; covering the roof of adjacent structures to avoid damage from falling objects; and ensuring appropriate security to minimize risks of vandalism and fire.</p>	Project sponsor and qualified individual in historic preservation.	Prior to the issuance of contract specifications for construction proximate to a designated historical resource.	Environmental Review Officer (ERO) and, optionally, Planning Department Preservation Technical Specialist, to review construction specifications.	Considered complete upon submittal to ERO by project sponsor of construction specifications.
<p><i>M-CP-5b. Construction Monitoring Program for Historical Resources.</i></p> <p>The project sponsor shall undertake a monitoring program to minimize damage to adjacent historic buildings and to ensure that any such damage is documented and repaired. The monitoring program would include the following components. Prior to the start of any ground-disturbing activity, the project sponsor shall engage a historic architect or qualified historic preservation professional to undertake a preconstruction survey of historical resource(s) identified by the Planning Department within 125 feet of planned construction to document and photograph the buildings' existing conditions. Based on the construction and condition of the resource(s), the consultant shall also establish a maximum vibration level that shall not be exceeded at each building, based on existing condition, character-defining features, soils conditions, and anticipated construction practices (a common standard is 0.2 inches per second, peak particle velocity). To ensure that vibration levels</p>	Project sponsor, project contractor, and qualified individual in historic preservation individual.	Prior to the start of demolition, earth moving, or construction activity proximate to a designated historical resource.	Planning Department Preservation Technical Specialist shall review and approve construction monitoring program.	Considered complete upon submittal to Environmental Review Officer (ERO) of post-construction report on construction monitoring program and effects, if any, on proximate historical resources.

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1. MITIGATION MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
Cultural and Paleontological Resources (cont.)				
<i>Historical Resources (cont.)</i>				
<p>do not exceed the established standard, the project sponsor shall monitor vibration levels at each structure and shall prohibit vibratory construction activities that generate vibration levels in excess of the standard.</p> <p>Should vibration levels be observed in excess of the standard, construction shall be halted and alternative techniques put in practice, to the extent feasible. The consultant shall conduct regular periodic inspections of each building during ground-disturbing activity on the project site. Should damage to either building occur, the building(s) shall be remediated to its preconstruction condition at the conclusion of ground-disturbing activity on the site.</p>				
Transportation				
<i>Pedestrian / Vehicle conflict and Hazards Conditions</i>				
<p><i>Project Mitigation Measure 5: Vehicle Queues / Driveway Operations (Implementing M-TR-5):</i></p> <p>It shall be the responsibility of the owner / operator of the Project to ensure that vehicle queues do not block any portion of the sidewalk or roadway of Fremont Street, including any portion of any travel lanes or bike lanes, except for the curbside turn pocket as described below. The owner / operator shall also ensure that no substantial pedestrian conflict as defined below is created at the Project driveway.</p> <p>A vehicle queue is defined as one or more stopped vehicles destined to the Project garage blocking any portion of the Fremont Street sidewalk or roadway (except for the curbside turn pocket) for a consecutive period of three minutes or longer on a daily or weekly basis, or for more than five (5) percent of any 60minute period. Queues could be caused by unconstrained parking demand exceeding parking space or valet capacity; vehicles waiting for safe gaps in high volumes of pedestrian traffic; car or truck congestion within the parking garage or loading dock; or a combination of these or other factors.</p>	Property Owner / Facility Operator.	Ongoing after certificate of occupancy through compliance with condition of project approval.	Planning Director, or his or her designee / Planning Department	Considered in compliance unless the Planning Department identifies a violation of a condition of project approval, in which case the Department may initiate enforcement proceedings pursuant to Planning Code Section 176 et. seq.

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1. MITIGATION MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
Transportation (cont.)				
<i>Pedestrian / Vehicle conflict and Hazards Conditions (cont.)</i>				
<p>A substantial pedestrian conflict is defined as a condition where drivers of inbound and / or outbound vehicles, frustrated by the lack of safe gaps in pedestrian traffic, unsafely merge their vehicle across the sidewalk while pedestrians are present and force pedestrians to stop or change direction to avoid contact with the vehicle, and / or contact between pedestrians and the vehicle would occur.</p> <p>There is one exception to the definition of a substantial conflict. Sometimes, outbound vehicles departing from the Project driveway would be able to cross the sidewalk without conflicting with pedestrians, but then would have to stop and wait in order to safely merge into the Fremont Street roadway (due to a lack of gaps in Fremont Street traffic and / or a red signal at the Fremont Street / Natoma Street intersection). While waiting to merge, the rear of the vehicle could protrude into the western half of the sidewalk. This protrusion should not be considered a pedestrian conflict. This is because the obstruction would be along the western edge of the sidewalk, while the pedestrian path of travel would be along the east side of the sidewalk; street trees and other streetscape elements would already impede pedestrian flow along the west side of the sidewalk. Any pedestrians that would be walking along the west side of the sidewalk would be able to divert to the east and maneuver behind the stopped car. This exception only applies to outbound vehicles, and only if pedestrians are observed to walk behind the stopped vehicle. This exception does not apply to any inbound vehicles, and does not apply to outbound vehicles if pedestrians are observed to walk in front of the stopped outbound vehicle.</p> <p>If vehicle queues or substantial conflicts occur, the owner / operator of the facility shall employ abatement methods as needed to abate the queue and / or conflict. Appropriate abatement methods would vary depending on the characteristics and causes of the queue and conflict. Suggested abatement methods include but are not limited to the following: redesign of facility to</p>				

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1. MITIGATION MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
Transportation (cont.)				
<i>Pedestrian / Vehicle conflict and Hazards Conditions (cont.)</i>				
<p>improve vehicle circulation and / or on-site queue capacity; employment of additional valet attendants; use of off-site parking facilities or shared parking with nearby uses; travel demand management strategies such as additional bicycle parking or employee shuttles; parking demand management strategies such as time-of-day parking surcharges; expanded hours of truck access limitations; and / or limiting hours of access to the Project driveway during periods of peak pedestrian traffic. Any new abatement measures shall be included in an updated Driveway Operations Plan, reviewed and approved by the Planning Department.</p> <p>If the Planning Director, or his or her designee, suspects that vehicle queues or a substantial conflict are present, the Department shall notify the property owner in writing. The owner / operator shall hire a qualified transportation consultant to evaluate the conditions at the site for no less than seven days. The consultant shall submit a report to the Department documenting conditions. Upon review of the report, the Department shall determine whether or not queues and / or a substantial conflict exists, and shall notify the garage owner / operator of the determination in writing.</p> <p>If the Department determines that queues or a substantial conflict do exist, upon notification, the facility owner / operator shall have 90 days from the date of the written determination to carry out abatement measures. If after 90 days the Department determines that vehicle queues and / or a substantial conflict are still present or that the owner / operator has been unsuccessful at abating the identified vehicle queues or substantial conflicts, the hours of inbound and / or outbound access of the Project driveway shall be limited during peak hours. The hours and directionality of the access limitations shall be determined by the Planning Department, communicated to the owner / operator in writing, and recorded in an updated Driveway Operations Plan. The owner / operator shall be responsible for limiting the hours of Project driveway access as specified by the Department.</p>				

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1. MITIGATION MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
Transportation (cont.)				
<i>Bicycle / Loading</i>				
<p><i>M-TR-7a. Loading Dock Management</i></p> <p>To ensure that off-street loading facilities are efficiently used and that trucks longer than can be safely accommodated are not permitted to use a building's loading dock, the project sponsor of a development project in the Plan area shall develop a plan for management of the building's loading dock and shall ensure that tenants in the building are informed of limitations and conditions on loading schedules and truck size. Such a management plan could include strategies such as the use of an attendant to direct and guide trucks (see Mitigation Measure M-TR-5), installing a "Full" sign at the garage/loading dock driveway, limiting activity during peak hours, installation of audible and/or visual warning devices, and other features. Additionally, as part of the project application process, the project sponsor shall consult with the Municipal Transportation Agency concerning the design of loading and parking facilities.</p> <p>Typically, a building property manager dictates the maximum size of trucks that can be accommodated by a building's loading dock, and when trucks may access the project site.</p>	Property Owner / Facility Operator.	Ongoing after certificate of occupancy through compliance with condition of project approval.	Planning Director, or his or her designee / Planning Department	Considered in compliance unless the Planning Department identifies a violation of a condition of project approval, in which case the Department may initiate enforcement proceedings pursuant to Planning Code Section 176 et. seq.
<i>Construction</i>				
<p><i>Project Mitigation Measure 6: Construction (Implementing TCDP M-TR-9).</i></p> <p>The Project Applicant shall develop and implement a construction management plan to anticipate and minimize transportation-related impacts of various construction activities associated with the Project.</p> <p>The Plan would disseminate appropriate information to contractors and affected agencies with respect to coordinating construction activities to minimize overall disruptions and ensure that overall circulation in the Project area is maintained to the extent possible, with particular focus on ensuring transit, pedestrian, and bicycle connectivity. The program would supplement and expand, rather than modify or supersede, any manual, regulations, or provisions set forth by SFMTA, the Department of Public Works ("DPW"), or other City departments and agencies, and Caltrans.</p>	Project sponsor/ construction contractor.	Prior to the start of project construction.	S.F. MTA, Planning Department	Considered complete upon MTA and, optionally, Planning Department review of Construction Management Plan.

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1. MITIGATION MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
Transportation (cont.)				
Construction (cont.)				
<p>Specifically, the plan should do the following:</p> <p>A) Identify construction traffic management best practices in San Francisco, as well as others that, although not being implemented in the City, could provide valuable information for the project. Management practices include, but are not limited to the following:</p> <ol style="list-style-type: none"> 1. Identifying ways to reduce construction worker vehicle-trips through transportation demand management programs and methods to manage construction worker parking demands. 2. Identifying best practices for accommodating pedestrians, such as temporary pedestrian wayfinding signage or temporary walkways. 3. Identifying ways to accommodate transit stops located along sidewalks slated for closure during construction. This may include identifying locations for temporary bus stops, as well as signage directing riders to those temporary stops. 4. Identifying ways to consolidate truck delivery trips, including a plan to consolidate deliveries from a centralized construction material and equipment storage facility. <p>B) Describe procedures required by different departments and / or agencies in the City for implementation of a construction management plan, such as reviewing agencies, approval processes, and estimated timelines, such as the following:</p> <ol style="list-style-type: none"> 1. The Project Applicant will need to coordinate temporary and permanent changes to the transportation network within the City of San Francisco, including traffic, street and parking changes, and lane closures, with the SFMTA. Any permanent changes may require meeting with the SFMTA Board of Directors or one of its sub-committees, which may require a public hearing. Temporary traffic and transportation changes must be coordinated through the SFMTA's Interdepartmental Staff Committee on Traffic and Transportation (ISCOTT) and would require a public meeting. As part of this process, the construction management plan may be 				

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Transportation (cont.)				
Construction (cont.)				
<p>reviewed by SFMTA's Transportation Advisory Committee (TASC) to resolve internal differences between different transportation modes.</p> <p>2. A temporary closure of a travel lane along Fremont Street would be required during concrete pours and large deliveries and complete closures of travel lanes along Fremont Street would be scheduled for off-peak hours and weekends.</p> <p>C) Require consultation with other Agencies, including Muni / SFMTA, and adjacent property owners to facilitate coordination of construction traffic management strategies as they relate to transit operations and the needs of other users along Fremont Street. The Project Applicant should proactively coordinate with these groups prior to developing the construction management plan to ensure that the plan adequately meets these needs.</p> <p>1. Identify construction transportation management strategies and other elements for the Project, and present a cohesive program of operational and demand management strategies designed to maintain acceptable levels of traffic flow during periods of construction activities. These include, but are not limited to, construction strategies, demand management activities, alternative route strategies, and public information strategies.</p>				
Noise				
New Sensitive Uses				
<p><i>M-NO-1a: Noise Survey and Measurements for Residential Uses.</i></p> <p>For new residential development located along streets with noise levels above 70 dBA Ldn, the Planning Department shall require the preparation of an analysis that includes, at a minimum, a site survey to identify potential noise-generating uses within two blocks of the project site, and including at least one 24-hour noise measurement (with average and maximum noise level readings taken so as to be able to accurately describe maximum levels reached during nighttime hours), prior to completion of the environmental</p>	<p>Project sponsor, architect, acoustical consultant, and construction contractor.</p>	<p>Complete as a part of environmental review.</p>		<p>In compliance with FEIR Mitigation Measure M-NO-1a, Charles M. Salter Associates conducted an environmental noise and vibration study for the 181 Fremont Street</p>

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Noise (cont.)				
<i>New Sensitive Uses (cont.)</i>				
<p>review for each subsequent residential project in the Plan area. The analysis shall be completed by a person(s) qualified in acoustical analysis and shall demonstrate with reasonable certainty that Title 24 standards, where applicable, can be met, and that there are no particular circumstances about the proposed project site that appear to warrant heightened concern about noise levels in the vicinity. Should such concerns be present, the Department may require the completion of a detailed noise assessment by person(s) qualified in acoustical analysis and/or engineering prior to the first project approval action, in order to demonstrate that acceptable interior noise levels consistent with those in the Title 24 standards can be attained.</p>				<p>project and reported the results in the May 8, 2012 <i>181 Fremont Results of Environmental Noise and Vibration Study</i>. This measure is considered completed.</p>
<p><i>M-NO-1b: Noise Minimization for Residential Open Space.</i> To minimize effects on residential development in the Plan area, the Planning Department, through its building permit review process and in conjunction with the noise analysis set forth in Mitigation Measure M-NO-1a, shall require that open space required under the Planning Code for residential uses be protected, to the maximum feasible extent, from existing ambient noise levels that could prove annoying or disruptive to users of the open space. Implementation of this measure could involve, among other things, site design that uses the building itself to shield on-site open space from the greatest noise sources, construction of noise barriers between noise sources and open space, and appropriate use of both common and private open space in multi-family dwellings, and implementation would also be undertaken consistent with other principles of urban design.</p>	<p>Project sponsor, architect, acoustical consultant, and construction contractor.</p>	<p>Incorporate findings of noise study into building plans prior to issuance of final building permit and certificate of occupancy.</p>	<p>Planning Department and Department of Building Inspection</p>	<p>Considered complete upon approval of final construction plan set.</p>
<p><i>M-NO-1d: Mechanical Equipment Noise Standard.</i> The Planning Department shall require that, as part of required the noise survey and study for new residential uses (Mitigation Measure M-NO-1a), all reasonable efforts be made to identify the location of existing rooftop mechanical equipment, the predicted noise generated by that equipment, and the elevation at which the predicted noise level would be of potential concern for new residential uses, as well as the necessary noise insulation for the new residential uses, where applicable.</p>	<p>Project sponsor, architect, acoustical consultant, and construction contractor.</p>	<p>Incorporate findings of noise study into building plans prior to issuance of final building permit and certificate of occupancy.</p>	<p>Planning Department and Department of Building Inspection</p>	<p>Considered complete upon approval of final construction plan set.</p>

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Noise (cont.)				
<i>Building Operation and Traffic Noise</i>				
<p><i>M-NO-1e: Interior Mechanical Equipment.</i></p> <p>The Planning Department shall require, as part of subsequent project-specific review under CEQA, that effects of mechanical equipment noise on adjacent and nearby noise-sensitive uses be evaluated by a qualified acoustical consultant and that control of mechanical noise, as specified by the acoustical consultant, be incorporated into the final project design of new buildings to achieve the maximum feasible reduction of building equipment noise, consistent with <i>Building Code</i> and Noise Ordinance requirements and CEQA thresholds, such as through the use of fully noise-insulated enclosures around rooftop equipment and/or incorporation of mechanical equipment into intermediate building floor(s).</p>	<p>Project sponsor, architect, acoustical consultant, and construction contractor.</p>	<p>Incorporate findings of noise study into building plans prior to issuance of final building permit and certificate of occupancy.</p>	<p>Planning Department and Department of Building Inspection</p>	<p>Considered complete upon approval of final construction plan set.</p>
<i>Construction</i>				
<p><i>M-NO-2a: Noise Control Measures During Pile Driving.</i></p> <p>For individual projects that require pile driving, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. These attenuation measures shall include as many of the following control strategies, and any other effective strategies, as feasible:</p> <ul style="list-style-type: none"> ▪ The project sponsor of a development project in the Plan area shall require the construction contractor to erect temporary plywood noise barriers along the boundaries of the project site to shield potential sensitive receptors and reduce noise levels; ▪ The project sponsor of a development project in the Plan area shall require the construction contractor to implement "quiet" pile-driving technology (such as pre-drilling of piles, sonic pile drivers, and the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions; ▪ The project sponsor of a development project in the Plan area shall require the construction contractor to monitor the effectiveness of noise attenuation measures by taking noise measurements; and 	<p>Project sponsor and construction contractor.</p>	<p>Prior to and during period of pile-driving</p>	<p>Project sponsor to provide monthly noise reports during pile-driving.</p>	<p>Considered complete upon final monthly report.</p>

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Noise (cont.)				
Construction (cont.)				
<ul style="list-style-type: none"> ▪ The project sponsor of a development project in the Plan area shall require that the construction contractor limit pile driving activity to result in the least disturbance to neighboring uses. 				
<p><i>M-NO-2b: General Construction Noise Control Measures.</i></p> <p>To ensure that project noise from construction activities is minimized to the maximum extent feasible, the project sponsor of a development project in the Plan area shall undertake the following:</p> <ul style="list-style-type: none"> ▪ The project sponsor of a development project in the Plan area shall require the general contractor to ensure that equipment and trucks used for project construction utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible). ▪ The project sponsor of a development project in the Plan area shall require the general contractor to locate stationary noise sources (such as compressors) as far from adjacent or nearby sensitive receptors as possible, to muffle such noise sources, and to construct barriers around such sources and/or the construction site, which could reduce construction noise by as much as five dBA. To further reduce noise, the contractor shall locate stationary equipment in pit areas or excavated areas, if feasible. ▪ The project sponsor of a development project in the Plan area shall require the general contractor to use impact tools (e.g., jack hammers, pavement breakers, and rock drills) that are hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used, along with external noise jackets on the tools, which could reduce noise levels by as much as 10 dBA. ▪ The project sponsor of a development project in the Plan area shall include noise control requirements in specifications provided to construction 	Project sponsor and construction contractor.	During construction period.	Project sponsor to provide monthly noise reports during construction.	Considered complete upon final monthly report.

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Noise (cont.)				
Construction (cont.)				
<p>contractors. Such requirements could include, but not be limited to, performing all work in a manner that minimizes noise to the extent feasible; use of equipment with effective mufflers; undertaking the most noisy activities during times of least disturbance to surrounding residents and occupants, as feasible; and selecting haul routes that avoid residential buildings inasmuch as such routes are otherwise feasible.</p> <ul style="list-style-type: none"> ▪ Prior to the issuance of each building permit, along with the submission of construction documents, the project sponsor of a development project in the Plan area shall submit to the Planning Department and Department of Building Inspection (DBI) a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include (1) a procedure and phone numbers for notifying DBI, the Department of Public Health, and the Police Department (during regular construction hours and off-hours); (2) a sign posted on-site describing noise complaint procedures and a complaint hotline number that shall be answered at all times during construction; (3) designation of an on-site construction complaint and enforcement manager for the project; and (4) notification of neighboring residents and non-residential building managers within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities (defined as activities generating noise levels of 90 dBA or greater) about the estimated duration of the activity. 				
Air Quality				
Project Operation				
<p><i>Project Mitigation Measure 1: Air Filtration Measures (Implementing TCDP M-AQ-2).</i></p> <p><i>Air Filtration and Ventilation Requirements for Sensitive Land Uses.</i> Prior to receipt of any building permit, the project sponsor shall submit a ventilation plan for the residential portion of the proposed building. The ventilation plan shall show that the building ventilation system for the residential units removes at least 80 percent of the outdoor PM2.5 concentrations from</p>	<p>Project sponsor and architect and/or mechanical/HVAC engineer.</p>	<p>Prior to issuance of building permit.</p>	<p>Environmental Review Officer (ERO) and/or S.F. Department of Public Health (DPH) to review and approve ventilation plan and disclosure form.</p>	<p>Considered complete upon ERO/DPH review and approval of ventilation plan and disclosure form.</p>

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Air Quality (cont.)				
Project Operation (cont.)				
<p>habitable areas and be designed by an engineer certified by ASHRAE, who shall provide a written report documenting that the system meets the 80 percent performance standard identified in this measure and offers the best available technology to minimize outdoor to indoor transmission of air pollution.</p> <p><i>Maintenance Plan.</i> Prior to receipt of any building permit, the project sponsor shall present a plan that ensures ongoing maintenance for the residential ventilation and filtration systems.</p> <p><i>Disclosure to buyers and renters.</i> The project sponsor shall also ensure the disclosure to buyers (and renters) that the building is located in an area with existing sources of air pollution and as such, the building includes an air filtration and ventilation system designed to remove 80 percent of outdoor particulate matter and shall inform occupants of the proper use of the installed air filtration system.</p>				
<p><i>Project Mitigation Measure 2: Best Available Control Technology for Diesel Generators (Implementing TCDP M-AQ-3).</i></p> <p>Prior to receipt of any building permit, the project sponsor shall submit documentation to the Planning Department demonstrating that all emergency (backup) diesel generators to be installed in the project would meet Tier 4 or interim Tier 4 emissions standards, or would meet Tier 2 emissions standards and be equipped with an ARB Level 3 Verified Diesel Emissions Control Strategy (VDECS).</p>	Project sponsor and construction contractor.	Prior to issuance of building permit.	Environmental Review Officer (ERO) to review and approve required diesel generator documentation.	Considered complete upon ERO review and approval of required diesel generator documentation.
Construction				
<p><i>Project Mitigation Measure 3: Construction Emissions Minimization (Implementing TCDP M-A--4a and TCDP M-AQ-5).</i></p> <p>A. <i>Construction Emissions Minimization Plan.</i> Prior to issuance of a construction permit, the project sponsor shall submit a Construction Emissions Minimization Plan (Plan) to the Environmental Review Officer (ERO) for review and approval by an Environmental Planning Air Quality</p>	Project sponsor and construction contractor.	Prior to issuance of construction permit.	Environmental Review Officer (ERO) to review and approve the Construction Emissions Minimization Plan.	Considered complete with ERO review and approval of Construction Emissions Minimization Plan and upon submittal, within six months of the

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Air Quality (cont.)				
Construction (cont.)				
<p>Specialist. The Plan shall detail project compliance with the following requirements:</p> <ol style="list-style-type: none"> 1. All off-road equipment greater than 25 hp and operating for more than 20 total hours over the entire duration of construction activities shall meet the following requirements: <ol style="list-style-type: none"> a) Where access to alternative sources of power are available, portable diesel engines shall be prohibited; b) All off-road equipment shall have: <ol style="list-style-type: none"> i. Engines that meet or exceed either USEPA or ARB Tier 2 off-road emission standards, <i>and</i> ii. Engines that are retrofitted with an ARB Level 3 Verified Diesel Emissions Control Strategy (VDECS).¹ c) Exceptions: <ol style="list-style-type: none"> i. Exceptions to A(1)(a) may be granted if the project sponsor has submitted information providing evidence to the satisfaction of the ERO that an alternative source of power is limited or infeasible at the project site and that the requirements of this exception provision apply. Under this circumstance, the sponsor shall submit documentation of compliance with A(1)(b) for onsite power generation. ii. Exceptions to A(1)(b)(ii) may be granted if the project sponsor has submitted information providing evidence to the satisfaction of the ERO that a particular piece of off-road equipment with an ARB Level 3 VDECS is: (1) technically not feasible, (2) would not produce desired emissions reductions due to expected operating modes, (3) installing the control device would create a safety hazard 			<p>Project sponsor to provide monthly construction reports indicating the construction phase and off-road equipment information used during each phase.</p>	<p>completion of construction activities, of final report summarizing construction activities.</p>

¹ Equipment with engines meeting Tier 4 Interim or Tier 4 Final emission standards automatically meet this requirement, therefore a VDECS would not be required.

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Air Quality (cont.)																
Construction (cont.)																
<p>or impaired visibility for the operator, or (4) there is a compelling emergency need to use off-road equipment that are not retrofitted with an ARB Level 3 VDECS and the sponsor has submitted documentation to the ERO that the requirements of this exception provision apply. If granted an exception to A(1)(b)(ii), the project sponsor must comply with the requirements of A(1)(c)(iii).</p> <p>iii. If an exception is granted pursuant to A(1)(c)(ii), the project sponsor shall provide the next cleanest piece of off-road equipment as provided by the step down schedules in Table A1 below.</p> <p align="center">TABLE A1 OFF-ROAD EQUIPMENT COMPLIANCE STEP DOWN SCHEDULE*</p> <table border="1" data-bbox="134 906 898 1089"> <thead> <tr> <th>Compliance Alternative</th> <th>Engine Emission Standard</th> <th>Emissions Control</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Tier 2</td> <td>ARB Level 2 VDECS</td> </tr> <tr> <td>2</td> <td>Tier 2</td> <td>ARB Level 1 VDECS</td> </tr> <tr> <td>3</td> <td>Tier 2</td> <td>Alternative Fuel*</td> </tr> </tbody> </table> <p>* How to use the table. If the requirements of (A)(1)(b) cannot be met, then the project sponsor would need to meet Compliance Alternative 1. Should the project sponsor not be able to supply off-road equipment meeting Compliance Alternative 1, then Compliance Alternative 2 would need to be met. Should the project sponsor not be able to supply off-road equipment meeting Compliance Alternative 2, then Compliance Alternative 3 would need to be met.</p> <p>** Alternative fuels are not a VDECS</p> <p>2. The project sponsor shall require the idling time for off-road and on-road equipment be limited to no more than two minutes, except as provided in exceptions to the applicable state regulations regarding idling for off-road and on-road equipment. Legible and visible signs shall be posted in multiple languages (English, Spanish, Chinese) in designated queuing areas and at the construction site to remind operators of the two minute idling limit.</p>	Compliance Alternative	Engine Emission Standard	Emissions Control	1	Tier 2	ARB Level 2 VDECS	2	Tier 2	ARB Level 1 VDECS	3	Tier 2	Alternative Fuel*				
Compliance Alternative	Engine Emission Standard	Emissions Control														
1	Tier 2	ARB Level 2 VDECS														
2	Tier 2	ARB Level 1 VDECS														
3	Tier 2	Alternative Fuel*														

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Air Quality (cont.)				
Construction (cont.)				
<p>3. The project sponsor shall require that construction operators properly maintain and tune equipment in accordance with manufacturer specifications.</p> <p>4. The Plan shall include estimates of the construction timeline by phase with a description of each piece of off-road equipment required for every construction phase. Off-road equipment descriptions and information may include, but is not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For VDECS installed: technology type, serial number, make, model, manufacturer, ARB verification number level, and installation date and hour meter reading on installation date. For off-road equipment using alternative fuels, reporting shall indicate the type of alternative fuel being used.</p> <p>5. The Plan shall be kept on-site and available for review by any persons requesting it and a legible sign shall be posted at the perimeter of the construction site indicating to the public the basic requirements of the Plan and a way to request a copy of the Plan. The project sponsor shall provide copies of Plan to members of the public as requested.</p> <p>B. <i>Reporting.</i> Monthly reports shall be submitted to the ERO indicating the construction phase and off-road equipment information used during each phase including the information required in A(4). In addition, for off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used.</p> <p>Within six months of the completion of construction activities, the project sponsor shall submit to the ERO a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. For each phase, the report shall include detailed information required in A(4). In addition, for off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used.</p>				

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Air Quality (cont.)				
Construction (cont.)				
C. <i>Certification Statement and On-site Requirements.</i> Prior to the commencement of construction activities, the project sponsor must certify (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications.				
<p><i>Project Mitigation Measure 4: Dust Control Plan (Implementing TCDP M-AQ-4b).</i></p> <p>To reduce construction-related dust emissions, the project sponsor shall incorporate into construction specifications the requirement for development and implementation of a site-specific Dust Control Plan as set forth in Article 22B of the <i>San Francisco Health Code</i>. The Dust Control Plan shall require the project sponsor to: submit a map to the Director of Public Health showing all sensitive receptors within 1,000 feet of the site; wet down areas of soil at least three times per day; provide an analysis of wind direction and install upwind and downwind particulate dust monitors; record particulate monitoring results; hire an independent, third party to conduct inspections and keep a record of those inspections; establish shut-down conditions based on wind, soil migration, etc.; establish a hotline for surrounding community members who may be potentially affected by project-related dust; limit the area subject to construction activities at any one time; install dust curtains and windbreaks on the property lines, as necessary; limit the amount of soil in hauling trucks to the size of the truck bed and secure soils with a tarpaulin; enforce a 15 miles per hour speed limit for vehicles entering and exiting construction areas; sweep affected streets with water sweepers at the end of the day; install and utilize wheel washers to clean truck tires; terminate construction activities when winds exceed 25 miles per hour; apply soil stabilizers to inactive areas; and sweep adjacent streets to reduce particulate emissions. The project sponsor would be required to designate an individual to monitor compliance with dust control requirements.</p>	Project sponsor and construction contractor.	Prior to the start of earthmoving activities.	S.F. Department of Public Health (DPH) and/or Environmental Review Officer (ERO).	Considered complete upon DPH/ERO review of Dust Control Plan.

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Wind				
<p><i>M-WI-2: Tower Design to Minimize Pedestrian Wind Speeds.</i> As part of the design development for buildings on Parcel F and at the 524 Howard Street, 50 First Street, 181 Fremont Street and Golden Gate University sites, the project sponsor(s) shall consider the potential effect of these buildings on pedestrian-level winds and on winds in the City Park atop the Transit Center. If wind-tunnel testing identifies adverse impacts, the project sponsor(s) shall conduct additional mitigation testing to resolve impacts to the maximum degree possible and to the satisfaction of Planning Department staff. Design features could include, but not be limited to, setting a tower atop a podium, which can interfere with “downwash” of winds from higher elevations toward the ground; the use of setbacks on tower facades, particularly those facades facing into prevailing winds, which can have similar results; using chamfered and/or rounded corners to minimize the acceleration of upper-level winds as they round corners; façade articulation; and avoiding the placement of large, unbroken facades into prevailing winds.</p>	Project sponsor.	Complete as a part of environmental review.		<p>In accordance with FEIR Mitigation Measure M-WI-2, RWDI conducted a pedestrian wind study for the 181 Fremont Street project and reported the results in the March 16, 2012 <i>181 Fremont Street-San Francisco Pedestrian Wind Study</i>. This measure is considered completed.</p>
Biological Resources				
<i>Candidate, Sensitive, or Special-Status Species</i>				
<p><i>M-BI-1a: Pre-Construction Bird Surveys.</i> Conditions of approval for building permits issued for construction within the Plan area shall include a requirement for pre-construction breeding bird surveys when trees or vegetation would be removed or buildings demolished as part of an individual project. Pre-construction nesting bird surveys shall be conducted by a qualified biologist between February 1st and August 15th if vegetation (trees or shrubs) removal or building demolition is scheduled to take place during that period. If special-status bird species are found to be nesting in or near any work area or, for compliance with federal and state law concerning migratory birds, if birds protected under the federal Migratory Bird Treaty Act or the California Fish and Game Code are found to be nesting in or near any work area, an appropriate no-work buffer zone (e.g., 100 feet for songbirds) shall be designated by the biologist. Depending on the species involved, input from the California Department of Fish and Game (CDFG) and/or the U.S. Fish and Wildlife Service (USFWS) Division of Migratory Bird Management may be warranted. As</p>	Project sponsor.	Prior to project approval.	Environmental Review Officer (ERO) to review and approve bird survey.	Considered complete upon ERO approval of bird survey.

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Biological Resources (cont.)				
<i>Candidate, Sensitive, or Special-Status Species (cont.)</i>				
recommended by the biologist, no activities shall be conducted within the no-work buffer zone that could disrupt bird breeding. Outside of the breeding season (August 16 – January 31), or after young birds have fledged, as determined by the biologist, work activities may proceed. Birds that establish nests during the construction period are considered habituated to such activity and no buffer shall be required, except as needed to avoid direct destruction of the nest, which would still be prohibited.				
Hazards and Hazardous Materials				
<i>Excavation and Handling of Potentially Contaminated Soil and Groundwater</i>				
<p><i>M-HZ-2a: Site Assessment and Corrective Action for Sites Located Bayward of Historic Tide Line.</i></p> <p>For any project located bayward of the historic high tide line the project sponsor shall initiate compliance with, and ensure that the project fully complies with, Article 22A of the San Francisco Health Code. In accordance with this article, a site history report shall be prepared, and if appropriate, a soil investigation, soil analysis report, site mitigation plan, and certification report shall also be prepared. If the presence of hazardous materials is indicated, a site health and safety plan shall also be required. The soil analysis report is submitted to DPH. If required on the basis of the soil analysis report, a site mitigation plan shall be prepared to 1) assess potential environmental and health and safety risks; 2) recommend cleanup levels and mitigation measures, if any are necessary, that would be protective of workers and visitors to the property; 3) recommend measures to mitigate the risks identified; 4) identify appropriate waste disposal and handling requirements; and 5) present criteria for on-site reuse of soil. The recommended measures would be completed during construction. Upon completion, a certification report shall be prepared documenting that all mitigation measures recommended in the site mitigation report have been completed and that completion of the mitigation measures has been verified through follow-up soil sampling and analysis, if required.</p>	Project sponsor.	Prior to issuance of site permit.	Environmental Review Officer (ERO), S.F. Department of Public Health (DPH).	Considered complete upon ERO and DPH review and approval of site history and, if appropriate, soil investigation, soil analysis report, site mitigation plan, and certification report, and any studies and remediation required by DPH.

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Hazards and Hazardous Materials (cont.)				
<i>Excavation and Handling of Potentially Contaminated Soil and Groundwater (cont.)</i>				
<p>If the approved site mitigation plan includes leaving hazardous materials in soil or the groundwater with containment measures such as landscaping or a cap to prevent exposure to hazardous materials, the project sponsor shall ensure the preparation of a risk management plan, health and safety plan, and possibly a cap maintenance plan in accordance with DPH requirements. These plans shall specify how unsafe exposure to hazardous materials left in place would be prevented, as well as safe procedures for handling hazardous materials should site disturbance be required. DPH could require a deed notice, for example, prohibiting or limiting certain future land uses, and the requirements of these plans and the deed restriction would transfer to the new property owners in the event that the property was sold.</p>				
<p><i>M-HZ-2c: Site Assessment and Corrective Action for All Sites.</i></p> <p>The project sponsor shall characterize the site, including subsurface features such as utility corridors, and identify whether volatile chemicals are detected at or above risk screening levels in the subsurface. If so, If potential exposure to vapors is suspected, a screening evaluation shall be conducted in accordance with guidance developed by the DTSC to estimate worst case risks to building occupants from vapor intrusion using site specific data and conservative assumptions specified in the guidance. If an unacceptable risk were indicated by this conservative analysis, then additional site data shall be collected and a site specific vapor intrusion evaluation, including fate and transport modeling, shall be required to more accurately evaluate site risks. Should the site specific evaluation identify substantial risks, then additional measures shall be required to reduce risks to acceptable levels. These measures could include remediation of site soil and/or groundwater to remove vapor sources, or, should this be infeasible, use of engineering controls such as a passive or active vent system and a membrane system to control vapor intrusion. Where engineering controls are used, a deed restriction shall be required, and shall include a description of the potential cause of vapors, a prohibition against construction without removal or treatment of contamination to approved risk-based levels, monitoring of the engineering controls to prevent vapor intrusion until risk-based cleanup levels have been met, and notification requirements to</p>	Project sponsor.	Prior to issuance of site permit.	Environmental Review Officer (ERO), S.F. Department of Public Health (DPH).	Considered complete upon ERO and DPH review and approval of site history and, if appropriate, soil analysis report, site mitigation plan, and certification report, and any studies and remediation required by DPH.

**EXHIBIT 1:
 MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval and Proposed Improvement Measures)**

1. MITIGATION MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
Hazards and Hazardous Materials (cont.)				
<i>Excavation and Handling of Potentially Contaminated Soil and Groundwater (cont.)</i>				
<p>utility workers or contractors who may have contact with contaminated soil and groundwater while installing utilities or undertaking construction activities. In addition, if remediation is necessary, the project sponsor shall implement long-term monitoring at the site as needed. The frequency of sampling and the duration of monitoring will depend upon site-specific conditions and the degree of volatile chemical contamination.</p> <p>The screening level and site-specific evaluations shall be conducted under the oversight of DPH and methods for compliance shall be specified in the site mitigation plan prepared in accordance with this measure, and subject to review and approval by the DPH. The deed restriction, if required, shall be recorded at the San Francisco Office of the Assessor-Recorder after approval by the DPH and DTSC.</p>				
<i>Hazardous Building Materials During Demolition</i>				
<p><i>M-HZ-3: Hazardous Building Materials Abatement.</i></p> <p>The project sponsor of any development project in the Plan area shall ensure that any building planned for demolition or renovation is surveyed for hazardous building materials including PCB-containing electrical equipment, fluorescent light ballasts containing PCBs or DEHP, and fluorescent light tubes containing mercury vapors. These materials shall be removed and properly disposed of prior to the start of demolition or renovation. Old light ballasts that are proposed to be removed during renovation shall be evaluated for the presence of PCBs and in the case where the presence of PCBs in the light ballast cannot be verified, they shall be assumed to contain PCBs, and handled and disposed of as such, according to applicable laws and regulations. Any other hazardous building materials identified either before or during demolition or renovation shall be abated according to federal, state, and local laws and regulations.</p>	Project sponsor.	Prior to building demolition.	Environmental Review Officer (ERO), S.F. Department of Public Health (DPH).	Considered complete upon ERO and DPH review and approval of any studies and remediation required by DPH.

**EXHIBIT 1, ATTACHMENT A:
 MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval and Proposed Improvement Measures)**

2. PROPOSED IMPROVEMENT MEASURES	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
Biological Resources				
<i>Movement of Resident and Migratory Birds</i>				
<p><i>I-BI-2: Night Lighting Minimization.</i></p> <p>In compliance with the voluntary San Francisco Lights Out Program, the Planning Department could encourage buildings developed pursuant to the draft Plan to implement bird-safe building operations to prevent and minimize bird strike impacts, including but not limited to the following measures:</p> <ul style="list-style-type: none"> ▪ Reduce building lighting from exterior sources by: <ul style="list-style-type: none"> - Minimizing amount and visual impact of perimeter lighting and façade up-lighting and avoid up-lighting of rooftop antennae and other tall equipment, as well as of any decorative features; - Installing motion-sensor lighting; - Utilizing minimum wattage fixtures to achieve required lighting levels. ▪ Reduce building lighting from interior sources by: <ul style="list-style-type: none"> - Dimming lights in lobbies, perimeter circulation areas, and atria; - Turning off all unnecessary lighting by 11:00 p.m. through sunrise, especially during peak migration periods (mid-March to early June and late August through late October); - Utilizing automatic controls (motion sensors, photo-sensors, etc.) to shut off lights in the evening when no one is present; - Encouraging the use of localized task lighting to reduce the need for more extensive overhead lighting; - Scheduling nightly maintenance to conclude by 11:00 p.m.; - Educating building users about the dangers of night lighting to birds. 	<p>Planning Department, working with project sponsor.</p>	<p>During project design development.</p>	<p>Planning Department</p>	<p>Considered complete upon approval of building plans by Planning Department.</p>



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- | | |
|---|---|
| <input checked="" type="checkbox"/> Affordable Housing (Sec. 415) | <input checked="" type="checkbox"/> First Source Hiring (Admin. Code) |
| <input checked="" type="checkbox"/> Jobs Housing Linkage Program (Sec. 413) | <input checked="" type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input checked="" type="checkbox"/> Downtown Park Fee (Sec. 412) | <input checked="" type="checkbox"/> Other |

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Draft Resolution Development Agreement

HEARING DATE: OCTOBER 16, 2014

Date: October 2, 2014
Case No.: **2014.1399WX**
Project Address: **181 Fremont Street**
Project Site Zoning: C-3-O (SD) (Downtown, Office: Special Development)
700-S-2 Height and Bulk District
Transit Center C-3-O (SD) Commercial Special Use District
Transbay C-3 Special Use District
Block/Lot: 3719/010, 011 (181 Fremont Street)
Project Sponsor: Janette D'Elia
c/o Jay Paul Company, LLC
Four Embarcadero Center, Suite 3620
San Francisco, CA 94111
Staff Contact: Kevin Guy – (415) 558-6163
kevin.guy@sfgov.org

RESOLUTION OF THE PLANNING COMMISSION RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND 181 FREMONT STREET LLC FOR CERTAIN REAL PROPERTY LOCATED AT 181 FREMONT STREET (LOTS 010 AND 011 IN ASSESSOR'S BLOCK 3719), ALTOGETHER CONSISTING OF APPROXIMATELY 15,313 SQUARE FEET, AND MAKING GENERAL PLAN PLANNING CODE SECTION 101.1(b) FINDINGS.

RECITALS

1. **WHEREAS**, 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 jurisdiction of the city, county, or city and county.
2. **WHEREAS**, Chapter 56 of the San Francisco Administrative Code sets forth the procedure by which any request for a Development Agreement will be processed and approved in the City and County of San Francisco.

3. **WHEREAS**, 181 Fremont Street LLC ("Project Sponsor") owns the real property located in the City and County of San Francisco, California located at 181 Fremont Street (Lots 010 and 011 in Assessor's Block 3719) altogether consisting of approximately 15,313 square feet ("Project Site").
4. **WHEREAS**, On December 6, 2012, the Planning Commission ("Commission) conducted a duly noticed public hearing at a regularly scheduled meeting and approved a Downtown Project Authorization and Requests for Exceptions pursuant to Planning Code Section ("Section") 309 (Motion No. 18765), an allocation of office space pursuant to Sections 320 through 325 (Annual Office Development Limitation Program (Motion No. 18764), and findings regarding shadow impacts to Union Square (Motion No. 18763), in connection with a proposal to demolish an existing three-story building and an existing two-story building, and to construct a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space, located at the Project Site, within the C-3-O (SD) (Downtown Office, Special Development) District, the 700-S-2 Height and Bulk District, the Transbay C-3 Special Use District, and the Transit Center C-3-O(SD) Commercial Special Use District. At the same hearing on December 6, 2012, the Zoning Administrator indicated an intent to grant a requested Variance from Section 140 to allow dwelling units on the north, east, and south portions of the proposed building without the required dwelling unit exposure. On March 15, 2013, the Zoning Administrator issued a Variance Decision Letter formally granting the requested Variance (collectively, "Project", Case No. 2007.0456EBKXV). A site permit has been issued for the Project, and the building is currently under construction.
5. **WHEREAS**, The environmental effects of the original Project were determined by the Department to have been fully reviewed under the Transit Center District Plan Environmental Impact Report (hereinafter "EIR"). The EIR was prepared, circulated for public review and comment, and, at a public hearing on May 24, 2012, by Motion No. 18628, certified by the Commission as complying with the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., (hereinafter "CEQA"). The Commission has reviewed the Final EIR, which has been available for this Commissions review as well as public review.
6. **WHEREAS**, The Transit Center District Plan EIR is a Program EIR. Pursuant to CEQA Guideline 15168(c)(2), if the lead agency finds that no new effects could occur or no new mitigation measures would be required of a proposed project, the agency may approve the project as being within the scope of the project covered by the program EIR, and no additional or new environmental review is required. In approving the Transit Center District Plan, the Commission adopted CEQA Findings in its Motion No. 18629 and hereby incorporates such Findings by reference.
7. **WHEREAS**, State CEQA Guidelines Section 15183 provides a streamlined environmental review for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, except as might be necessary to examine whether there are project-specific effects which are peculiar to the project or its site. Section

15183 specifies that examination of environmental effects shall be limited to those effects that (a) are peculiar to the project or parcel on which the project would be located, (b) were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent, (c) are potentially significant off-site and cumulative impacts which were not discussed in the underlying EIR, or (d) are previously identified in the EIR, but which are determined to have a more severe adverse impact than that discussed in the underlying EIR. Section 15183(c) specifies that if an impact is not peculiar to the parcel or to the proposed project, then an EIR need not be prepared for that project solely on the basis of that impact.

8. **WHEREAS**, On November 9, 2012, the Department determined that the application for the original Project did not require further environmental review under Section 15183 of the CEQA Guidelines and Public Resources Code Section 21083.3. The Project was consistent with the adopted zoning controls in the Transit Center District Plan and was encompassed within the analysis contained in the Transit Center District Plan Final EIR. Since the Transit Center District Plan Final EIR was finalized, there were no substantial changes to the Transit Center District Plan and no substantial changes in circumstances that would require major revisions to the Final EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIR. The file for this Project, including the Transit Center District Plan Final EIR and the previously issued Community Plan Exemption certificate, is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California.
9. **WHEREAS**, Pursuant to the requirements of the Transbay C-3 Special Use District (“SUD”) contained in Section 249.28, a minimum of 15% of the dwelling units in the Project would have been required to be affordable to, and occupied by, qualifying persons and families as defined by the Transbay Redevelopment Plan.
10. **WHEREAS**, The Transbay Redevelopment Plan requires that, in accordance with State law (Public Resources Code Section 5027.1), at least 35% of all new housing within the Project Area be affordable to low- and moderate-income households. It is anticipated that this goal will be achieved through a combination of constructing stand-alone affordable housing projects, increasing affordable housing requirements for development of the publicly-owned parcels in “Zone 1”, and requiring on-site affordable units for developments on privately-owned parcels containing residential uses.
11. **WHEREAS**, The Office of Community Investment and Infrastructure (OCII), in consultation with the Mayor’s Office of Housing and Community Development (MOHCD), has analyzed the implications of applying the on-site requirement of the SUD to the Project. The units within the Project are relatively large, and are situated within the uppermost floors of the tower with abundant views. Given these characteristics, the 11 affordable units within the Project would need to be steeply discounted compared with the market-rate units. In addition, it is estimated that the homeowner’s association (“HOA”) fees for these units will likely exceed \$2,000 per month. These HOA fees would impose a substantial financial burden on residents whose income levels would allow them to qualify for an affordable unit within the Project. Therefore, OCII and MOHCD staff have concluded that the

resources necessary to create affordable units within the Project could be better leveraged to create other affordable housing opportunities elsewhere in the Redevelopment Plan Area.

12. **WHEREAS**, On September 18, 2014, Janette D'Elia, acting on behalf of the Project Sponsor applied for a Downtown Project Authorization, pursuant to Section 309, in order to amend the conditions of approval for the previously-granted Downtown Project Authorization (Motion No. 18765) to enable the payment of an in-lieu fee toward the development of affordable housing in the Transbay Redevelopment Project Area. In addition the Project Sponsor proposes to enter into a Development Agreement (pursuant to Chapter 56 of the San Francisco Administrative Code) to exempt the Project from the requirements of Section 249.28 to provide affordable dwelling units on-site (collectively, Case No. 2014.1399WX).
13. **WHEREAS**, The proposed Development Agreement would exempt the Project from the requirements of Section 249.28 to provide affordable dwelling units on-site. If the Development Agreement is approved by the Board of Supervisors, the Project Sponsor would contribute \$13.85 million toward the development of affordable housing in the Redevelopment Plan Area. OCII staff estimates that this fee would be capable of creating approximately 69 affordable housing units, a net gain of 58 affordable units compared to the 11 affordable units that would be provided within the Project. For comparative purposes, if the Project Sponsor were to pay the in-lieu affordable housing fee established in the Planning Code, the fee amount would be approximately \$5.5 million.
14. **WHEREAS**, Because the City is entering into a development agreement with the Project Sponsor addressing, among other issues, the amount of the Project Sponsor's affordable housing contribution, this Project is consistent with Charter Section 16.110(h)(1)(B)(i) (adopted as part of the Housing Trust Fund, Proposition C, November 6, 2012).
15. **WHEREAS**, The Planning Commission hereby finds, for the reasons set forth in Motion No. XXXXX (Case No. 2014.1399X, Downtown Project Authorization), that the Development Agreement and related approval actions are, on balance, consistent with the General Plan including any area plans, and are consistent with the Planning Code Priority Policies of Planning Code Section 101.1(b)
16. **WHEREAS**, The Department is accounting for all costs of reviewing the Development Agreement and preparing all necessary materials for the associated public hearing. The Director recommends that the Developer be required to pay to the City all of the City's costs in preparing and negotiating the Development Agreement, including all staff time for the Planning Department and the City Attorneys' Office.
17. **WHEREAS**, The Director has scheduled and the Commission has held a public hearing on October 16, 2014, as required by Administrative Code Section 56.4(c). The Planning Department gave notice as required by Planning Code Section 306.3 and mailed such notice on September 26, 2014, which is at least 10 days before the hearing to local public agencies as required by Administrative Code Section 56.8(b).
18. **WHEREAS**, The Commission has had available to it for its review and consideration studies, case reports, letters, plans, and other materials pertaining to the Project contained in the Department's case

files, and has reviewed and heard testimony and received materials from interested parties during the public hearings on the Project.

NOW, THEREFORE BE IT RESOLVED THAT, the Commission finds, based upon the entire Record, the submissions by the Applicant, the staff of the Department, and other interested parties, the oral testimony presented to the Commission at the public hearing, and all other written materials submitted by all parties, that the public necessity, convenience and general welfare require that the Development Agreement to exempt the Project from the requirements of Section 249.28 to provide affordable dwelling units on-site, and to enable the payment of a fee toward the creation of other affordable housing opportunities elsewhere in the Redevelopment Plan Area, as proposed in Application No. 2014.1399W; and,

The actions contemplated in this Resolution do not constitute a project under the California Environmental Quality Act ("CEQA"), CEQA Guidelines (California Code of Regulations Title 14) Sections 15378 (b)(4) and 15378(b)(5) because it merely creates a government funding mechanism that does not involve any commitment to a specific project and is an administrative activity of the government with no physical impact.

BE IT FURTHER RESOLVED THAT, the Planning Commission recommends the Board of Supervisors approve the proposed Development Agreement.

I hereby certify that the foregoing Resolution was ADOPTED by the Planning Commission at its regular meeting on October 16, 2014.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: October 16, 2014

1 [Development Agreement – 181 Fremont Street with 181 Fremont Street, LLC]

2

3 **Ordinance approving a Development Agreement between the City and County of San**
4 **Francisco and 181 Fremont Street, LLC, for certain real property, known as 181**
5 **Fremont Street, located in the Transbay Redevelopment Project Area, consisting of two**
6 **parcels located on the east side of Fremont Street, between Mission and Howard**
7 **Streets; making findings of conformity with the General Plan and the eight priority**
8 **policies of Planning Code, Section 101.1(b); and waiving certain provisions of**
9 **Administrative Code, Chapter 56 and Planning Code Section 249.28.**

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

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

18

19 Section 1. Project Findings. The Board of Supervisors makes the following findings:

20 (a) California Government Code Sections 65864 et seq. authorizes any city, county,
21 or city and county to enter into an agreement for the development of real property within their
22 respective jurisdiction.

23 (b) Administrative Code Chapter 56 (“Chapter 56”) sets forth certain procedures for
24 the processing and approval of development agreements in the City and County of San
25 Francisco (the “City”).

(c) 181 Fremont Street, LLC, a Delaware limited liability company (the
“Developer”), is the owner of that certain real property located at 181 Fremont Street, which is

1 an irregularly shaped property formed by two parcels measuring a total of 15,313 square feet,
2 located on the east side of Fremont Street, between Mission and Howard Streets in the
3 Transbay Redevelopment Project Area (the “Project Site”).

4 (d) On December 6, 2012, the Planning Commission approved Motions 18763,
5 18764, 18765 and the Zoning Administrator issued a variance decision (later revised on
6 March 15, 2013) (collectively, the “**Approvals**”). The Approvals approved a project on the
7 Project Site (the “**Project**”) that would demolish an existing three-story building and an
8 existing two-story building, and construct a 52-story building reaching a roof height of
9 approximately 700 feet with a decorative screen reaching a maximum height of approximately
10 745 feet and a spire reaching a maximum height of approximately 800 feet, containing
11 approximately 404,000 square feet of office uses, approximately 74 dwelling units,
12 approximately 2,000 square feet of retail space, and approximately 68,000 square feet of
13 subterranean area with off-street parking, loading, and mechanical space. The Project also
14 includes a bridge to the future elevated City Park situated on top of the Transbay Transit
15 Center. The Approvals are on file with the Planning Department, located at 1650 Mission
16 Street, Suite 400, San Francisco, CA 94103.

17 (e) On June 5, 2014, Developer filed a request with the Office of Community
18 Investment and Infrastructure (“OCII” or “Successor Agency”) for a Plan Variation pursuant to
19 Section 3.5.5___ of the Transbay Project Area Redevelopment Plan (the “Plan”) for a
20 variation from the on-site affordable housing requirements of Section 4.9.3 of the Plan (the
21 “Plan’s Inclusionary Housing Obligation”) as well as a request to the City’s Planning
22 Department for a waiver from Section 249.28(b)(6) of the Planning Code (the “Requested
23 Variations from On-Site Affordable Housing”).

24 (f) The Developer has submitted the Requested Variations from On-Site Affordable
25 Housing for variations from the Plan and a waiver from the City’s Planning Code in exchange

1 for the payment of \$13.85 million dollars to the City for use by OCII for the provision of
2 affordable housing within the Project Area, all as further described in the proposed
3 development agreement, a copy of which is on file with the Clerk of the Board in File No.
4 _____ (the "Development Agreement").

5 (g) The City has determined that as a result of the development of the Project Site
6 in accordance with the Development Agreement, clear benefits to the public will accrue that
7 could not be obtained through application of existing City ordinances, regulations, and
8 policies, as more particularly described in the Development Agreement. The Development
9 Agreement will provide OCII the ability to subsidize up to approximately 69 affordable housing
10 units, with a net gain of 58 affordable units at the deepest affordability levels.

11 (h) On _____, 2014, at a duly noticed public hearing, the Commission
12 on Community Investment and Infrastructure ("CCII") (as the Commission to the OCII), in
13 Resolution No. _____, conditionally approved, by Resolution No. _____, the
14 Developer's requested Plan Variation and the change to the Plan's Inclusionary Housing
15 Obligation because of the infeasibility of maintaining affordable units in the Project and the
16 payment of \$13.85 million for affordable housing. Said Resolution is on file with the Clerk of
17 the Board in File No. _____ and is incorporated herein by reference. Under Section
18 6 (a) of Ordinance No. 215-12, the Board of Supervisors delegated certain authority under
19 Redevelopment Dissolution Law, Cal. Health and Safety Code Section 34170 et seq., to the
20 CCII, but required that it not materially change its affordable housing obligations without
21 obtaining the approval of the Board of Supervisors. Given that the CCII's conditional
22 approval of the Plan Variation potentially removes the on-site affordable housing requirements
23 of Section 4.9.3 of the Plan from the Project, the Board of Supervisors, acting as the
24 legislative body for OCII, must approve the change to the Plan's Inclusionary Housing
25 Obligation.

1 (i) The Board of Supervisors, acting in its capacity as the legislative body for the
2 CCII has reviewed the basis for CCII's conditional approval of the Plan Variation and has
3 determined that the changes to the Plan's Inclusionary Housing Obligation will comply with,
4 and facilitate the fulfillment of, OCII's affordable housing obligations by significantly increasing
5 the amount of affordable housing that would otherwise be available at the Project under the
6 Plan's Inclusionary Housing Obligation. Accordingly, on _____, 2014, at a
7 duly noticed public hearing, the Board of Supervisors, acting as the legislative body for the
8 CCII approved, by Resolution No. _____, the change to the Plan's Inclusionary Housing
9 Obligation. Said Resolution is on file with the Clerk of the Board in File No. _____
10 and is incorporated herein by reference.

11 (j) On _____, 2014, at a duly noticed public hearing, the Planning
12 Commission approved Motion No. _____ (the "Section 309 approval") to revise its prior
13 decision under Planning Code Section 309 to allow the Developer to make an in-lieu payment
14 for affordable housing instead of constructing affordable housing on-site. At that same
15 hearing, the Planning Commission adopted Motion/Resolution No. _____ to adopt
16 findings of consistency with the General Plan and priority policies of Planning Code Section
17 101.1 in regard to the Development Agreement (the "Development Agreement
18 recommendation"). This action also included findings under Section 302 of the Planning Code
19 that the Development Agreement legislation, which includes a waiver of Planning Code
20 Section 249.28(b)(6) (Transbay C-3 Special Use District on-site affordable housing
21 requirement) is required to serve the public necessity, convenience, and general welfare. The
22 action also recommended that the Board of Supervisors approve the Development
23 Agreement. The Planning Commission's Section 309 approval and Development Agreement
24 recommendation are on file with the Clerk of the Board in File No. _____ and
25 incorporated herein by reference.

1 Section 2. California Environmental Quality Act.

2 The Board’s approval of the Development Agreement does not compel any direct or
3 indirect physical changes in the Project that the Planning Commission previously approved.
4 Rather, approval of the Development Agreement merely authorizes the Commission on
5 Community Investment and Infrastructure, Planning Commission and Board of Supervisors to
6 remove the requirement for inclusionary housing from the Project and to accept affordable
7 housing funding. Thus, approval of the Development Agreement and authorizing the future
8 acceptance of \$13.85 million for the Transbay Affordable Housing Obligation does not
9 constitute a project under the California Environmental Quality Act (“CEQA”), CEQA
10 Guidelines (California Code of Regulations Title 14) Section 15378 (b)(4) because it merely
11 creates a government funding mechanism that does not involve any commitment to a specific
12 project.

13
14 Section 3. General Plan and Planning Code Section 101.1(b) Findings.

15 (a) The Board of Supervisors finds that the Development Agreement, including the
16 waiver of Planning Code Section 249.28(b)(6), will serve the public necessity, convenience
17 and general welfare for the reasons set forth in Planning Commission Resolution No. _____
18 .

19 (b) The Board of Supervisors finds that the Development Agreement is, on balance,
20 in conformity with the General Plan and the eight priority policies of Planning Code Section
21 101.1 for the reasons set forth in Planning Commission Resolution No. _____. The Board
22 hereby adopts the findings set forth in Planning Commission Resolution No. _____ as its
23 own.

1 Section 4. Development Agreement.

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

5 (b) The Board of Supervisors approves and authorizes the execution, delivery and
6 performance by the City of the Development Agreement, subject to the Developer's payment
7 of all City costs with respect to the Development Agreement. Upon receipt of the payment of
8 City's costs billed to Developer, the Director of Planning is authorized to execute and deliver
9 the Development Agreement, and (ii) the Director of Planning and other applicable City
10 officials are authorized to take all actions reasonably necessary or prudent to perform the
11 City's obligations under the Development Agreement in accordance with the terms of the
12 Development Agreement and Chapter 56, as applicable. The Director of Planning, at his or
13 her discretion and in consultation with the City Attorney, is authorized to enter into any
14 additions, amendments or other modifications to the Development Agreement that the
15 Director of Planning determines are in the best interests of the City and that do not materially
16 increase the obligations or liabilities of the City or decrease the benefits to the City under the
17 Development Agreement, subject to the approval of any affected City agency as more
18 particularly described in the Development Agreement.

19
20 Section 5. Administrative Code Chapter 56 and Planning Code Section 249.28
21 Waivers; Ratification.

22 (a) In connection with the Development Agreement, the Board of Supervisors finds
23 that the requirements of Administrative Code Chapter 56 have been substantially complied
24 with, and hereby waives any procedural or other requirements of Chapter 56 if and to the
25 extent that they have not been complied with.

1 (b) In consideration of the terms of the Development Agreement and the grant of a
2 variation from the on-site affordable housing requirements of Section 4.9.3 of the Plan, the
3 Board waives the requirements of Planning Code Section 249.28(b)(6) regarding the
4 requirement for on-site affordable housing in the Transbay Redevelopment Plan Zone 2.

5 (c) All actions taken by City officials in preparing and submitting the Development
6 Agreement to the Board of Supervisors for review and consideration are hereby ratified and
7 confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken
8 by City officials consistent with this Ordinance.

9
10 Section 6. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisor’s overrides the Mayor’s veto of the ordinance.

14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By: _____
18 Heidi J. Gewertz
19 Deputy City Attorney

20 n:\spec\as2014\1500113\00960221.doc

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo, Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND 181 FREMONT STREET LLC,
RELATIVE TO THE DEVELOPMENT KNOWN AS
181 FREMONT DEVELOPMENT PROJECT**

DRAFT

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- B CCII Resolution
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- D Conditions of Approval – Section 309 Approval

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND 181 FREMONT STREET LLC, A DELAWARE LIMITED LIABILITY
COMPANY, RELATIVE TO THE DEVELOPMENT KNOWN AS
THE 181 FREMONT DEVELOPMENT PROJECT**

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) dated for reference purposes only as of this ____ day of _____, 2014, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the “**City**”), acting by and through its Planning Department, and 181 Fremont Street LLC, a Delaware limited liability company, its permitted successors and assigns (the “**Developer**”), pursuant to the authority of Section 65864 *et seq.* of the California Government Code.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer is the owner of that certain property known as 181 Fremont Street (the “**Project Site**”) which is an irregularly shaped property formed by two parcels measuring a total of 15,313 square feet, located on the east side of Fremont Street, between Mission and Howard Streets. The Project Site is within the C-3-0 (SD) District, the 700-S-2 Height and Bulk District, the Transit Center C-3-0 (SD) Commercial Special Use District, the Transbay C-3 Special Use District, the Transit Center District Plan area (the “**TCDP**”) and in Zone 2 of the Transbay Redevelopment Project Area (the “**Project Area**”).

B. The Redevelopment Plan for the Project Area (“**Plan**”) establishes land use controls and imposes other requirements on development within the Project Area. Notably, the Plan incorporates, in section 4.9.2, state law requirements that 25 percent of the residential units developed in the Project Area “shall be available to” low income households, and an additional 10 percent “shall be available to” moderate income households. Cal. Public Resources Code § 5027.1 (the “**Transbay Affordable Housing Obligation**”). To fulfill the Transbay Affordable Housing Obligation, both the Plan and the San Francisco Planning Code (“**Planning Code**”) require that all housing developments within the Project Area contain a minimum of 15 percent on-site affordable housing. Redevelopment Plan, § 4.9.3; Planning Code, § 249.28 (b) (6) (the “**On-Site Requirement**”). Neither the Redevelopment Plan nor the Planning Code authorize off-site affordable housing construction or an “in-lieu” fee payment as an alternative to the On-Site Requirement in the Project Area.

C. The Plan provides that the land use controls for Zone 2 of the Project Area shall be the Planning Code, as amended from time to time, so long as any amendments to the Planning Code are consistent with the Plan. Through a Delegation Agreement, the former Redevelopment Agency of the City and County of San Francisco (the “**Former Agency**”) delegated jurisdiction for permitting of projects in Zone 2 (including the Project Site) to the

Planning Department, with the Planning Code governing development, except for certain projects that require Redevelopment Agency action.

D. However, pursuant to Section 3.5.5 of the **Plan**, the Commission on Community Investment and Infrastructure (“**CCII**”) (as the Commission to the Successor Agency to the Former Agency, a public body organized and existing under the laws of the State of California, also known as the Office of Community Investment and Infrastructure (“**Successor Agency**” or “**OCII**”)), has the authority to grant a variation from the Plan and the associated Transbay Development Controls and Design Guidelines, or the Planning Code where the enforcement of these controls would otherwise result in practical difficulties for development creating undue hardship for the property owner and constitute an unreasonable limitation beyond the intent of the Plan, the Transbay Design for Development or the Transbay Development Controls and Design Guidelines.

E. Where a variation or other action of the Successor Agency materially changes the Successor Agency’s obligations to provide affordable housing, the Board of Supervisors (“**Board**”) must approve that action. San Francisco Ordinance No. 215-12, § 6 (a) (Oct. 4, 2012).

F. On December 6, 2012, the Planning Commission approved Motions 18763, 18764, 18765 and the Zoning Administrator issued a variance decision (later revised on March 15, 2013) (collectively, the “**Approvals**”). The Approvals approved a project on the Project Site (the “**Project**”) that would demolish an existing three-story building and an existing two-story building, and construct a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space. The Project also includes a bridge to the future elevated City Park situated on top of the Transbay Transit Center.

G. As part of the Project approval on December 6, 2012, the Planning Commission found that the Project was consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the Planning Principles set forth in Section 101.1 of the Planning Code (together, the “**General Plan Consistency Findings**”).

H. As part of the Project approval on December 6, 2012, Conditions of Approval were placed on the Project including the On-Site Requirement that pursuant to Planning Code Sections 249.28(b)(6) and 415.6 and Plan Section 4.9.3, the Project is required to provide 15% of the proposed dwelling units as affordable to qualifying households.

I. Developer has commenced construction of the Project in accordance with the provisions of the Plan, the Planning Code and the Approvals applicable thereto, including the On-Site Requirement (the “**Existing Requirements**”).

J. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 et seq. (the “**Development**”).

Agreement Statute”), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property related to the development of such property. Pursuant to the Development Agreement Statute, the City adopted Chapter 56 (“**Chapter 56**”) of the San Francisco Administrative Code establishing procedures and requirements for entering into a development agreement. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

K. Approval of this Agreement does not compel any changes in the Project that the Planning Commission previously approved. Rather, approval of this Agreement merely authorizes the Commission on Community Investment and Infrastructure, Planning Commission and Board of Supervisors to remove the On-Site Requirement from the Project. Thus, approval of this Agreement and authorizing the future acceptance of \$13.85 million for the Transbay Affordable Housing Obligation does not constitute a project under the California Environmental Quality Act (“CEQA”), CEQA Guidelines Section 15378 (b)(4) because it merely creates a government funding mechanism that does not involve any commitment to a specific project..

L. On June 5, 2014, OCII received a request from the Developer for a variation from the On-Site Requirement. The Developer proposed removing the affordability restrictions from the 11 affordable units on-site and converting them to market rate units. Letter, J. Paul, 181 Fremont Street, LLC, to M. Grisso, OCII (June 5, 2014) (“Variation Request”), attached as Exhibit A.

M. The Developer’s Variation Request explained that the Project was unique in that it is the only approved or proposed mixed-use office and housing development within the Project Area, it has the smallest number of residential units of any high rise development in the Project Area, its residential units are located on the upper 15 floors of a 52 story tower, and its HOA dues will be in excess of \$2000 per month. The Variation Request concludes that the application of the On-Site Requirement to the Project will create practical difficulties for maintaining the affordability of the units because homeowners association (“HOA”) fees, which are already high in such developments, will likely increase such that the original residents would not be able to afford the payments and thus an undue hardship can be created for both the Project Sponsor and the owners of the inclusionary housing units.

N. The Variation Request proposes that the Successor Agency grant a variation on the condition that the Developer contribute \$13.85 million toward the development of affordable housing in the Project Area (the “Affordable Housing Fee”). Payment of this fee would ensure that the conversion of the 11 inclusionary units to market rate units does not adversely affect the Successor Agency’s compliance with the Transbay Affordable Housing Obligation

O. On _____, 2014, CCII, pursuant to Resolution No. _____, approved a variation pursuant to Section 3.5.5 of the Plan, allowing the Project to pay the Affordable Housing Fee in lieu of satisfying the On-Site Requirement (the “**OCII Variation**”), attached as Exhibit B.

P. The Board, in its capacity as the governing body of OCII, has reviewed the OCII Variation under the authority that it reserved to itself in Ordinance No. 215-12 to approve

material changes to the Successor Agency's affordable housing program and has approved, by Board of Supervisors Resolution No. _____, the actions of OCII in granting the OCII Variation.

Q. The City has determined that as a result of the development of the Project in accordance with this Agreement additional, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies because the payment of the Affordable Housing Fee and use thereof in accordance with this Agreement rather than compliance with the On-Site Requirements will result in more affordable housing units within the Project Area at deeper affordability levels while maintaining land values necessary for the financing assumptions of the Transbay Joint Powers Authority (the "TJPA"). The basis for this determination is the following:

- To achieve the overall goal of at least 35% of all new housing development units within the Project Area, there must be both inclusionary units and stand-alone affordable housing developments in the Project Area.
- The Plan's 2005 report set a goal of 388 inclusionary units and approximately 795 stand-alone affordable housing units but at the time of the Plan's adoption, mixed-use, high-rise developments were not contemplated within the Project Area.
- The Project Area covers 40 acres and includes blocks programmed for: (i) stand-alone affordable housing developments; (ii) all or a majority of office space; and (iii) a combination of market and affordable housing.
- The TJPA established specific land value goals for each block in its funding plan for the Transbay Transit Center (the "TTC") and there are a limited number of publicly-owned blocks remaining upon which affordable housing may be built to meet the Plan's 35% affordability requirement.
- Adding affordable housing to blocks that must be sold to finance the TTC is not feasible without significantly reducing the land value and thereby creating shortfalls in the TTC funding.
- Due to zoning restrictions, the addition of affordable units to a block will result in a decrease of the number of market-rate units that may be built on that block. However, each block contains both market-rate and stand-alone affordable parcels and it is possible to add stand-alone affordable housing units to one or more of the stand-alone affordable parcels on a particular block while reducing the number of inclusionary units on the market rate parcel. This would result in the increase of the total amount of affordable housing, but would require additional public subsidy to fund the bonus stand-alone units.
- The Affordable Housing Fee is estimated to be capable of subsidizing the equivalent of approximately 69 stand-alone affordable housing units on publicly owned parcels in the Project Area in contrast to the up to 11 units that would be produced under the On-Site Requirement and accordingly the Affordable Housing Fee will allow OCII to better fulfill the requirements of the Transbay Affordable Housing Obligation (as

defined in Recital B above). In addition, the 69 stand-alone affordable housing units would provide deeper affordability levels (50% of AMI) compared to the levels (100% of AMI) that would be achieved through the application of the On-Site Requirement for up to 11 units.

- In addition, due to the unique nature of the Property, any affordable units created under the On-Site Requirement would have challenges associated with maintaining their affordability in so much as the residential units within the Project are for-sale and include high homeowners fees, in excess of \$2,000 per month. Although the initial price of the affordable for-sale units would be adjusted to reflect the cost of these fees, after completion of the Project such fees may rise from time-to-time in a manner that might cause the once affordable units to become unaffordable.
- The City and OCII determined the amount of the Affordable Housing Fee following review of an analysis and determination by The Concord Group (“TCG”), a real estate economics firm (see report, Exhibit C). TCG calculated the net additional revenue that would accrue to the Developer if the 11 on-site affordable units were converted to market-rate units.

R. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with CEQA, the CEQA Guidelines, Chapters 31 and 56 of the San Francisco Administrative Code, the Development Agreement Statute, the Enacting Ordinance and all other applicable laws as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental laws, including CEQA, before taking any discretionary action regarding the Project, or Developer's obligation to comply with all applicable laws in connection with the development of the Project.

S. On _____, the Planning Commission held a public hearing and approved Motion ____, conditionally amending the Conditions of Approval applicable to the Project related to the On-Site Requirement, which Conditions of Approval are attached to this Agreement as Exhibit D.

T. On _____, the Planning Commission held a public hearing on this Agreement, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission made General Plan Consistency Findings with respect to this Agreement and recommended adoption of an ordinance approving this Agreement.

U. On _____, the Board, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board approved the actions of OCII in granting the OCII Variation pursuant to Resolution No. _____ and adopted Ordinance No. _____, approving this Agreement, incorporating by reference the General Plan Consistency Findings, and authorizing the Planning Director to execute this Agreement on behalf of the City (the “**Enacting Ordinance**”). The Enacting Ordinance took effect on _____, 2014.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. GENERAL PROVISIONS

1.1 Incorporation of Preamble, Recitals and Exhibits. The preamble paragraph, Recitals, and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set **forth in full**.

1.2 Definitions. In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.2.1 “**Administrative Code**” shall mean the San Francisco Administrative Code.

1.2.2 “Affordable Housing Fee” shall mean the payment, pursuant to Section 2.1 of this Agreement, from the Developer to the City in the amount of thirteen million eight hundred fifty thousand dollars (\$13,850,000) for fulfillment of the Transbay Affordable Housing Obligation.

1.2.3 “**Board of Supervisors**” or “**Board**” shall mean the Board of Supervisors of the City and County of San Francisco.

1.2.4 “**CCII**” shall mean the Commission on Community Investment and Infrastructure.

1.2.5 “**City**” shall have the meaning set forth in the preamble paragraph. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors. The City’s approval of this Agreement will be evidenced by the signatures of the Planning Director and the Clerk of the Board of Supervisors [need to confirm if the Clerk needs to sign].

1.2.6 “**City Agency**” or “**City Agencies**” shall mean, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and that have subdivision or other permit, entitlement or approval authority or jurisdiction over the Project or the Project Site, together with any successor City agency, department, board, or commission.

1.2.7 “**City Attorney’s Office**” shall mean the Office of the City Attorney of the City and County of San Francisco.

1.2.8 “**Director**” or “**Planning Director**” shall mean the Director of Planning of the City and County of San Francisco.

1.2.9 “**Indemnify**” shall mean to indemnify, defend, reimburse, and hold harmless.

1.2.10 “**OCII**” shall mean Office of Community Investment and Infrastructure.

1.2.11 “**Official Records**” shall mean the official real estate records of the City and County of San Francisco, as maintained by the City’s Recorder’s Office.

1.2.12 “**On-Site Requirement**” is defined in Recital B.

1.2.13 “**Party**” means, individually or collectively as the context requires, the City and Developer (and, as Developer, any Transferee that is made a Party to this Agreement under the terms of an Assignment and Assumption Agreement). “**Parties**” shall have a correlative meaning.

1.2.14 “**Plan**” shall mean the Transbay Project Area Redevelopment Plan, Approved by Ordinance No. 124-05, Adopted by the Board of Supervisors on June 21, 2005 and Ordinance No. 99-06 adopted by the Board of Supervisors May 9, 2006, as amended from time to time.

1.2.15 “**Planning Code**” shall mean the San Francisco Planning Code.

1.2.16 “**Planning Commission**” or “**Commission**” shall mean the Planning Commission of the City and County of San Francisco.

1.2.17 “**Planning Department**” shall mean the Planning Department of the City and County of San Francisco.

1.3 Effective Date. This Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties and (ii) the effective date of the Enacting Ordinance (“**Effective Date**”). The Effective Date is _____.

1.4 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for the earlier of (i) Project completion (as evidenced by issuance of the Temporary Certificate of Occupancy) or (ii) ten (10) years after the effective date., unless extended or earlier terminated as provided herein (“**Term**”). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2. PROJECT CONTROLS AND VESTING

2.1 Project Controls; Affordable Housing Fee. During the term of this Agreement, Developer shall have the vested right to develop the Project Site in accordance with the Existing Requirements, provided (i) within 30 days following the Effective Date, Developer shall pay to the City the Affordable Housing Fee, and (ii) upon the City’s receipt of the Affordable Housing Fee, the On-Site Requirement shall not apply to the Project. Upon receipt, the City shall transfer the Affordable Housing Fee to OCII to be used by OCII to fulfill the Transbay Affordable

Housing Obligation. The City agrees to work collaboratively with OCII to seek to maximize the number of affordable units that can be built with the Affordable Housing Fee. OCII shall have the right, in its sole discretion, to determine how and where to apply the Affordable Housing Fee, with the only restriction being that OCII use the Affordable Housing Fee for predevelopment and development expenses and administrative costs associated with the acquisition, construction or rehabilitation of affordable housing in the Project Area. Developer shall have no right to challenge the appropriateness or the amount of any expenditure, so long as it is used for affordable housing in the Project Area.

2.2 Vested Rights. The City, by entering into this Agreement, is limiting its future discretion with respect to Project approvals that are consistent with this Agreement during the Term. Consequently, the City shall not use its discretionary authority in considering any application to change the policy decisions reflected by the Agreement or otherwise to prevent or to delay development of the Project as set forth in the Agreement. Instead, implementing approvals that substantially conform to or implement the Agreement shall be issued by the City so long as they substantially comply with and conform to this Agreement. The City shall not use its discretionary authority to change the policy decisions reflected by this Agreement or otherwise to prevent or to delay development of the Project as contemplated in this Agreement. The City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement.

2.3 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law. If any such changes in Federal or State Laws would materially and adversely affect the construction, development, use, operation or occupancy of the Project such that the Development becomes economically infeasible, then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties.

2.4 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

2.5 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment.

3. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the legal owner of the Project Site, and that all other persons with an ownership or security interest in the Project Site have consented to this Agreement. Developer is a Delaware limited liability company. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer has made all required state filings required to conduct business in the State of California and is in good standing in the State of California.

3.2 No Conflict with Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

3.3 No Inability to Perform; Valid Execution. Developer warrants and represents that it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

3.4 Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

3.5 Notification of Limitations on Contributions. Through execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for a contract as defined under Section 1.126 of the Campaign and Governmental Conduct Code until six (6) months after the date the contract is approved by the City elective officer or the board on which that City elective officer

serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

3.6 Other Documents. No document furnished or to be furnished by Developer to the City in connection with this Agreement contains or will contain to Developer's knowledge any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such statement shall have been made.

3.7 No Suspension or Debarment. Neither Developer, nor any of its officers, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency.

3.8 No Bankruptcy. Developer represents and warrants to City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

3.9 Taxes. Without waiving any of its rights to seek administrative or judicial relief from such charges and levies, Developer shall pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its property before the date on which penalties attach thereto, and all lawful claims which, if unpaid, would become a lien upon the Project Site.

3.10 Notification. Developer shall promptly notify City in writing of the occurrence of any event which might materially and adversely affect Developer or Developer's business, or that would make any of the representations and warranties herein untrue, or that would, with the giving of notice or passage of time over the Term, constitute a default under this Agreement.

3.11 Nexus/Reasonable Relationship Waiver. Developer consents to, and waives any rights it may have now or in the future, to challenge with respect to the Project, the legal validity of, the conditions, requirements, policies, or programs required by this Agreement, including, without limitation, any claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

3.12 Indemnification of City. Developer shall Indemnify the City and OCII (each an "Indemnified Party") and the Indemnified Party's officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("Losses") arising or resulting directly or indirectly from this Agreement and Developer's performance (or nonperformance) of this Agreement, regardless of the negligence of and

regardless of whether liability without fault is imposed or sought to be imposed an Indemnified Party, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or willful misconduct of an Indemnified Party. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the Indemnified Party's cost of investigating any claims against the Indemnified Party. All Indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement.

3.13 Payment of Fees and Costs.

3.13.1. Developer shall pay to the City all City Costs during the Term within thirty (30) days following receipt of a written invoice from the City. Each City Agency shall submit to the Planning Department or another City agency as designated by the Planning Department monthly or quarterly invoices for all City Costs incurred by the City Agency for reimbursement under this Agreement, and the Planning Department or its designee shall gather all such invoices so as to submit one City bill to Developer each month or quarter. To the extent that a City Agency fails to submit such invoices, then the Planning Department or its designee shall request and gather such billing information, and any City Cost that is not invoiced to Developer within twelve (12) months from the date the City Cost was incurred shall not be recoverable.

3.13.2. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer are past due. If such failure to make payment continues for a period of more than sixty (60) days following notice, it shall be a Default for which the City shall have all rights and remedies as set forth in Section 7.4.

3.14 Mello-Roos Community Facilities District. The Project shall be subject to the provisions of the proposed City and County of San Francisco Transbay Center District Plan [Mello-Roos] Community Facilities District No. 2014-1 (Transbay Transit Center) (“**CFD**”), once established, to help pay the costs of constructing the new Transbay Transit Center, the Downtown Rail Extension (“**DTX**”), and other improvements in the Transit Center District Plan area. The special tax rate has not been established, but will be equal to or less than those set forth in the CFD Rate and Method of Apportionment (“**RMA**”) attached hereto as Exhibit _____.

i. If the Project is not subject to a CFD that will help pay the costs of constructing the new Transbay Transit Center, the DTX, and other improvements in the Transit Center District Plan area on the date that a Final C of O is issued to the Developer, then the Developer will be required to pay to the City for transmittal to the TJPA, and retention by the City as applicable, of the estimated CFD taxes amount that would otherwise be due to the San Francisco Office of the Assessor-Recorder (“**Assessor-Recorder**”) if the CFD had been established in accordance with the rates established in the RMA.

ii. The “amount that would otherwise be due” under 3.14(i) above shall be based on the RMA attached hereto as Exhibit ____, calculated as if the Project were subject to the RMA from the date of issuance of the Final C of O until the Project is subject to the CFD.

iii. If the City proposes a CFD covering the Site, Developer agrees to cast its vote in favor of the CFD, provided that the tax rates are not greater than the Base Special Tax rates in the RMA attached as Exhibit to this Agreement.

4. MUTUAL OBLIGATIONS

4.1 Notice of Completion or Revocation. Upon the Parties' completion of performance or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Official Records.

4.2 Estoppel Certificate. Developer may, at any time, and from time to time, deliver written notice to the Planning Director requesting that the Planning Director certify in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; (iii) Developer is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9.2 below. The Planning Director shall execute and return such certificate within forty-five (45) days following receipt of the request. Each Party acknowledges that any mortgagee with a mortgage on all or part of the Project Site, acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

4.3 Cooperation in the Event of Third-Party Challenge.

4.3.1 In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City.

4.3.2 Developer shall assist and cooperate with the City at its own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office and any consultants; *provided, however*) Developer shall have the right to receive monthly invoices for all such costs. Developer shall Indemnify the City from any other liability incurred by the City, its officers, and its employees as the result of any Third-Party Challenge, including any award to opposing counsel of attorneys' fees or costs, except where such award is the result of the willful misconduct of the City or its officers or employees. This section shall survive any judgment invalidating all or any part of this Agreement.

4.3.3 Affordable Housing Fee Challenge. The Parties agree that if a Third_Party Challenge is initiated regarding the validity or enforceability of this Agreement or, specifically of the Affordable Housing Fee, Developer shall not sell [or lease?] the residential units designated for and required to complete the On-Site Requirements until the validity and enforceability of this Agreement, including payment of the Affordable Housing Fee, has been finally determined and upheld. If this Agreement or the Affordable Housing Fee is not upheld (on any final appeal), then Developer will satisfy the On-Site Requirements with the designated residential units.

4.4 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

4.5 Agreement to Cooperate; Other Necessary Acts. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Agreement are fulfilled during the Term. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, in accordance with the terms of this Agreement (and subject to all applicable laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

5. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

5.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute, at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year; *provided, however*, that such review shall be deferred to the following January if not commenced on or before May 31st.

5.2 Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section.

5.2.1 Required Information from Developer. Upon request by the Planning Director but not more than sixty (60) days and not less than forty-five (45) days before the Annual Review Date, Developer shall provide a letter to the Planning Director confirming Developer's compliance with this Agreement.

5.2.2 City Compliance Review. If the Planning Director finds Developer is not in compliance with this Agreement, the Planning Director shall issue a Certificate of Non-Compliance. The City's failure to timely complete the annual review is not deemed to be a waiver of the right to do so at a later date within a given year, so long as the annual review is commenced on or before May 31st, as contemplated in Section 5.1.

6. AMENDMENT; TERMINATION; EXTENSION OF TERM

6.1 Amendment or Termination. Except as provided in Section XX (Changes in State and Federal Rules and Regulations) and Section XXX (Remedies), this Agreement may only be amended or terminated with the mutual written consent of the Parties. Except as provided in this Agreement to the contrary, the amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 56.

6.2 Extension Due to Legal Action, Referendum, or Excusable Delay.

6.2.1 If any litigation is filed challenging this Agreement or the validity of this Agreement or any of its provisions, then the Term shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension.

6.2.2 In the event of changes in state or federal laws or regulations, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, war, acts of terrorism, fire, acts of God, litigation, lack of availability of commercially-reasonable project financing (as a general matter and not specifically tied to Developer), or other circumstances beyond the control of Developer and not proximately caused by the acts or omissions of Developer that substantially interfere with carrying out the obligations under this Agreement (“**Excusable Delay**”), the Parties agree to extend the time periods for performance, as such time periods have been agreed to by Developer, of Developer’s obligations impacted by the Excusable Delay. In the event that an Excusable Delay occurs, Developer shall notify the City in writing of such occurrence and the manner in which such occurrence substantially interferes with the ability of Developer to perform under this Agreement. In the event of the occurrence of any such Excusable Delay, the time or times for performance of the obligations of Developer, will be extended for the period of the Excusable Delay if Developer cannot, through commercially reasonable and diligent efforts, make up for the Excusable Delay within the time period remaining before the applicable completion date; *provided, however*, within thirty (30) days after the beginning of any such Excusable Delay, Developer shall have first notified City of the cause or causes of such Excusable Delay and claimed an extension for the reasonably estimated period of the Excusable Delay. In the event that Developer stops any work as a result of an Excusable Delay, Developer must take commercially reasonable measures to ensure that the affected real property is returned to a safe condition and remains in a safe condition for the duration of the Excusable Delay.

6.2.3 The foregoing Section XXXX notwithstanding, Developer may not seek to delay the payment of the Affordable Housing Fee as a result of an Excusable Delay related to the lack of availability of commercially reasonable project financing.

7. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION

7.1 Enforcement. The only Parties to this Agreement are the City and Developer. This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

7.2 Default. For purposes of this Agreement, the following shall constitute an event of default (an “**Event of Default**”) under this Agreement: (i) except as otherwise specified in this Agreement, the failure to make any payment within ninety (90) calendar days of when due; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant hereunder, including complying with all terms of the Conditions of Approval, attached hereto as Exhibit D, and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance (a “**Notice of Default**”); *provided, however*, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter.

7.3 Notice of Default. Prior to the initiation of any action for relief specified in Section XX below, the Party claiming default shall deliver to the other Party a Notice of Default. The Notice of Default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the Notice of Default, then that Party, within twenty-one (21) calendar days of receipt of the Notice of Default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that a default has not occurred. The Parties shall meet to discuss resolution of the alleged default within thirty (30) calendar days of the delivery of the notice of non-default. If, after good faith negotiation, the Parties fail to resolve the alleged default within thirty (30) calendar days, then the Party alleging a default may (i) institute legal proceedings pursuant to Section XX to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section XX. The Parties may mutually agree in writing to extend the time periods set forth in this Section.

7.4 Remedies.

7.4.1 Specific Performance; Termination. In the event of an Event of Default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity (subject to the limitation on damages set forth in Section XX below). In the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party setting forth the basis for the termination. The Party alleging a material breach shall provide a notice of termination to the breaching Party, which notice of termination shall state the material breach. The Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. The Party receiving the notice of termination may take legal action available at law or in equity if it believes the other Party’s decision to terminate was not legally supportable.

7.4.2 Actual Damages. Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) the City shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for (a) Developer's failure to pay sums to the City as and when due under this Agreement, but subject to any express conditions for such payment set forth in this Agreement, and (b) Developer's failure to make payment due under any Indemnity in this Agreement, and (2) either Party shall have the right to recover attorneys' fees and costs as set forth in Section XX, when awarded by an arbitrator or a court with jurisdiction. For purposes of the foregoing, "actual damages" shall mean the actual amount of the sum due and owing under this Agreement, with interest as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

7.5 Dispute Resolution. The Parties recognize that disputes may arise from time to time regarding application to the Project. Accordingly, in addition and not by way of limitation to all other remedies available to the Parties under the terms of this Agreement, including legal action, the Parties agree to follow the dispute resolution procedure in Section XX that is designed to expedite the resolution of such disputes. If, from time to time, a dispute arises between the Parties relating to application to the Project the dispute shall initially be presented by Planning Department staff to the Planning Director, for resolution. If the Planning Director decides the dispute to Developer's satisfaction, such decision shall be deemed to have resolved the matter. Nothing in this section shall limit the rights of the Parties to seek judicial relief in the event that they cannot resolve disputes through the above process.

7.6 Dispute Resolution Related to Changes in State and Federal Rules and Regulations. The Parties agree to follow the dispute resolution procedure in this Section XX for disputes regarding the effect of changes to State and federal rules and regulations to the Project pursuant to Section XX.

7.6.1 Good Faith Meet and Confer Requirement. The Parties shall make a good faith effort to resolve the dispute before non-binding arbitration. Within five (5) business days after a request to confer regarding an identified matter, representatives of the Parties who are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall immediately be submitted to the arbitration process set forth in Section XX.

7.6.2 Non-Binding Arbitration. The Parties shall mutually agree on the selection of an arbiter at JAMS in San Francisco or other mutually agreed to Arbiter to serve for the purposes of this dispute. The arbiter appointed must meet the Arbiters' Qualifications. The "**Arbiters' Qualifications**" shall be defined as at least ten (10) years of experience in a real property professional capacity, such as a real estate appraiser, broker, real estate economist, or attorney, in the Bay Area. The disputing Party(ies) shall, within ten (10) business days after submittal of the dispute to non-binding arbitration, submit a brief with

all supporting evidence to the arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within ten (10) business days after distribution of the initial brief. The arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within five (5) business days after the submittal of the last brief, unless the arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the arbiter shall be submitted to the arbiter (with copies to all Parties) within five (5) business days after the arbiter's request, and thereafter the arbiter shall hold a telephonic hearing and issue a decision promptly but in any event not sooner than two (2) business days after submission of such additional briefs, and no later than thirty-two (32) business days after initiation of the non-binding arbitration. Each Party will give due consideration to the arbiter's decision before pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

7.7 Attorneys' Fees. Should legal action be brought by either Party against the other for an Event of Default under this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "reasonable attorneys' fees and costs" shall mean the fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

7.8 No Waiver. Failure or delay in giving a Notice of Default shall not constitute a waiver of such Event of Default, nor shall it change the time of such Event of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies, nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

7.9 Future Changes to Existing Standards. Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is terminated by mutual agreement of the Parties or terminated for default as set forth in Section XX, either Party may enforce this Agreement notwithstanding any change in any applicable general or specific plan, zoning,

subdivision, or building regulation adopted by the City or the voters by initiative or referendum (excluding any initiative or referendum that successfully defeats the enforceability or effectiveness of this Agreement itself).

7.10 Joint and Several Liability. If Developer consists of more than one person or entity with respect to any real property within the Project Site or any obligation under this Agreement, then the obligations of each such person and/or entity shall be joint and several.

8. MISCELLANEOUS PROVISIONS

8.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, constitute the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

8.2 Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to Article XX above, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code section 1468.

8.3 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and such City and County shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

8.4 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement or to this Agreement shall be deemed to refer to the Agreement as amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.

8.5 Project Is a Private Undertaking; No Joint Venture or Partnership.

8.5.1 The Agreement is to be undertaken by Developer the Project is a private development and no portion shall be deemed a public work. The City has no interest in, responsibility for, or duty to third persons concerning the Project. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

8.5.2 Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

8.6 Recordation. Pursuant to Section 65868.5 of the Development Agreement Statute, the clerk of the Board shall cause a copy of this Agreement or any amendment thereto to be recorded in the Official Records within ten (10) business days after the Effective Date of this Agreement or any amendment thereto, as applicable, with costs to be borne by Developer.

8.7 Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

8.8 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

8.9 Time of the Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties under this Agreement.

8.10 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon written notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

To Developer:

XXXXXX
XXXXXX

with a copy to:

Rachel B. Horsch
Pillsbury Winthrop Shaw Pittman LLP
4 Embarcadero Center, 22nd Floor
San Francisco, California, 94111

8.11 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

8.12 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or if any such term, provision, covenant, or condition does not become effective until the approval of any Non-City Responsible Agency, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. Notwithstanding the foregoing, the Developer and the City agree that the Agreement will terminate and be on no force or effect if Section 2.1 herein is found invalid, void or unenforceable.

8.13 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested

by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, Developer shall mark any such materials as such, . When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

[Remainder of Page Intentionally Blank;

Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

Approved as to form:
Dennis J. Herrera, City Attorney

By: _____
John Rahaim
Director of Planning

By: _____
Heidi Gewertz
Deputy City Attorney

Approved on _____
Board of Supervisors Ordinance No. _____

DEVELOPER

181 FREMONT STREET LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

DRAFT FOR NEGOTIATION PURPOSES ONLY – SUBJECT TO CHANGE

Parcel Map

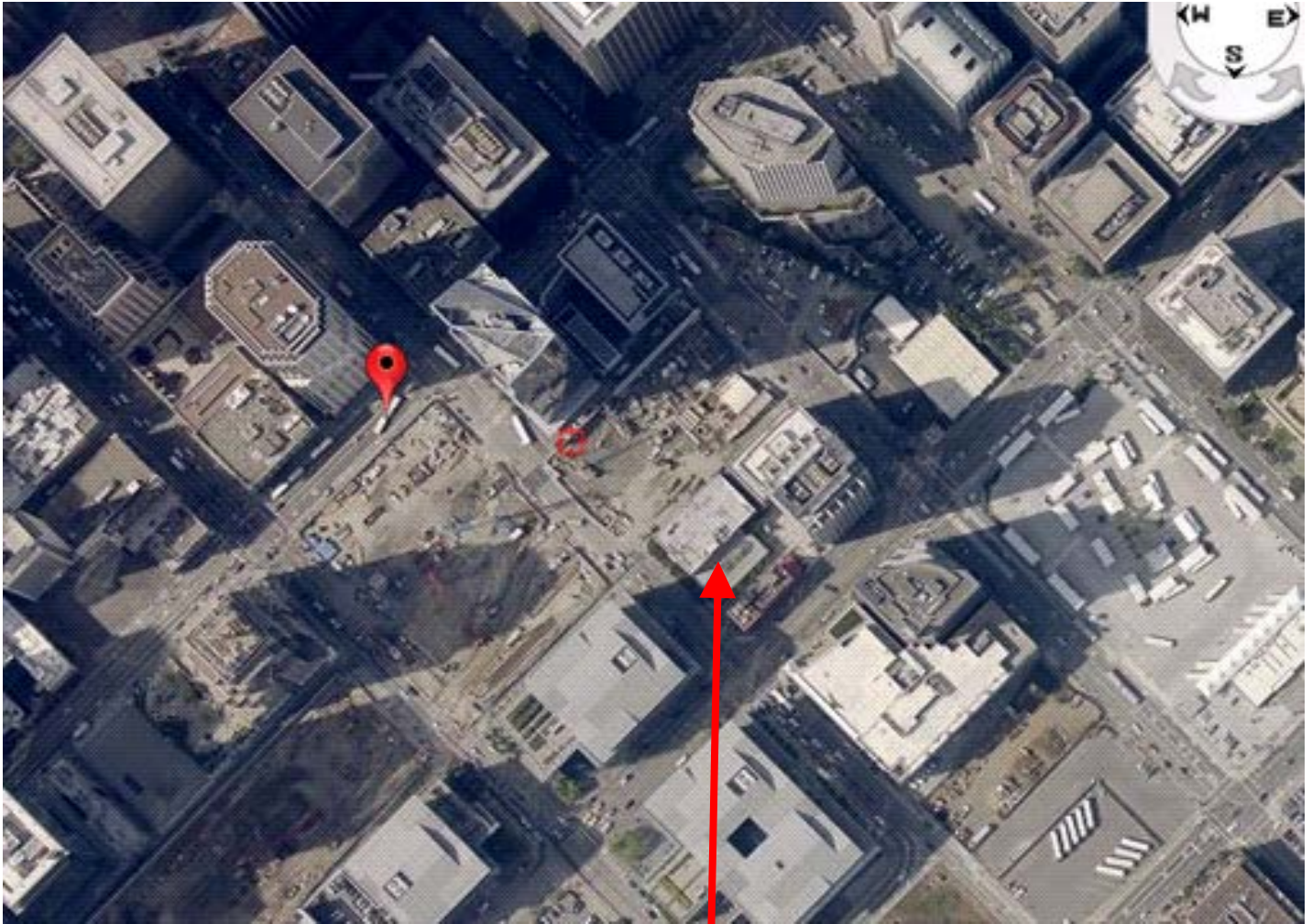


PROJECT SITE



Downtown Project Auth./Dev. Agreement
Case No. 2014.1399WX
181 Fremont Street

Aerial Photo



PROJECT SITE



Downtown Project Auth./Dev. Agreement
Case No. 2014.1399WX
181 Fremont Street

Aerial Photo



PROJECT SITE



Downtown Project Auth./Dev. Agreement
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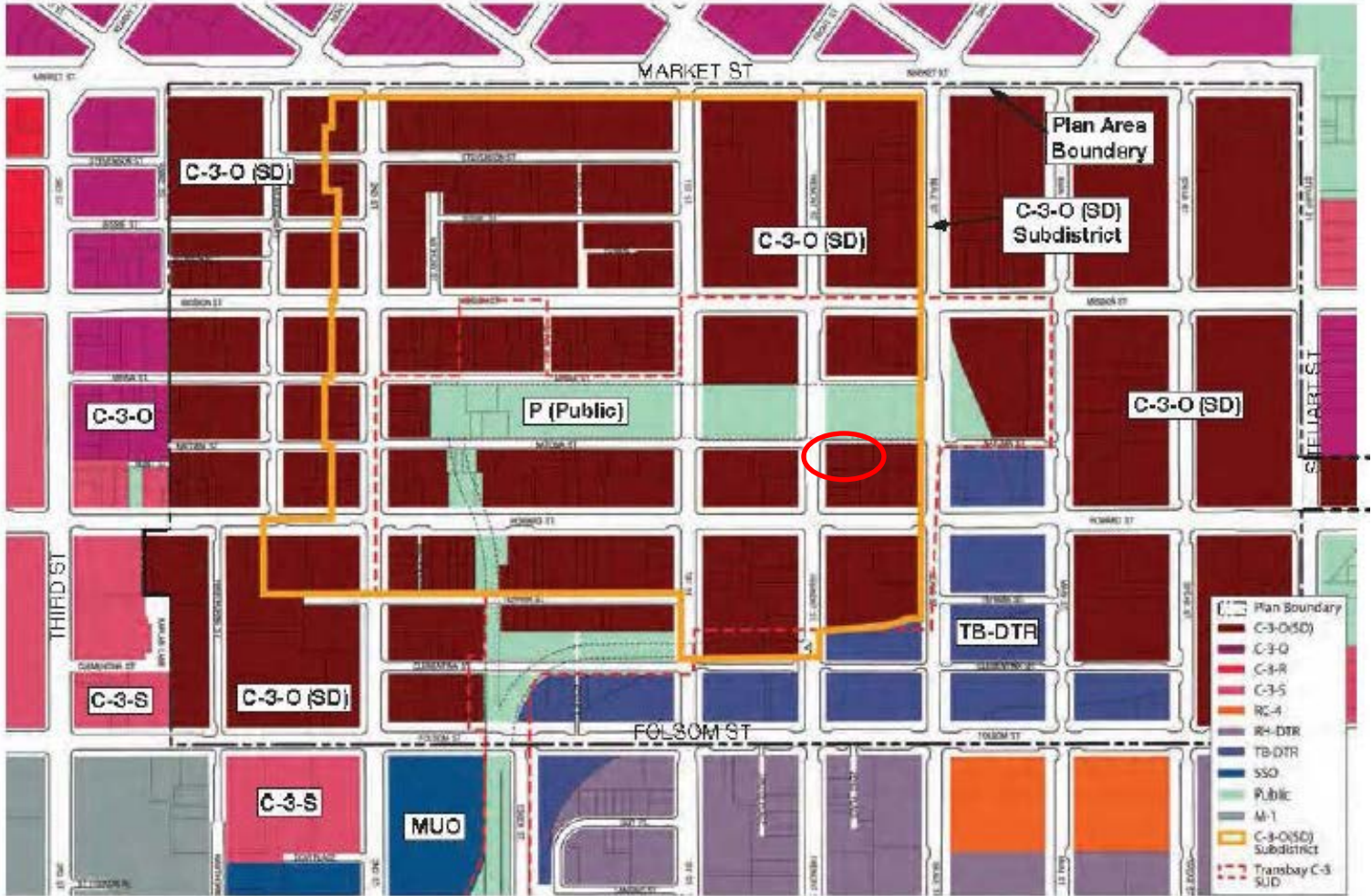


PROJECT SITE



Downtown Project Auth./Dev. Agreement
Case No. 2014.1399WX
181 Fremont Street

Zoning Map



Downtown Project Auth./Dev. Agreement
Case No. 2014.1399WX
181 Fremont Street