

PLANNING COMMISSION

**Case No. 2005.0298CEKV
1285 Sutter Street
Assessor's Block 691, Lot 8
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Subject to:

- Inclusionary Housing
- Childcare Requirement
- Park Fund
- Art Fund
- Public Open Space Fund
- Jobs Housing Linkage Program
- Transit Impact Development Fee
- First Source Hiring
- Other:

**SAN FRANCISCO PLANNING COMMISSION
MOTION NO. 17592**

ADOPTING FINDINGS RELATED TO CEQA AND TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION UNDER PLANNING CODE SECTION 303 TO ALLOW CONSTRUCTION OF A RESIDENTIAL BUILDING THAT EXCEEDS 40 FEET IN HEIGHT IN AN R DISTRICT AND WITH AN EXCEPTION TO THE BULK LIMITS PURSUANT TO PLANNING CODE SECTIONS 253 AND 253.2(1), TO ALLOW PARKING IN EXCESS OF THE AMOUNT PERMITTED AS ACCESSORY PARKING UNDER PLANNING CODE SECTION 157, TO ALLOW DEMOLITION OF A MOVIE THEATER UNDER PLANNING CODE SECTION 221.1, AND TO ALLOW THE SALE OF ALCOHOL UNDER PLANNING CODE SECTION 209.8, FOR NEW CONSTRUCTION OF AN APPROXIMATELY 130-FOOT TALL, THIRTEEN-STORY MIXED-USE BUILDING WITH APPROXIMATELY 17,300 SQUARE FEET OF GROUND FLOOR RETAIL/COMMERCIAL SPACE, UP TO 106 DWELLING UNITS AND UP TO 170 OFF-STREET PARKING SPACES, AT 1285 SUTTER STREET, LOT 8 IN ASSESSOR'S BLOCK 691, IN AN RC-4 DISTRICT, A 130-V HEIGHT AND BULK DISTRICT, AND THE VAN NESS SPECIAL USE DISTRICT.

On February 28, 2006, Tuija I. Catalano of Reuben and Junius, LLP, authorized agent of RP BayRock III, LLC (hereinafter "Applicant") filed Application No. 2005.0298C (hereinafter "Application") requesting a conditional use authorization for the property at **1285 Sutter Street, Lot 8 in Assessor's Block 691** to construct a 130-foot tall structure containing up to 106 dwelling units, up to 170 off-street parking spaces, and approximately 17,300 square feet of ground-floor retail/commercial space within a RC-4 (Residential Commercial High Density) Use District, a 130-V Height and Bulk District, and the Van Ness Special Use District.

A Mitigated Negative Declaration was prepared and issued for the project pursuant with the provisions of the California Environmental Quality Act (hereinafter "CEQA"), the State Guidelines for the Implementation of CEQA and Chapter 31 of the San Francisco Administrative Code, that there will not be a significant effect on the environment because of the mitigation measures included. The Mitigated Negative Declaration was published on December 8, 2007 by the Planning Department of the City and County of San Francisco (hereinafter "Department"), and no appeals were filed. A Final Mitigated Negative Declaration was adopted and issued on January 15, 2008. This document is included in Planning Department File No. 2005.0298E.

On April 18, 2007, the Department performed a shadow study, Case No. 2005.0298K, per Planning Code Section 295 and determined that the proposed 130-foot building would not create new shadow impact on any property under the jurisdiction of the Recreation and Park Commission. On May 15, 2008, the Commission reviewed and affirmed that the project does not create any shadow impacts per Section 295.

On May 15, 2008, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2005.0298C, at which time the Commission reviewed and discussed the findings prepared for their review by the staff of the Department.

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

The 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 applicant, the Department staff, and other interested parties.

MOVED, that the Commission hereby grants Conditional Use authorization as requested in Application No. 2005.0298C subject to the conditions contained in Exhibit A, attached hereto and incorporated herein by reference thereto, based on the following findings:

FINDINGS

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

1. The above Recitals are accurate and also constitute findings of this Commission.
2. Project Site and Present Use:
The 21,330-sq.ft. Project Site is located in the Van Ness Avenue corridor, west of Polk Gulch area, at the southeast corner of Van Ness Avenue and Sutter Street. A vacant movie theater currently occupies the Project Site. The four-screen Galaxy Theater was constructed in 1984, and ceased operation in December of 2005. The Project Site has been unused for almost 2 ½ years. The Sutter Street frontage has a lateral slope of approximately 6 percent to the east, and the Van Ness Avenue frontage has a north-to-south slope of approximately 2 percent.
3. Surrounding Area:
The surrounding area is diversely zoned for a variety of residential, residential-mixed, and neighborhood-commercial uses, and is developed with a mix of building types primarily occupied by retail, service, commercial and residential uses. Nearby land

uses include Regency Center, at the northeast corner of Van Ness Avenue and Sutter Street, Circuit City/24 Hour Fitness, at the southeast corner of Van Ness Avenue and Hemlock Street, One Daniel Burnham Court, East and West, 13- and 18-story residential buildings, between Daniel Burnham Court and Post Street. A multi-story hospital (California Pacific Medical Center Cathedral Hill Hospital) is proposed south of the Project Site, on a block bounded by Van Ness Avenue, Geary Boulevard, Post Street and Franklin Street currently occupied by the Cathedral Hill Hotel. San Francisco Towers, a senior residential facility, is located two blocks to the north and Van Ness Avenue and Pine Street.

4. Description of the Project:

The Project consists of the demolition of the defunct Galaxy Theater, and the construction of a mixed-use building with commercial/retail uses on the ground floor, up to 106 residential units on floors two through thirteen, and up to 170 off-street parking spaces on four below-grade levels with ingress from Hemlock Street and egress to Sutter Street. The Project contains a total of approximately 250,300 square feet of floor area, which can be broken down into approximately 132,200 square feet of residential area, 17,300 square feet of retail/commercial ground floor space, approximately 80,800 square feet of parking, and approximately 20,000 square feet of common and mechanical areas. The total gross building floor area pursuant to Planning Code Section 102.9 is approximately 149,320 square feet. The Project also provides 39 bicycle spaces.

The residential portion of the Project would contain approximately 31 one-bedroom units, and 75 two-bedroom units, including 4 two-bedroom townhouse units. The residential lobby is entered from Sutter Street. The Project Sponsor intends to satisfy the Inclusionary Housing Requirement by payment on an approximately \$5.7 million dollar in-lieu fee. Off-street parking for the residential units would be provided below the commercial parking. Open space for the units would be provided in three spaces, one above the commercial space at the rear courtyard of the building, one above a residential tower of the project at the 12th floor roof terrace, and an 8th floor roof terrace. Private balconies would provide open space to some units.

The ground level retail/commercial space is anticipated to be occupied by a Trader Joe's grocery store. The proposed hours of operation are 9 a.m. to 9 p.m. daily, although the actual hours may be different. Levels one and two of the below-grade parking garage will contain 61 off-street parking spaces dedicated for the grocery store's use. One off-street loading dock accessible from Sutter Street will be provided for the retail/commercial use. Entrances to the retail space are on Van Ness Avenue and at the corner of Van Ness Avenue and Sutter Street.

5. Nature of the Use District and the Required Conditional Use Authorization.

The Project Site is located in an R District and the Van Ness Special Use District and proposes a 130-foot tall building. The Project requires Conditional Use authorization to permit construction of a residential building that exceeds 40 feet in height in an R District

with an exception to the bulk limits pursuant to Section 253 and in the Van Ness Special Use District according to Section 253.2(1). In addition, a Conditional Use authorization is required to allow the demolition of a movie theater pursuant to Section 221.1, to allow parking in excess of the amount permitted as accessory parking pursuant to Section 157, and to allow the sale of alcohol in the proposed specialty grocery store pursuant to Section 209.8.

6. Public Comment:

As of May 6, 2008, the Department has received approximately seven letters and e-mails regarding the Project. Five letters of support have been received along with one letter of opposition. One letter requested that ADA standards be met. The letters have been forwarded to the Commission for its consideration. The Commission has considered these comments and concerns in its review of the Project.

7. Planning Code Compliance:

- a. Use: Residential and commercial/retail uses are permitted in the RC-4 and Van Ness Special Use Districts pursuant to Planning Code Sections 209 and 243.

Comment: The Project includes up to 106 dwelling units, and approximately 17,300 square feet of ground-floor retail space proposed for use by a specialty grocery store (Trader Joe's).

- b. Dwelling Unit Density: RC-4 Districts normally provide for a density limit of one unit per 200 square feet of lot area per Planning Code Section 209.1. Per Section 243(c)(2), due to the Property's location in the Van Ness Special Use District, the Project is not subject to any density limit.

Comment: The Project proposes up to 106 dwelling units.

- c. Shadow Study: Section 295 requires review of buildings over 40 feet in height to determine any potential shadowing on property under the jurisdiction of the Recreation and Park Commission.

Comment: On April 18, 2007, the Department performed a shadow study (Case No. 2005.0298K) and determined that the 130-foot building would not create a shadow impact on any property under the jurisdiction of the Recreation and Park Department.

- d. Floor Area Ratio: The FAR limit in the Van Ness Special Use District is 7 to 1 in the 130-foot height district, where the Project Site is located. The Project Site has a lot area of 21,330 square feet, and thus the maximum development can contain up to 149,310 gross square feet.

Comment: The Project contains approximately 149,320 gross square feet of area, and thus complies with the FAR limit.

- e. 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 every residential level in the RC-4 zoning district. The Project provides a rear yard that varies in depth, and thus the Project requires a modification of the rear yard requirement pursuant to Section 243(c)(6). Section 243(c)(6) allows the Zoning Administrator to modify or waive the normally applicable rear yard requirements pursuant to Section 307(g) if: 1) the interior block open space formed by the rear yards of abutting properties will not be adversely affected, 2) a comparable amount of usable open space is provided elsewhere on the lot or within the development where it is more accessible to residents, and 3) the access of light and air to abutting properties will not be significantly impeded. A rear yard modification will be considered by the Zoning Administrator at the same public hearing as the conditional use.

Comment: The required 25% rear yard setback would result in an area of approximately 5,310 square feet. The common open space areas provided by the Project do not extend for the full width of the property, and thus a modification by the Zoning Administrator pursuant to Section 243(c)(6) is required. Since the Project Site has a frontage on three streets, the Site abuts only one property at 1235-1243 Sutter Street. The existing building on this abutting property covers the lot almost entirely, and thus the Project will have no impact on an interior block open space since none exists. The modification of the rear yard requirement will also not have any impact on the abutting property's access to light and air since the abutting building is built up to the common property line. The Project provides an irregularly shaped 4,364-square foot common courtyard at the second level, the first level where residential units are located, a 3,126-square foot common terrace on the fifth level, and a 793-square foot common terrace at the twelfth level. The open space areas provided by the Project exceed the area required by the rear yard setback and total to 8,283 square feet, and are more accessible and appropriate for the Project due to the Project Site's location and configuration.

- f. Dwelling Unit Exposure: Section 140 establishes exposure requirements for all dwelling units, requiring that all units face onto an open area such as a street or rear yard, or onto an inner court, that is no less than 25 feet in every horizontal dimension.

Comment: One unit facing the common courtyard does not comply with the dwelling unit exposure requirement, and thus a variance by the Zoning Administrator is required.

- g. Usable Open Space: Planning Code Section 135 requires at least 36 square feet of private open space per dwelling unit, or approximately 48 square feet of common open space per dwelling unit. The Project requires 3,816 square feet of private open space, or 5,075 square feet of common open space, or some combination of both.

Comment: 65 of the units include private decks or balconies adjacent to the units. A 4,364-square foot common courtyard open space located at the second level, a 3,126-square foot common roof terrace located on the fifth level, and a 793-square foot common roof terrace open space located at the twelfth level will provide the open space for the remaining 41 units. Thus, the Project complies with the open space requirement.

- h. Height and Bulk: The Project complies with the 130-foot height limit applicable in the 130-V height and bulk district. Since the Project is located in the Van Ness Special Use District, and exceeds 40 feet in height, a Conditional Use authorization pursuant to Section 253.2 is required. Bulk dimensions of 110-foot maximum length and 140-foot maximum diagonal dimension apply above 50-foot height, for which the project requires an exception pursuant to Section 271.

Comment: Findings pursuant to Section 253.2 are provided below. The Project requires an exception under the Conditional Use authorization to the bulk limits for exceeding the maximum diagonal by 16 feet 3 inches above 50-foot height until 80-foot height, and applicable Section 271 findings are provided below.

- i. Off-Street Parking: Planning Code Section 151 requires one independently accessible parking space for every dwelling unit, and one independently accessible space for every 500 square feet of occupied retail/commercial use. The Project is required to provide 106 spaces for the residential use and approximately 31 spaces for the approximately 15,540 square feet of occupiable retail/commercial use, or approximately 136 off-street parking spaces in aggregate.

Comment: The project includes 106 off-street parking spaces for the residential use, 61 spaces for the retail/commercial use, and 2 service vehicle spaces and 1 carshare spaces, for a total of 170 off-street parking spaces. The parking proposed for the retail/commercial use exceeds the amount permitted as accessory parking under Planning Code Section 204.5, and thus the Project requires Conditional Use authorization to allow the additional parking. All off-street parking spaces are located in a four-level below-grade parking garage with ingress from Hemlock Street and egress to Sutter Street.

- j. Off-Street Loading: Pursuant to Section 152, retail stores over an area of over 10,001 square feet but less than 60,000 square feet require one off-street freight loading space, and residential uses with more than 100,000 square feet but less than 200,000 square feet in area require one off-street freight loading space.

Comment: The ground-floor commercial area is approximately 17,300 square feet, and the gross floor area for the residential use is approximately 131,410 square feet. Thus, the Project requires two off-street freight loading spaces. One 66.5-foot deep by 14-foot wide loading dock accessible from Sutter Street will be provided for the retail/commercial use. The Project does not provide the second required freight loading space for the residential use and requires a variance from this Code requirement. The Project does provide two service vehicle spaces in lieu of the residential loading space in the below-grade parking garage, and the Project Sponsor has indicated that they intend to seek installation of a yellow curb loading zone along Sutter Street to accommodate residential loading.

- k. Affordable Housing: Pursuant to Section 315, the Project is required to comply with the inclusionary affordable housing requirements by constructing 12% of the proposed dwelling units as affordable if they are provided on-site, 17% if the affordable units are provided off-site, or by payment of an in-lieu fee.

Comment: The Project will satisfy the affordable housing requirements by payment of the in-lieu fee of approximately \$5.7 million dollars.

- l. Reduction of Ground Level Wind Currents: Pursuant to Section 243(c)(9), the proposed building cannot contribute to wind currents exceeding certain thresholds at ground level.

Comment: Ground-level wind currents were addressed within the environmental review for the Project. It was found that the Project would have no significant individual or cumulative impact on ground-level wind currents.

8. Van Ness Special Use District Findings:

Planning Code Section 253.2 states that any new construction over 40 feet in height shall be permitted as a Conditional Use upon approval by the Commission. Per Section 253.2, the Commission may impose the following requirements in addition to any others deemed appropriate:

- a. On Van Ness Avenue, the Commission may require a setback of up to 20 feet at a height of 50 feet or above in order to maintain the continuity of the prevailing street wall height established by the existing buildings along Van Ness Avenue within two blocks of the project.

Comment: The Project is set back by approximately 19 feet from the western (Van Ness Avenue) property line at the fifth floor (at approximately 50-foot height above grade). .

9. Compliance with Planning Code Section 221.1 and 303(k):

Pursuant to Section 221.1, the demolition of a movie theater must comply with Planning Code Section 303(k) criteria. The Commission hereby finds and determines that the Project complies with the criteria of Section 303(k) of the Code in that:

- a. Preservation of a movie theater use is no longer economically viable and cannot effect a reasonable economic return to the property owner (For purposes of defining “reasonable economic return,” pursuant to Section 303(k)(1)(A)(i), the Planning Commission is guided by the criteria for “fair return on investment” set forth in Section 228.4(a). Section 228.4(a), is intended to guide the Zoning Administrator in a request to allow a conversion of a gasoline station, as follows using the following information);
 - i. An independent appraisal of the property stating its value;
 - ii. A written statement from an independent Certified Public Accountant summarizing the applicant’s financial records, including the property appraisal and stating the return on investment calculated pursuant to this ordinance;
 - iii. A certified statement from the Certified Public Accountant identifying the owner of the property and the owner of the movie theater; and
 - iv. Such other financial information as the Zoning Administrator may reasonably determine is necessary to make the determination provided for in this Section.

The Project Sponsor purchased the Property on April 14, 2005, and did not obtain control of the building until January 1, 2006, after the movie theater operation had ceased. The prior four-screen Galaxy Theater held its last showing in December of 2005. Because the Project Sponsor did not operate, and did not have any involvement in the operation of the movie theater, the Project Sponsor has stated that they do not have, and have not had, any access to any financial or operational documents or records for the prior movie theater.

The prior movie theater has been vacant since December of 2005, and thus has not produced any return on investment for almost 2 ½ years.

- b. The change in use or demolition of the movie theater use will not undermine the economic diversity and vitality of the surrounding Neighborhood Commercial District; and

The Galaxy Theater, and has been vacant, and unused, for almost 2 ½ years. The demolition of the movie theater will allow the Project Site to be constructed with a mixed use development that will provide many services and benefits to the City and the neighborhood, including provision of up to 106 new dwelling units, and approximately 17,300 square feet of ground floor retail/commercial space anticipated to be used by a specialty grocery store. The demolition of the vacant theater and construction of the Project will increase the economic diversity and vitality of the neighborhood.

- c. The resulting project will preserve the architectural integrity of important historic features of the movie theater use affected.

The vacant Galaxy movie theater was constructed in 1984, and has not been identified as a historically important structure that warrants preservation. The demolition of the existing theater will have no impact on this criterion.

10. Compliance with Planning Code Section 157:

The Project requires Conditional Use authorization to allow off-street parking for the retail use in an amount that exceeds the number of spaces that can be provided as accessory parking pursuant to Section 204.5. In considering an application for parking where the amount exceeds the amount classified as accessory parking as set forth in Section 204.5, in addition to Section 303(c) criteria, the Planning Commission must consider the criteria set forth in Section 157. The Commission hereby finds and determines that the Project complies with the criteria of Section 157 of the Code in that:

- a. The trips to the use to be served, and the apparent demand for additional parking, cannot be satisfied by the amount of parking classified by this Code as accessory, by transit service which exists or is likely to be provided in the foreseeable future, by car pool arrangements, by more efficient use of existing on-street and off-street parking available in the area, and by other means;

The Transportation Study prepared for the Project's environmental review indicated that the retail use would result in a parking demand deficit of 45 spaces for the weekday midday and evening periods. The Project will provide up to 61 off-street parking spaces for the approximately 17,300-square foot retail/commercial space, to be occupied by a specialty grocery store. The Planning Code principally permits 31 spaces for the retail/commercial use in addition to 15 spaces that are permitted as an accessory use. The Project proposed an additional 15 spaces under the Conditional Use authorization for the amount exceeding the accessory parking.

The additional off-street parking will alleviate the parking demand deficit and will ensure the economic viability of the retail/commercial space by providing adequate parking for the proposed specialty grocery store's employees and patrons.

- b. The proposed parking does not have a detrimental effect on the surrounding area, and does not consist of unnecessary demolition of a sound structure, contribution to traffic congestion, or disruption of or conflict with transit services;

The additional parking is proposed for the retail patrons' and employees' use only and will have no detrimental effect on the surrounding area. The additional parking would alleviate the demand for existing on-street parking and public parking facilities in the area.

- c. For non-residential uses, the proposed parking is limited to short-term occupancy by visitors rather than long-term occupancy by employees; and

The additional parking allowed through Conditional Use authorization is solely for the retail/commercial component's use, and for short-term occupancy to allow patrons to visit the retail/commercial uses during business hours.

- d. The proposed parking is available to the general public at times when such parking is not needed to serve the use or uses for which it is primarily intended.

The spaces will be accessible and available only during the retail/commercial space's business hours.

11. Compliance with Planning Code Section 271:

In considering an application for exceptions from the normally applicable bulk limits, the Planning Commission may permit the bulk limits to be exceeded to a certain degree when for one or both of the following positive reasons is applicable: (1) Achievement of a distinctly better design, in both a public and a private sense, than would be possible with strict adherence to the bulk limits, avoiding an unnecessary prescription of building form while carrying out the intent of the bulk limits and the principles and policies of the Master Plan, and/or (2) Development of a building or structure with widespread public service benefits and significance to the community at large, where compelling functional requirements of the specific building or structure make necessary such a deviation. The Commission hereby finds and determines that the Project complies with the criteria of Section 271 of the Code in that:

- a. The appearance of bulk in the building, structure or development has been reduced by means of at least one of the following factors, so as to produce the impression of an aggregate of parts rather than a single building mass:
- i. Major variations in the planes of wall surfaces, in either depth or direction, that significantly alter the mass;
 - ii. Significant differences in the heights of various portions of the building, structure or development that divide the mass into distinct elements;

- iii. Differences in materials, colors or scales of the facades that produce separate major elements;
 - iv. Compensation for those portions of the building, structure or development that may exceed the bulk limits by corresponding reduction of other portions below the maximum bulk permitted; and
 - v. In cases where two or more buildings, structures or towers are contained within a single development, a wide separation between such buildings, structures or towers.
- b. The building, structure or development has been made compatible with the character and development of the surrounding area by means of all of the following factors:
- i. A silhouette harmonious with natural land-forms and building patterns, including the patterns produced by height limits;
 - ii. Either maintenance of an overall height similar to that of surrounding development or a sensitive transition, where appropriate, to development of a dissimilar character;
 - iii. Use of materials, colors and scales either similar to or harmonizing with those of nearby development; and
 - iv. Preservation or enhancement of the pedestrian environment by maintenance of pleasant scale and visual interest.

The Project is located in the 130-V height and bulk district where 110-foot maximum length and 140-foot maximum diagonal dimensions apply above 50 feet in height. The Project proposes a maximum length of approximately 108' 9" feet, and a maximum diagonal of approximately 156 feet 3 inches above the 50 feet in height. Thus, the Project requires Conditional Use authorization to allow an exception to the normally applicable bulk dimensions for exceeding the maximum diagonal by 16 feet 3 inches.

The Project has been designed to provide for distinct "base" and "tower" features. The base is built up to the property lines without any setbacks and extends up to 50-foot height. The tower has been pulled back from all property lines, approximately 19 feet from from Van Ness Avenue, approximately 18 feet from Sutter Street, and approximately 2.5 feet from Hemlock Street.

The design includes a separate, prominent residential entry on Sutter Street and residential balconies on all building facades, contributing to the building's residential appearance. The building provides a cornice line at 50-foot height that is similar in height and design to the structures located adjacent to the Project Site along Van Ness Avenue.

Materials to be used include glass fiber reinforced concrete (GFRC), architectural concrete and stone. Stucco of any sort shall not be used. The proposed materials will provide enough architectural detail and interest to be consistent with the surrounding structures. The GFRC will compliment the terra cotta materials used on some surrounding structures. The tower includes punched window openings along with corner window elements that are used to break up the appearance of mass

The pedestrian experience of this site will be greatly enhanced. The Project introduces retail windows along Van Ness Avenue of approximately 2 stories in height where none currently exist. The base of the building does not include any setbacks, and thus connects with the ground solidly and provides strong corners at the Van Ness-Sutter and Van Ness-Hemlock corners. Two pedestrian entrances will be created, one along Van Ness Avenue and one along Sutter Street. Overall, the Project will create a high-level of transparency between the street and building use through the use of windows and openings (retail and residential).

12. Conditional Use Authorization:

The Project requires a conditional use authorization to permit construction of a residential building that exceeds 40 feet in height in an R District with an exception to the bulk dimensions per Section 271 (see findings in Part 11 above) pursuant to Section 253 and in the Van Ness Special Use District according to Section 253.2(1). In addition, a conditional use authorization is required to allow the demolition of a movie theater pursuant to Section 221.1 (see findings in Part 9 above), to allow parking in excess of the amount permitted as accessory parking pursuant to Section 157 (see findings in Part 10 above), and to allow the sale of alcoholic liquors pursuant to Section 209.8.

The Commission hereby finds and determines that the Project complies with the criteria of Section 303 of the Code in that:

- a. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The Project will create up to 106 new dwelling units in an in-fill project within an established residential and mixed-use neighborhood, fulfilling General Plan policies that encourage the construction of new housing. The Project will make a contribution to the City's housing supply, and will also contribute to the affordable housing supply by payment on an in-lieu fee in compliance with Section 315.

The approximately 17,300 square feet of new retail/commercial space, anticipated to be occupied by a specialty grocery store, will provide services to the immediate neighborhood, and will create pedestrian-oriented, active uses on the Van Ness Avenue frontage. The sale of alcohol will be one of the components to the grocery store operation, and is necessary to allow the grocery store to operate as a full-service neighborhood store, and to ensure the grocery store's viability.

The Project will demolish the defunct movie theater. At 130-feet tall, the proposed replacement building is appropriate for its location at the corner of Van Ness Avenue and Sutter Street. The proposed residential and commercial/retail uses are compatible with the neighborhood that includes a variety of land uses, including residential, retail, commercial, religious and community services.

- b. The Project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the Project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. The nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The Project Site is located at the intersection of Van Ness Avenue and Sutter Street and is appropriate for such a mixed-use development. The Site provides three street frontages, and allows vehicular ingress from Hemlock Street and vehicular egress to Sutter Street.

The design of the Project is compatible with the scale and context of the surrounding neighborhood, and will result in a continuous and unified street wall on Van Ness Avenue, Sutter Street and Hemlock Street with active ground level pedestrian-friendly and neighborhood-serving uses along Van Ness Avenue.

The proposed grocery store component will provide neighborhood- serving grocery products and services to the Project vicinity. The Project's parking garage will provide 61 parking spaces for the retail component accessible from Hemlock with egress to Sutter Street. The retail component will be provided with a full-size loading dock to accommodate retail product deliveries. The sale of alcoholic beverages is an integral part of the grocery store's operation necessary to ensure its viability. The grocery store will not include on-site consumption of alcoholic beverages, and thus the sale of alcoholic beverages will have no negative impact on the neighborhood.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading.

The Project provides up to 170 off-street parking spaces located in a four-level below-grade garage, with ingress from Hemlock Street and egress to Sutter Street. The project's Transportation Study found that additional off-street parking is necessary given the proposed grocery store use. All of the parking spaces will be independently accessible. The proposed curb cuts along Hemlock and Sutter

Streets are necessary to accommodate the expected volume of traffic related to Trader Joe's grocery store. A 14 feet wide by 65.5 feet deep loading dock for the ground level retail/commercial use will be located off Sutter Street with an 18-foot wide opening. The Sponsor will apply for a loading zone on Sutter Street to serve both retail and residential loading.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor.

The Project will consist of residential units and ground floor retail/commercial, and will not produce noxious or offensive emissions, noise, glare, dust or odors.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs.

The project proposes street trees along all three frontages on Van Ness Avenue, Sutter Street and Hemlock Street. Off-street parking will be provided at four below-grade basement levels. The proposed parking garage will be completely screened from view from the street, and will be accessible from an entrance located on Hemlock Street with an exit to Sutter Street. The Project will provide both private and common usable open space. Areas that provide common usable open space would be appropriately landscaped. Lighting along the building façade and at the street level will be consistent with the neighborhood character. Signage pursuant to Article 6 of the Planning Code has not been proposed, or reviewed, under the subject proposal.

- c. The Commission hereby finds and determines that the proposed uses and features comply with the applicable provisions of the Planning Code and affirmatively promotes the objectives and policies of the General Plan.

Van Ness Avenue Area Plan – Residential Livability

OBJECTIVE 7: PROVIDE SAFE AND ATTRACTIVE ENVIRONMENTS WITHIN EACH MIXED USE DEVELOPMENT.

Policy 1: Ensure safety, security and privacy within new residential developments while encouraging efficient use of common open space areas.

Policy 3: Generally maintain existing open space requirements for residential use. Allow common open space requirements to be met by a variety of recreation and open space features.

Policy 4: Design mixed use developments to create a quiet residential environment with a variety of intimate, personal spaces well insulated from the intrusion of noise from street of commercial activities.

Housing Element:

OBJECTIVE 1: 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 1.4: Locate in-fill housing on appropriate sites in established residential neighborhoods.

Policy 1.7: Encourage and support the construction of quality, new family housing.

OBJECTIVE 11: IN INCREASING THE SUPPLY OF HOUSING, PURSUE PLACE MAKING AND NEIGHBORHOOD BUILDING PRINCIPLES AND PRACTICES TO MAINTAIN SAN FRANCISCO'S DESIRABLE URBAN FABRIC AND ENHANCE LIVABILITY IN ALL NEIGHBORHOODS.

Policy 11.1: Use new housing development as a means to enhance neighborhood vitality and diversity.

Policy 11.2: Ensure housing is provided with adequate public improvements, services, and amenities.

Policy 11.3: Encourage appropriate neighborhood-serving commercial activities in residential areas, without causing affordable housing displacement.

- Policy 11.5: Promote the construction of well-designed housing that enhances existing neighborhood character.
- Policy 11.8: Strongly encourage housing project sponsors to take full advantage of allowable building densities in their housing developments while remaining consistent with neighborhood character.

The Project is an appropriate in-fill proposal that will facilitate replacement of a former movie theater in an established mixed-use neighborhood with a more desirable residential and commercial/retail use. The Project will locate up to 106 housing units at a site zoned for residential use and will increase the supply of housing maximizing the allowable development potential within the building height and floor area ratio limits. The Project's architectural design will be compatible with the existing scale and character of the neighborhood.

With the provision of three common open space areas on the second, fifth and twelfth floors of the development and through the rear yard modification, the Project has been designed to create a quiet residential environment that is well insulated from the intrusion of noise from street and commercial activities along Van Ness Avenue and Sutter Street.

The Project provides neighborhood-service commercial uses, anticipated to be used by a specialty grocery store that will sell food, produce, household goods, other groceries, and alcoholic and other beverages. No alcohol will be sold for on-site consumption. The grocery component will enhance the pedestrian experience by providing active uses along the Van Ness and Sutter frontages and a unified street wall along all three frontages on Sutter Street, Van Ness Avenue, and Hemlock Street. The grocery store will also contribute to the economic vitality of the neighborhood. The Project will contribute to the City's affordable housing supply by paying the in-lieu fee in compliance with Section 315.

Commerce and Industry Element:

OBJECTIVE 1: MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

- Policy 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 will demolish the existing vacant movie theater and construct a mix of residential and commercial/retail uses. The Project is consistent with the objectives of the RC-4 and Van Ness Special Use Districts by proposing a mixed-use development that provides ground floor commercial/retail uses and locates up to 106 dwelling units above the ground level. The

Project's ground floor commercial/retail component will enhance the neighborhood by providing accessible services to the neighborhood and the City. The Project will minimize parking problems by providing up to 106 accessible parking spaces (at one to one ratio) for the residential component, and up to 61 accessible spaces to the 17,300-square foot retail/commercial component. The Project appropriately locates the proposed retail/commercial component along Van Ness Avenue, a transit thoroughfare.

Urban Design Element:

OBJECTIVE 1: EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE AND A MEANS OR ORIENTATION.

Policy 1.2: Protect and reinforce the existing street pattern, especially as it is related to topography.

Policy 1.3: Recognize that buildings, when seen together, produce a total effect that characterizes the City and its districts.

The Project will enhance this RC-4 District by reinforcing the urban nature of the street pattern, and by improving the street wall along Van Ness Avenue, and Sutter Street by providing new openings and visual transparency. The Project will dramatically enhance the site's use and contribution to the built environment.

Visual Harmony:

OBJECTIVE 3: MODERATION OF MAJOR NEW DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHBORHOOD ENVIRONMENT.

Policy 3.1: Promote harmony in visual relationships and transitions between new and older buildings.

Policy 3.3: Promote efforts to achieve high quality of design for buildings to be constructed at prominent locations.

Neighborhood Environment:

OBJECTIVE 4: IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY.

Policy 4.12: Install, promote and maintain landscaping in public and private areas.

The Project will provide pedestrian-level interest by providing a 17,300-square foot retail/commercial space anticipated to be used by a specialty grocery store. A unified street wall will be provided on all three street frontages.

13. Priority Planning Principles: Section 101.1(b)(1-8) establishes Eight Priority Planning Policies and requires review of permits for consistency with said policies. The Commission finds and determines that the Project complies with said policies in that:

(1) That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The Project Site was previously used as a movie theater that ceased to operate almost 2 ½ years ago. Currently, no neighborhood-serving retail uses exist on the Project Site and thus none will be displaced by the Project. The Project will create approximately 17,300 square feet of new commercial/retail space on the ground floor, and thus could provide new resident employment.

(2) That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

No existing housing would be impacted. The site was previously used as a movie theater. The Project Site is located within the RC-4 District which is a mixed-use area consisting of residential and commercial uses. The new dwelling units will provide opportunities for up to 106 households to move into the building.

(3) That the City's supply of affordable housing be preserved and enhanced;

The Project will further this priority policy by payment of an in-lieu fee in compliance with Planning Code Section 315.

(4) That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking;

This is primarily a residential project, and will therefore not create significant commuter traffic. Housing created by the Project will be located along a transit thoroughfare on Van Ness Avenue, and one off-street parking space will be provided for each residential unit. The 17,300-square foot retail/commercial component will be provided with off-street parking spaces that exceed in amount that permitted as accessory parking. Because the Project Site is located on a transit thoroughfare, it is anticipated that the Project will generate less traffic than a similar residential building located elsewhere.

- (5) 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 will demolish the existing defunct movie theater. The Project does not propose any commercial office development. The Project will contribute to a diverse economic base by providing up to 106 new residential dwelling units and by including a 17,300-square foot retail/commercial component.

- (6) That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The Project will conform to the structural and seismic requirements of the San Francisco Building Code.

- (7) That landmarks and historic buildings be preserved; and,

This policy does not apply, since the Project Site is not located in a historic district or conservation district, and does not contain any landmark or historic buildings.

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

The Project will not impact parks, open space, or their access to sunlight or vistas.

14. The Commission hereby finds and determines that granting the conditional use authorization in this case would promote the public welfare, convenience and necessity of the City.
15. The Commission hereby finds that all significant environmental effects of the Project have been fully and adequately analyzed in the material before the Commission, and that no additional information is required in order for the Commission to make an informed decision regarding the environmental impacts of the project, appropriate mitigation measures, alternatives or overriding considerations and that the Final Mitigated Negative Declaration reflects the lead agency's independent judgment and analysis.

That based upon the Record, the submissions by the Applicant, the staff of the Department and other **DECISION** interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby adopts the Final Mitigated Negative Declaration and **APPROVES** the Conditional Use

PLANNING COMMISSION
May 15, 2008

Case No. 2005.0298CEKV
1285 Sutter Street
Motion No. 17592
Block 691, Lot 8
Page 20

Application, Case No. 2005.0298CEKV, subject to the following conditions attached hereto as Exhibit A (Conditions of Approval) which is incorporated herein by reference as though fully set forth, in general conformance with the plans stamped Exhibit B and dated May 7, 2008 and on file in Case Docket No. 2005.0298C.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this conditional use authorization to the Board of Supervisors within thirty (30) days after the date of this **Motion No. 17592**. The effective date of this Motion shall be the date of this Motion if not appealed (after the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission on May 15, 2008.

Linda Avery
Commission Secretary

AYES: Commissioners Antonini, Lee, Olague and Sugaya

NOES: Commissioner Moore

ABSENT: Commissioner Miguel

ADOPTED: May 15, 2008

EXHIBIT A

CONDITIONS OF APPROVAL

GENERAL

Wherever "Project Sponsor" is used in the following conditions, the conditions shall also bind any successor to the project or other persons having an interest in the project or underlying property.

This Conditional Use authorization is granted to allow construction of a residential building that exceeds 40 feet in height in an R District with an exception to the bulk requirements, to allow demolition of a movie theater, to allow parking in excess of the amount permitted as accessory parking, and to allow the sale of alcohol within $\frac{1}{4}$ of a mile of the Polk Street Neighborhood Commercial District, for the construction of a new building that would contain approximately 106 dwelling units, approximately 17,300 square feet of ground floor commercial/retail space, and up to 170 off-street parking spaces at 1285 Sutter Street, Lot 008 in Assessor's Block 0691 in an RC-4 (Residential-Commercial High Density) District, a 130-VX Height and Bulk District, and the Van Ness Special Use District, in general conformity with the plans identified as Exhibit B, dated May 7, 2008, by Christiani Johnson Architects and reviewed by the Commission on May 15, 2008. Conditions regarding environmental mitigations shall be implemented per the MITIGATION MONITORING AND REPORTING PROGRAM identified as Exhibit C.

The Project Sponsor must also obtain a modification from the rear yard setback requirement as requested from the Zoning Administrator pursuant to Section 243(c)(6), and variances from the freight loading and dwelling unit exposure requirements as requested from the Zoning Administrator pursuant to Sections 152 and 140, respectively. The conditions set forth below are additional conditions required in connection with the Project. If these conditions conflict with any other requirement imposed on the Project, the more restrictive or protective condition or requirement, as determined by the Zoning Administrator, shall apply.

1. GENERAL CONDITIONS

- A. Community Liaison.** The Project Sponsor shall appoint a community liaison officer to deal with issues of concern to owners and occupants of nearby properties at all times during construction of the Project. Prior to the commencement of construction activities, the Project Sponsor shall provide the Zoning Administrator and the owners of the properties within 300 feet of the Project site written notice of the name, business address, and telephone number of the community liaison.
- B. Recordation.** Prior to the issuance of any building permit application for the construction of 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, which notice shall state that construction of the Project has been authorized by and is subject to the conditions of this Motion. From time to time after recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in

writing the extent to which the conditions of this Motion have been satisfied, and record said writing if requested.

- C. Reporting.** The Project Sponsor shall submit two copies of a written report describing the status of compliance with the conditions of approval contained within this Motion every six months from the date of this approval through the issuance of the first temporary certificate of occupancy. Thereafter, the submittal of the report shall be on an annual basis. This requirement shall lapse when the Zoning Administrator determines that all the conditions of approval have been satisfied or that the report is no longer required for other reasons
- D. Performance.** This authorization may be extended at the discretion of the Zoning Administrator only where the failure to issue a permit by the bureau of the Department of Building Inspection to construct the proposed building is caused by a delay by a City, state or federal agency or by any appeal of the issuance of such a permit(s). The Project Sponsor shall obtain required site or building permits within three years of the date of this approval or this authorization may be null and void. Construction, once commenced, shall be pursued diligently to completion
- E. First Source Hiring Program.** The Project is subject to the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code) and the Project Sponsor shall comply with the requirements of this program, including having an Occupancy Program approved by the First Source Hiring Administrator prior to the issuance of the first Certificate of Occupancy
- F. Street Trees.** Should the existing street trees be damaged or destroyed during any phase of construction, replacement trees shall be provided by the sponsor. Prior to issuance of the first Certificate of Occupancy, street trees and any other required pedestrian streetscape improvements shall be installed.
- G. Trash Recepticals and Dumpsters.** Space for the collection and storage of garbage shall be provided within enclosed areas on the property. Garbage containers shall be kept inside buildings, and placed outside only when being serviced by the disposal company. Space for the collection and storage of recyclable 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.
- H. Bicycle Parking.** The project shall include secure parking for a minimum of 39 bicycles. The secured bicycle parking shall be provided at the first garage level below street level. Bicycle parking shall be accessible to customers during regular business hours and employees at any time during their hours of employment. Bicycle parking shall be accessible to residents 24 hours a day, 7 days a week.

- I. Automobile Parking and Car-Share Space.** The Project's parking garage shall contain space for no more than 170 cars. The Project Sponsor shall provide space at no cost for at least one car-share space, to be operated by City Carshare or another qualified entity offering carshare services. The Project Sponsor any successor shall provide information regarding the availability of the car sharing service to any new owner or tenant of a residential unit or a commercial space in the Project. In the event that no organization is prepared to offer car share services at no cost to the Project owner, the designated car share space may be rented on a short term basis to residents until a responsible organization agrees to provide the car share services.
- J. Street Maintenance.** The Van Ness Avenue, Sutter Street and Hemlock Alley street frontages shall be maintained twice daily to keep them clean and free of trash and graffiti. Maintenance shall include sweeping, litter removal and scrubbing of sidewalks and walls whenever conditions warrant. The project grounds including building facades, landscaping, and sidewalks, shall be continually maintained in a clean, orderly and attractive manner.
- K. Hours of Operation.** The hours of operation for the proposed grocery store at the project site will be limited to the hours of 8:00 a.m. to 10:00 p.m. These hours may fluctuate a few days prior to public holidays such as Thanksgiving and Christmas. The project sponsor or the retail tenant may seek extension of the hours (outside of major holidays) if it is determined that there is sufficient demand, need and desire in the neighborhood for additional hours of operation, and such an extension would not create a significant nuisance to the surrounding neighborhood. Such an extension would require Conditional Use authorization.
- L. Loading Hours.** The loading dock located on Sutter Street shall only be accessed between 12:00 a.m. and 7:00 am everyday. Deliveries and loading/unloading shall take place only in the loading dock between the hours designated above, and within the necessary loading zone on Sutter Street.
- M. Shopping Carts.** Shopping carts shall be monitored to ensure they remain within the grocery store's control, oversight and within close proximity. Should shopping carts become a nuisance within the neighborhood, a containment program shall be required and is subject to review, comment and approval by the Planning Department. Shopping carts shall be stored within the building envelope at all times.
- N. Window Transparency.** All windows of any retail space shall be kept unobstructed from top to bottom so as to provide clear visual access of activities into the store at all times. There shall be no physical barrier located behind the windows that would prevent visual access into the commercial space.
- O. Conditions related to Construction Monitoring and Mitigation.** All conditions in the Mitigation Monitoring Program as developed as part of the Mitigated Negative Declaration (Case No. 2005.0298E) and shown in the Mitigation Monitoring and

Reporting Program (MMRP) attached to this Motion as Exhibit C, shall be conditions of this conditional use authorization.

P. Monitoring and Violation.

Violation of the conditions noted above or any other provisions of the Planning Code may be subject to abatement procedures and fines up to \$500 a day in accordance with Code Section 176.

Should implementation of this Project result in complaints from neighborhood residents or business owners and tenants, which are not resolved by the Project Sponsor and are subsequently reported to the Zoning Administrator and found to be in violation of the City Planning Code and/or the specific Conditions of Approval for the Project as set forth in Exhibit A of the Motion, the Zoning Administrator shall report such complaints to the City Planning Commission which may thereafter hold a public hearing on the matter in accordance with the hearing notification and conduct procedures as set forth in Sections 174, 306.3 and 306.4 of the Code to consider revocation of this Conditional Use Authorization.

Should the monitoring of the conditions of approval contained in this Exhibit A be required, the Project Sponsor or successors shall pay fees as established in Planning Code Section 351(f)(2).

2. CONDITIONS TO BE MET PRIOR TO THE ISSUANCE OF A BUILDING (OR SITE) PERMIT.

A. Affordable Housing

- i. The Project shall comply with the inclusionary housing requirements set forth in Section 315 of the Planning Code. Under Planning Code Section 315 of the Planning Code, the project requires thirteen (13) below-market-rate units (12%) if the units are placed on-site, or eighteen (18) below-market-rate units (17%) if the units are placed off-site. The project sponsor has provided a "Declaration of Intent" electing to satisfy the Inclusionary Housing requirement by payment of an in lieu fee of approximately \$5.7 million dollars (this number could fluctuate).
- ii. Payment of an in lieu fee shall be determined according to the procedures set forth in Section 315.6 of the Planning Code. The project applicant can pay an in lieu fee to satisfy the requirements of the Inclusionary Housing requirement. The in lieu fee shall be paid to the Treasurer for use by the Mayor's Office of Housing for the purpose of constructing on an alternative site prior to the issuance of the first site our building permit application for the project. The amount of the fee shall take into account the number of units required by the project applicant to meet the off-site housing development and the affordability gap as identified in the "Jobs Housing Nexus Analysis" prepared by Keyser Marston Associates, Inc. in June 1997 for the Maximum Annual Rent or Maximum Purchase Price for the equivalent unit sizes.

3. CONDITIONS TO BE MET PRIOR TO THE ISSUANCE OF THE ARCHITECTURAL ADDENDUM TO THE SITE PERMIT.

- A. Signage and Lighting.** A signage program for the retail space(s) and lighting program for the entire building will be developed and submitted for review by the Planning Department. Signage shall consist of high quality materials, design and lighting methods. Backlit sign cabinets and cans with acrylic lenses shall not be used, and lighting shall be at a low intensity to avoid unnecessary glare. Signage size, graphics, illumination and orientation shall be designed to provide a consistent and cohesive appearance to the pedestrian scale and the commercial level of the building. All signage shall comply with Article 6 of the Planning Code and shall require separate building permit applications. This authorization does not convey any entitlement regarding signage.
- B. Design.** The Project Sponsor and Architects shall continue to work with the Planning Department's Director on the design of the Project, including but not limited to the following specific aspects:
- i. The corner window systems on the Sutter and Hemlock Street vertical elements shall be more fully incorporated into the building, particularly along Van Ness Avenue.
 - ii. The columns, openings and materials at the building's base shall be more fully developed to prevent a "leggy" appearance to the base. The final pattern of such elements shall be reflected on the Sutter Street base façade.
 - iii. All cornices shall relate to each other stylistically. They shall be incorporated into the Project in a rational and systematic pattern.
 - iv. Material of balcony railings.
 - v. Windows, including framing materials, depth of reveal, depth of glazing within mullions, glass color and reflectivity, mullion configuration and window opening size and configuration.
 - vi. Streetscape, including ground floor materials, pedestrian entry and exit doors, and garage doors.
 - vii. All final exterior finish materials.
 - viii. The streetscape design along Sutter Street shall be modified to reduce the impact of garage openings and create a more pedestrian friendly environment.

The final plans shall meet the standards of the Planning Code and be in general conformity with the plans approved by the Commission on May 15, 2008 as Exhibit B found in the Case docket.

Highly reflective spandrel glass, mirror glass, or tinted glass shall not be permitted as a primary glazing material. Only clear glass shall be used at the ground floor level.

If, after the Project Sponsor and Architects work with staff on refining the design as described above, the Director of the Planning Department is NOT satisfied that the project represents and outstanding overall design, the Project shall be presented to the Planning Commission at a public hearing for further direction.

The sponsor shall notify the Planning Department when architectural addendums are submitted to the Department of Building Inspection for review. The sponsor will ensure the addendums, and any revisions, are routed to the Planning Department for review and any necessary authorization prior to permit issuance.

EXHIBIT C

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

MITIGATION MEASURES

Mitigation Measure 1 - Archeology

Based on the reasonable potential that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of a qualified archeological consultant having expertise in California prehistoric and urban historical archeology. The archeological consultant shall undertake an archeological monitoring program. All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of *construction* can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less-than-significant level potential effects on a significant archeological resource as defined in CEQA Guidelines Sect. 15064.5(a)(c).

Archeological Monitoring Program (AMP). If the ERO in consultation with the archeological consultant determines that an archeological monitoring program shall be implemented the archeological monitoring program shall minimally include the following provisions:

- The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the project archeologist shall determine what project activities shall be archeologically monitored. In most cases, any soils disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles

(foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring because of the potential risk these activities pose to archaeological resources and to their depositional context;

- The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource;
- The archaeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with the archeological consultant, determined that project construction activities could have no effects on significant archeological deposits;
- The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis;
- If an intact archeological deposit is encountered, all soils disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction crews and heavy equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall, after making a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, present the findings of this assessment to the ERO.

If the ERO in consultation with the archeological consultant determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:

- A) The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or
- B) An archeological data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

If an archeological data recovery program is required by the ERO, the archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The project archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP. The archeological consultant shall prepare a draft ADRP that shall be submitted to the ERO for review and approval. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will

identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.

The scope of the ADRP shall include the following elements:

- *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations.
- *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures.
- *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies.
- *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program.
- *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities.
- *Final Report.* Description of proposed report format and distribution of results.
- *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.

Human Remains, Associated or Unassociated Funerary Objects. The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal Laws, including immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (CEQA Guidelines, Sec. 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, curation, possession, and final disposition of the human remains and associated or unassociated funerary objects.

Final Archeological Resources Report. The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical of any discovered archeological resource and describes the archeological and historical research methods employed in

the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the draft final report.

Copies of the Draft FARR shall be sent to the ERO for review and approval. Once approved by the ERO copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Major Environmental Analysis division of the Planning Department shall receive three copies of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest or interpretive value, the ERO may require a different final report content, format, and distribution than that presented above.

Mitigation Measure 2 - Construction Air Quality

Implementation of the following control measures would reduce the impact of construction emissions to a less-than-significant level, and construction activities would not violate any air quality standards:

- Water all active construction areas at least twice per day.
- Sweep streets daily with water sweepers if visible soil material is carried onto public streets.
- Cover all trucks hauling construction materials and debris, or require all trucks to maintain at least two feet of freeboard.
- Pave, apply water three times daily, or apply non-toxic soil stabilizers on all unpaved access roads, parking areas, and staging areas of construction sites.
- Sweep daily with water sweepers all paved access roads, parking areas and staging areas at construction sites.

Mitigation Measure 3 – Protection of Nesting Birds during Construction

The Project Sponsor would implement the following protective measures to ensure implementation of the Migratory Bird Treaty Act and compliance with State regulations during construction. Pre-construction surveys for nesting birds shall be conducted by a qualified ornithologist or wildlife biologist to ensure that no nests will be disturbed during project implementation. A pre-construction survey shall be conducted no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (January through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the qualified person shall inspect all trees in and immediately adjacent

to the impact areas for nests. If an active nest is found close enough to the construction area to be disturbed by these activities, the ornithologist, in consultation with CDFG, shall determine the extent of a construction-free buffer zone to be established around the nest.

IMPROVEMENT MEASURES

Improvement Measure 1 - Pedestrian

Install a pedestrian warning system near the project driveways to caution pedestrians on Sutter Street when a driver approaches the exit. This device should be positioned in such a way as to minimize any impacts to nearby residents.

Improvement Measure 2 - Pedestrian

Install mirrors on both sides of the driveway opening to provide a line of sight for pedestrians and drivers.

Improvement Measure 3 - Loading

Station a loading dock employee on site to help direct trucks into and out of the loading dock, and to help pedestrians on the south sidewalk of Sutter Street.

Improvement Measure 4 - Bicycles

Supply bicycle parking facilities such as bicycle racks for supermarket patrons and employees to promote the use of bicycles to the proposed project.

Improvement Measure 5 - Loading

The Project Sponsor should seek authorization from the Department of Parking and Traffic (DPT) to prohibit parking and loading along the south curb of Sutter Street between Van Ness Avenue and the proposed loading dock driveway during periods when trucks are expected to access the loading dock (12:00 AM to 7:00 AM everyday) in order to provide adequate space for delivery trucks to back into the dock. The application for this request should be submitted to DPT in enough time to have the loading zone completed prior to the end of construction.

Improvement Measure 6 - Loading

The Project Sponsor should seek approval from the Department of Parking and Traffic (DPT) for the installation of a yellow loading zone along Sutter Street between Van Ness Avenue and the proposed loading dock driveway. In addition to the two service-vehicle parking spaces in the garage, the proposed yellow loading zone would be available for truck deliveries to the residences during the parts of the day when specialty supermarket deliveries are not accessing the loading dock.

Improvement Measure 7 - Transit

Establish a transit pass program that would offer tax incentives or benefits to supermarket employees who use transit to and from the proposed project.

Improvement Measure 8 - Parking

Install a sign stating "Parking Lot Full" to be used to warn patrons that the garage is full and redirect them to an additional parking facility near the proposed project site. The location of the sign would likely be on the west side of the proposed building facing southbound so that it is viewable by all vehicles traveling on northbound Van Ness Avenue to provide drivers adequate warning to seek other facilities in the situation when there is no parking available on-site.

Improvement Measure 9 - Traffic Management

The Planning Department is concerned about traffic entering the commercial/retail/grocery (Trader Joe's) parking garage and hindering traffic flow on Hemlock Street and negatively impacting traffic on Van Ness Avenue/Highway 101. To prevent potential queuing on Van Ness Avenue, and traffic obstruction on Hemlock Street, negatively effecting access to local businesses on Hemlock Street, the commercial/retail/grocery operator (Trader Joe's) will provide a parking control officer during peak traffic hours of 3 P.M. to 7 P.M. Monday through Friday and 10 A.M. to 2 P.M. Saturday and Sunday. This traffic management tool shall also be implemented prior to major holidays outside of peak hours.

The parking control officer's primary role shall be to prevent queuing onto Van Ness Avenue and to maintain the free flow of traffic onto Hemlock Street. The parking control officer's secondary role shall be to expedite traffic in and out of the commercial/retail/grocery garage.

If, after a minimum of six months from the date of opening, the commercial/retail/grocery operator wishes to reassess the need for traffic control officer, they shall provide evidence to the Zoning Administrator and MTA's Department of Parking and Traffic, in a form and methodology acceptable to each, that shows that such a need is unwarranted, or that concerns may be addressed through alternate means. The MTA's Department of Parking and Traffic will make a recommendation to the Planning Department to eliminate, amend, or continue the conditions. The decision to eliminate, amend, or continue the condition shall be at the discretion of the Zoning Administrator.