

File No. 130567

Committee Item No. 10

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 7/18/13

Board of Supervisors Meeting

Date _____

Cmte Board

- | | | |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

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Completed by: Linda Wong

Date 7/15/13

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Settlement of Unlitigated Claims - 300 Spear Realty Venture LLC]

2
3 **Resolution approving the settlement of the unlitigated claim in favor of 300 Spear**
4 **Realty Venture LLC against the City and County of San Francisco; and the unlitigated**
5 **claim in favor of the City and County of San Francisco against 300 Spear Realty**
6 **Venture LLC.**

7
8 WHEREAS, During the construction of the building located at 300 Spear Street, San
9 Francisco, California (commonly known as the Infinity), the developer 300 Spear Realty
10 Venture LLC ("300 Spear Realty Venture") installed certain streetlights that are not of the style
11 and type that can be accepted by the San Francisco Public Utilities Commission ("SFPUC")
12 for maintenance and repair; and

13 WHEREAS, A dispute has arisen between 300 Spear Realty Venture and the SFPUC
14 in which each party claims that the other party should be responsible for the cost of removing
15 the existing streetlights so that they can be replaced with new streetlights that are acceptable
16 to the SFPUC; and

17 WHEREAS, In order to resolve their disputes without the cost of litigation, the SFPUC
18 and 300 Spear Realty Venture have agreed to a settlement in which the parties would share
19 the cost of removing and replacing the existing streetlights; and

20 WHEREAS, Under the terms of the proposed settlement, 300 Spear Realty Venture
21 would pay the City \$133,000, which would cover the \$130,000 cost of purchasing new
22 streetlights and the \$3,000 cost the SFPUC incurred for the electricity that has been used
23 while the streetlights were under the control of 300 Spear Realty Venture; and

1 WHEREAS, Under the terms of the proposed settlement, the SFPUC would be
2 responsible for the \$72,000 cost of removing and replacing the existing streetlights with the
3 new streetlights; and

4 WHEREAS, The terms and conditions of the settlement are set forth in the Release
5 and Settlement of Claims Agreement, a copy of which is on file with the Clerk of the Board of
6 Supervisors in File No. 130567 and is hereby declared to be a part of this resolution as if set
7 forth fully herein; now, therefore, be it

8 RESOLVED, That, pursuant to Section 10.22 of the San Francisco Administrative
9 Code, the Board of Supervisors hereby approves the settlement of the unlitigated claim in
10 favor of 300 Spear Realty Venture LLC and against the City and County of San Francisco;
11 and, be it

12 FURTHER RESOLVED, That, pursuant to Section 10.24(b) of the San Francisco
13 Administrative Code, the Board of Supervisors hereby approves the settlement of the
14 unlitigated claim in favor of City and County of San Francisco and against 300 Spear Realty
15 Venture LLC; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors authorizes the San Francisco
17 Public Utilities Commission General Manager to execute the Release and Settlement of
18 Claims Agreement with 300 Spear Realty Venture LLC.

19 APPROVED:

RECOMMENDED:

20
21 DENNIS J. HERRERA
City Attorney

SAN FRANCISCO PUBLIC UTILITIES
COMMISSION

22
23 See File for Signature
WILLIAM K. SANDERS
24 Deputy City Attorney

See File for Signature
HARLAN L. KELLY, JR.
General Manager

25
City Attorney
BOARD OF SUPERVISORS

MUTUAL RELEASE AND SETTLEMENT OF CLAIMS AGREEMENT

This Mutual Release and Settlement of Claims Agreement (the "Agreement") is entered as of May 24, 2013 (the "Execution Date"), by and between 300 SPEAR REALTY VENTURE LLC, a Delaware limited liability company ("300 Spear"), and the City and County of San Francisco ("City"), a municipal corporation, acting by and through the San Francisco Public Utilities Commission, a City department. 300 Spear and City are sometimes each referred to in this Agreement as a "Party" and collectively as the "Parties."

RECITALS

This Agreement is executed with reference to the following facts:

- A. 300 Spear was the developer of the residential project located in San Francisco at 300 Spear Street and commonly known as the Infinity ("Project"). The Project has been completed and fully occupied. 300 Spear no longer owns any residential units in the Project.
- B. During the land use entitlement process for the Project, 300 Spear worked with a variety of City departments and agencies in selecting and installing 36 streetlights around the perimeter of the Project ("Existing Streetlights") and within the public sidewalk right of way along Spear, Folsom, and Main Street (see **Exhibit A**).
- C. During the permitting process, the Parties worked diligently and in good faith to ensure that that the correct streetlights were installed and the appropriate process followed so that the City would accept ownership of the Existing Streetlights.
- D. Subsequently, a dispute arose between the Parties concerning whether or not the Existing Streetlights met City standards and needed to be replaced.
- E. The Parties now desire to settle their differences on mutually agreeable terms.

NOW THEREFORE, for and in consideration of the promises, covenants, and releases hereinafter set forth in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Recitals

The above recitals are incorporated herein by reference and are hereby made a part of this Agreement.

2. 300 Spear Obligations

Within forty-five (45) days of the Effective Date, as defined below in Section 4, 300 Spear shall pay to City the amount of \$133,000. The date of 300 Spear's delivery of the payment required by this Section 2 shall be the "Payment Date." After making the payment required herein, 300 Spear shall have no further liability or responsibility with regard to either the Existing Streetlights or the New Streetlights.

3. City Obligations

Except as otherwise provided in Sections 4 and 5, below, City hereby agrees to perform the following tasks within 15 (fifteen) months of the Payment Date:

- a) Purchase 36 new streetlights for installation at the Project that satisfy all City requirements ("New Streetlights");
- b) Maintain the Existing Streetlights until they are replaced with the New Streetlights;
- c) Remove the Existing Streetlights;
- d) Replace each of the Existing Streetlights with the New Streetlights;
- e) If necessary, pay any outstanding PG&E electric bills from the time the Existing Streetlights were installed until such time as the New Streetlights are installed; and
- f) Following the installation of the New Streetlights: (i) provide 300 Spear with documentation that the New Streetlights have been accepted by the City; (ii) assume sole responsibility for the operation, maintenance, and repair of the New Streetlights; and (iii) assume sole responsibility for all energy costs associated with the use of the New Streetlights.

4. Board of Supervisors Approval

The City shall cause this Agreement to be submitted to the San Francisco Board of Supervisors ("Board") for approval. Notwithstanding anything herein to the contrary, 300 Spear understands and agrees that no officer or employee of City has authority to commit City to this Agreement unless and until the Board shall have duly approved this Agreement in accordance with the San Francisco Charter. The Board may approve this Agreement in its sole discretion. Therefore, any obligations of City hereunder are contingent upon such approval by the Board, and this Agreement shall not be effective unless and until such Board approval is final. In the event the Board does not approve this Agreement, then this Agreement shall terminate and shall be of no force and effect whatsoever. In the event that the Board does approve this Agreement, the effective date of the Board's approval shall be the effective date of this Agreement (the "Effective Date").

5. Conflict of Interest

Through its execution of this Agreement, 300 Spear acknowledges that it is familiar with the provisions of Section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts that constitute a violation of said provisions and agrees that it will immediately notify City if it becomes aware of any such fact during the term of this Agreement.

6. Release of Claims

Each Party hereby fully releases the other from any and all claims, demands, controversies, causes of action, obligations, liabilities and damages (together, "**Claims**") relating to or arising out of any of the facts in connection with the installation of the Existing Streetlights and

replacement with the New Streetlights (the “**Released Claims**”). The Released Claims include, without limitation, any claims against any parent companies, affiliates, subsidiaries, equity partners, members, shareholders, partners, agents, insurance carriers, counsel, representatives, employees, agents, and officers of either Party and any elected or appointed City officials (together, the “**Released Parties**”).

7. Waiver of Future Claims: Waiver of Civil Code Section 1542

The Parties understand that they may have sustained damages that arise or may arise out of or relate to the Released Claims that may have not become apparent and that are presently unknown. The waivers and releases contained in this Agreement are specifically intended to include any such claims. The waivers and releases in this Agreement also include waivers and releases of any other claims for unknown or unanticipated injuries, losses or damages arising out of or relating to the Released Claims. The Parties waive, with respect to the Released Claims, all rights or benefits that he has or may have in the future under Section 1542 of the California Civil Code to the extent it would otherwise apply. Section 1542 read as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties acknowledges that they are assuming the risks described in this Section.

8. No Admission of Liability

Neither the transfer of any consideration, the doing of any of the acts referred to in this Agreement, nor anything else contained in this Agreement shall be construed to be an admission by either Party of any liability for any claims asserted by either Party against the other.

9. Notice

All notices, demands and other communications under this Agreement shall be in writing and signed by the party or authorized agent or attorney of the party and shall be either personally delivered to the party to whom it is addressed by courier service or overnight service (such as Federal Express or United Parcel Service), or by U.S. certified or registered mail, return receipt requested, postage prepaid, or via e-mail or facsimile, to the respective addresses of the Parties set forth below:

All notices to 300 Spear shall be sent to:	Carl Shannon Managing Director Tishman Speyer Properties One Bush Street, Suite 600 San Francisco, CA 94104 (415) 344-6630 Andrew Junius, Esq. Reuben & Junius LLP. One Bush Street, Suite 600 San Francisco, CA 94104 (415) 567-9000
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All notices to City shall be sent to:	<p>Barbara Hale Assistant General Manager, SFCity Power San Francisco Public Utilities Commission 525 Golden Gate Avenue, 13th Floor San Francisco, CA 94102 415-554-2483</p> <p>Chief Energy and Telecommunications Deputy Office of the City Attorney City and County of San Francisco City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4682 415-554-4700</p>
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10. Successors and Assigns

This Agreement shall inure to the benefit of and shall be binding upon the Parties to this Agreement and their respective heirs, successors, assigns or owners. Each Party shall provide a copy of this Agreement to any successor, assign or new owner prior to transfer of their respective property.

11. Representations and Warranties

- a) The person signing this Agreement on behalf of 300 Spear hereby warrants and represents that he or she has the power and authority to bind 300 Spear.
- b) Subject to the requirements of Section 4, the person signing this Agreement on behalf of the City hereby warrants and represents that it has the power and authority to bind the City.

12. Entire Agreement; Controlling Law

This Agreement sets forth the entire agreement of the Parties and any disputes concerning the Released Claims, and shall not be modified or altered except by a subsequent written agreement signed by the Parties. The laws of the State of California shall govern the validity, interpretation and enforcement of this Agreement.

13. Counterparts; Severability; Time Is of the Essence

This Agreement may be executed in multiple counterparts and signatures may be exchanged by facsimile or electronically, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same document. In the event that any representation, warranty, acknowledgment, covenant, agreement, clause, provision, promise, or undertaking made by any party contained in this Agreement is deemed, construed, or alleged to be illegal, invalid, or unenforceable under present or future laws, in whole or in part, the Parties acknowledge that each and every other term of this Agreement shall remain valid and enforceable. Time is of the essence for the completion of the acts described in and required by this Agreement.

14. Advice of Counsel

The Parties represent and acknowledge that they have read and understood the terms of this Agreement and have obtained the advice of counsel on the meaning and effect of this Agreement. The Parties have had an opportunity to fully participate in preparing this Agreement and acknowledge that it is the product of the draftsmanship of the Parties. Accordingly, this Agreement shall not be construed for or against any party by virtue of their participation, or lack of participation, in the drafting hereof.

This Agreement is executed as of the Execution Date by the Parties.

300 SPEAR REALTY VENTURE LLC

By _____

Title:

Date: _____

City AND COUNTY OF SAN FRANCISCO

By: 

HARLAN L. KELLY, JR.

Title: General Manager
San Francisco Public Utilities
Commission

Date: 5/24/13

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney



WILLIAM K. SANDERS
Deputy City Attorney

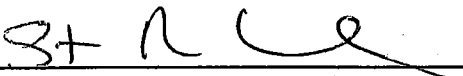
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This Agreement is executed as of the Execution Date by the Parties.

300 SPEAR REALTY VENTURE, LLC.

By 

Title: **Steven R. Wechsler**
Senior Managing Director

Date: _____

CITY AND COUNTY OF SAN FRANCISCO

By:

HARLAN L. KELLY, JR.

Title: General Manager
San Francisco Public Utilities
Commission

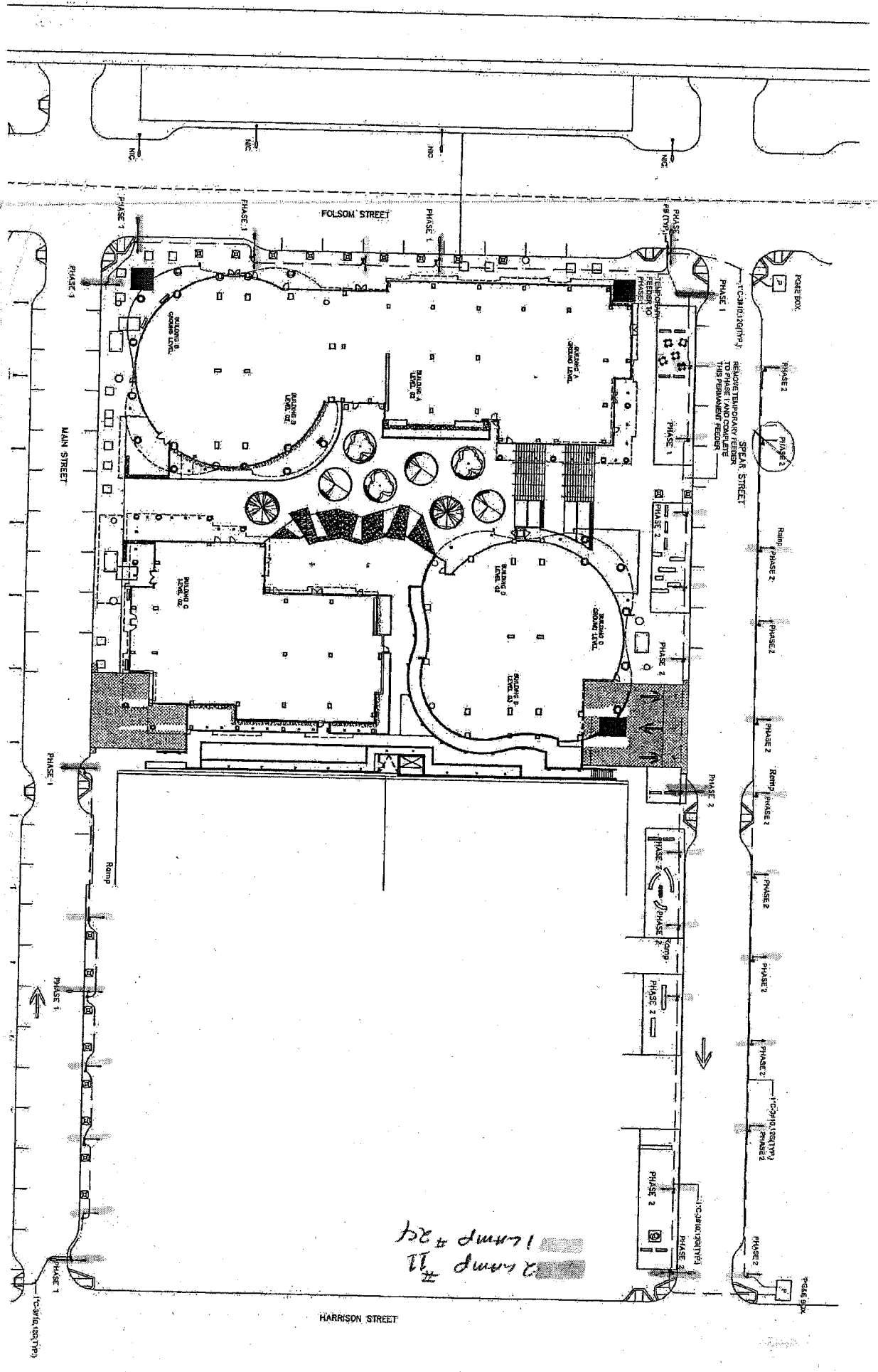
Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

WILLIAM K. SANDERS
Deputy City Attorney

Date: _____



2 ramp # 201
1 ramp # 202

HARRISON STREET