

File No. 180525

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: June 11, 2018

Board of Supervisors Meeting:

Date: _____

Cmte Board

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| <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 checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <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 type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
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OTHER

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|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning GP and CEQA Letter - June 4, 2018</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Support of Default Judgement - CA Sup. Court - March 15, 2018</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Notice of Trustee's Sale - January 31, 2018</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Default Judgement - April 20, 2018</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>DALP Loan - December 2018</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Commission Motion No. 16692 - December 4, 2003</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Commission Motion No. 16693 - December 4, 2003</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Commission Motion No. 16996 - April 28, 2005</u> |

Prepared by: John Carroll

Date: June 7, 2018

Prepared by: John Carroll

Date: _____

1 [Authorizing the Acquisition and Conveyance of a Below Market Rate Unit under
2 Foreclosure - 1160 Mission Street, Unit 812]

3 **Resolution approving and authorizing the acquisition of a below market rate**
4 **condominium located at 1160 Mission Street, Unit 812, San Francisco (“the Property”)**
5 **for up to \$300,000 to hold the Property for resale under the City’s Below Market Rate**
6 **Inclusionary Housing Program (“Program”); adopting findings that the conveyance is**
7 **consistent with the General Plan, and the eight priority policies of Planning Code,**
8 **Section 101.1; and authorizing and directing the execution of any documents**
9 **necessary to implement this Resolution, as defined herein.**

10
11 WHEREAS, Pursuant to San Francisco Planning Code, Section 415, the City’s Below
12 Market Rate Inclusionary Housing Program (“Program”) creates housing more affordable to
13 low and middle income residents by requiring housing developers to set aside a certain
14 percentage of units in new buildings to be rented or sold at a below market rate (“BMR”); and

15 WHEREAS, The Mayor’s Office of Housing and Community Development (“MOHCD”)
16 administers the Program by facilitating the purchase of BMR units by low to middle income
17 buyers at an affordable price if they meet the Program requirements and agree to abide by the
18 restrictions and conditions of the Program; and

19 WHEREAS, The Property was designated as a BMR unit by the San Francisco
20 Planning Commission on December 4, 2003, in Planning Commission Motion No. 16692, and
21 a "Notice of Special Restrictions under the Planning Code" ("NSR") was recorded against title
22 of the Property on August 21, 2006, which is on file with the Clerk of the Board in File
23 No. 180525; and

24 WHEREAS, Gregory Garver (“Owner”) purchased the Property directly from the Soma
25 Grand developer in December 2008 at a BMR price through the Program and received a

1 down payment assistance loan in the principal amount of \$33,255, with share of appreciation
2 of \$10,587, from MOHCD ("DALP Loan"), which is on file with the Clerk of the Board in File
3 No. 180525; and

4 WHEREAS, Owner has used the Property as a rental income property in violation of
5 the NSR, the Program requirements, and the San Francisco Planning Code, and has
6 committed unlawful and unfair business practice, within the meaning of Business and
7 Professional Code, Sections 17200-17209; and

8 WHEREAS, On August 23, 2017, the City, filed a Complaint against Owner alleging
9 causes of action for violations of the San Francisco Planning Code and the NSR, violations of
10 the Unfair Competition Law (Business and Professions Code, Section 17200, et al.), and for
11 public nuisance; and

12 WHEREAS, A Notice of Trustee's Sale was recorded by the first mortgage lender,
13 Selene Finance (the "Bank"), as Doc#2018-K574186-00 on January 31, 2018 in the Official
14 Records of San Francisco County to sell the Property at public auction, which is on file with
15 the Clerk of the Board in File No. 180525, and the trustee sale is scheduled for June 25, 2018;
16 and

17 WHEREAS, The DALP Loan is in a junior lien position and the entire outstanding DALP
18 Loan could be eliminated if the Property is acquired by the Bank; and

19 WHEREAS, On April 12, 2018, the City Attorney's Office obtained a Default
20 Judgment of \$209,104.30 against Owner for civil penalties, attorneys' fees, and costs
21 related to Owner's violations of the Planning Code and unfair business practices, which
22 is on file with the Clerk of the Board in File No. 180525; and

23 WHEREAS, Pursuant to the California Civil Code, the Property must be sold at a
24 public auction when there is a non-judicial foreclosure, and MOHCD cannot facilitate
25 the transfer of the Property to a qualified homebuyer at the public auction; and

1 WHEREAS, MOHCD estimates that the current maximum BMR price for the
2 Property is Three Hundred Thousand Dollars and No/100 (\$300,000.00), which is
3 based on MOHCD's formula of an affordable price for a low income household (the
4 "Current BMR Price"); and

5 WHEREAS, The Board declares that preserving the City's affordable housing
6 stock is a high priority during the current housing crisis for maintaining opportunities for
7 low and moderate income households to live in the City; and

8 WHEREAS, MOHCD desires to acquire the Property at the Trustee sale, up to
9 the Current BMR Price, to preserve the Property as affordable housing under the
10 Program and convey the Property to a new qualified household approved by MOHCD;
11 and

12 WHEREAS, The Board determines that an appraisal of the Property is not
13 required based on the NSR restricting the BMR price below the estimated market
14 value, and MOHCD's desire to only hold the Property for resale to a qualified
15 household; and

16 WHEREAS, The Planning Department, by letter dated June 4, 2018, found that
17 the acquisition of the Property is not considered a project under the California
18 Environmental Quality Act ("CEQA", Pub. Resources Code, Section 21000 et seq.)
19 pursuant to CEQA Guidelines, Section 15060 and Chapter 31 of the City's
20 Administrative Code, and is consistent with the General Plan, and the eight priority
21 policies of Planning Code, Section 101.1, which letter is on file with the Clerk of the
22 Board of Supervisors in File No. 180525, and incorporated herein by this reference;
23 now, therefore, be it

24 RESOLVED, That the Board of Supervisors hereby finds that the acquisition of
25 the Property is consistent with the City's General Plan, and with the eight priority

1 Policies under Planning Code, Section 101.1, for the same reasons set forth in the
2 letter of the Department of City Planning dated June 4, 2018, and hereby incorporates
3 such findings by reference as though fully set forth in this Resolution; and, be it

4 FURTHER RESOLVED, That in accordance with the recommendations of the
5 Director of Property and the Director of MOHCD, the Board of Supervisors hereby
6 approves the acquisition of the Property for up to Three Hundred Thousand Dollars
7 (\$300,000), under the jurisdiction of MOHCD, and authorizes the Director of Property
8 (or designee) and the Director of MOHCD (or designee) to execute any documents that
9 are necessary or advisable to complete the acquisition of the Property, and to
10 effectuate the purpose and intent of this Resolution; and, be it

11 FURTHER RESOLVED, That the Director of Property is hereby authorized, in the
12 name and on behalf of the City and County of San Francisco, to accept the deed to the
13 Property from the trustee upon a successful bid by MOHCD, to place the Property under the
14 jurisdiction of MOHCD, and to take any and all steps as the Director of Property deems
15 necessary or appropriate in order to consummate the conveyance of the Property, or to
16 otherwise effectuate the purpose and intent of this Resolution, such determination to be
17 conclusively evidenced by the execution and delivery by the Director of Property of any such
18 documents; and, be it

19 FURTHER RESOLVED, That the Director of Property (or designee) and the Director of
20 MOHCD (or designee) is hereby authorized to convey the Property to a qualified buyer
21 approved by MOHCD and pursuant to the requirements of the Program; and, be it

22 FURTHER RESOLVED, That all actions authorized and directed by this
23 Resolution and heretofore taken are hereby ratified, approved and confirmed by this
24 Board of Supervisors; and, be it

1 FURTHER RESOLVED, That within thirty (30) days of MOHCD acquiring the
2 Property at the trustee sale, MOHCD shall provide the final documents of such
3 acquisition to the Clerk of the Board for inclusion into the official file.
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\$300,000 available

Fund: 10580

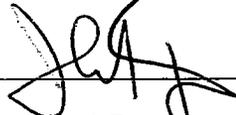
Project: 10023908

Approximate Amount: \$300,000

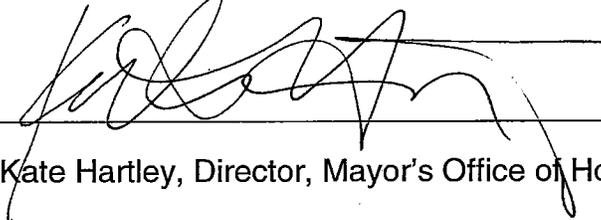


Ben Rosenfield
Controller

RECOMMENDED:



John Updike, Director of Property



Kate Hartley, Director, Mayor's Office of Housing and Community Development

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292
FAX (415) 252-0461

June 8, 2018

TO: Government Audit and Oversight Committee
FROM: Budget and Legislative Analyst 
SUBJECT: June 11, 2018 Government Audit and Oversight Committee Meeting

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<p>Item 5 File 18-0525</p>	<p>Department: Mayor’s Office of Housing and Community Development</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution authorizes (1) the acquisition of a below market rate condominium located at 1160 Mission Street, Unit 812, San Francisco for up to \$300,000 to hold the property for resale under the City’s Below Market Rate Inclusionary Housing Program; (2) the adoption of findings that the conveyance is consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and (3) the execution of any documents necessary to implement this Resolution. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • In August 2017 the City Attorney filed a lawsuit against the owner of a one bedroom one bathroom Below Market Rate (BMR) condominium located in the Soma Grand at 1160 Mission Street, Unit 812. The owner was found to be using the unit as a rental income property in violation of the program requirements. • The first mortgage lender initiated foreclosure proceedings and the trustee sale is scheduled for June 25, 2018. • The owner purchased the property in 2008 at the below market rate price of \$221,698. He paid the down payment with the assistance of a MOHCD DALP loan in the principal amount of \$33,255 to cover 15 percent of the purchase price. The payoff amount now owed to MOHCD includes the equitable share of appreciation, 15percent or \$10,587, for a total \$43,842 owed to MOHCD. • Any property subject to a non-judicial foreclosure must be sold at a public auction. MOHCD cannot facilitate the transfer of the property to a qualified homebuyer at the public auction due to the BMR program requirement that all BMR units be sold through a lottery. As a result, the transfer of the property from the mortgage company’s possession to a new owner-occupant requires first a trustee sale, then a MOHCD resale by lottery. Given the unit’s restrictions, bidding is unlikely to proceed as at an unrestricted auction. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • If there are no bidders or the property otherwise reverts to the beneficiary (the lender), MOHCD’s DALP loan along with all junior liens would be eliminated. If MOHCD acquires the property, the BMR DALP loan will be recovered when MOHCD resells the property through the city lottery process. The up to \$300,000 approved in the proposed resolution would allow MOHCD to acquire the property at public auction and to hold it for resale. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

Administrative Code Section 23.1 requires Board of Supervisors approval of all resolutions and ordinances approving real property transactions.

BACKGROUND**Unit 812 at the Soma Grand**

In August 2017 the City Attorney filed a lawsuit against the owner of a one bedroom one bathroom Below Market Rate (BMR) condominium located in the Soma Grand at 1160 Mission Street, Unit 812. The owner was found to be using the unit as a rental income property in violation of the program requirements and lawful and fair business practices. The City filed a Complaint against the owner citing 1) violations of the San Francisco Planning Code, 2) the Notice of Special Restrictions signed with the title to the property, and 3) the Unfair Competition Law. As of December 2017, when a default judgment was entered against the owner, the owner was ordered to comply with the restrictions of the BMR program or sell the property.

At roughly the same time, the Soma Grand Homeowners Association (HOA) issued a notice of default to the owner for his failure to pay HOA dues. While the City's lawsuit was pending, JPMorgan Chase, who held the First Deed of Trust on the property began the foreclosure process due to failure to make mortgage payments. As of JPMorgan's first Notice of Default in June 2017, the owner was behind in payments by \$11,532. After JPMorgan issued a notice of default but before initiating a trustee sale, they sold their interest in the Deed of Trust to Selene Finance, a Texas-based residential mortgage company. Selene Finance continued foreclosure proceedings and the trustee sale is scheduled for June 25, 2018.

Below Market Rate Inclusionary Housing Program

The property was designated as Below Market Rate by the San Francisco Planning Commission in December of 2003 under the City's BMR Inclusionary Housing Program. The BMR Program, administered by the Mayor's Office of Housing and Community Development (MOHCD), requires housing developers to set aside a percentage of units in new housing projects larger than 9 units¹. The set aside units must be rented or sold at a below market rate and must remain affordable to qualifying households for the life of the project, pursuant to Planning Code Section 415. A Notice of Special Restrictions specifies income levels and conditions of the BMR program that go with the land and must be agreed to by all buyers. Chief among the conditions, purchasers of BMR units must (1) reside in the BMR unit as a primary residence and (2) refrain from renting out the BMR unit, without the written consent of MOHCD. The owner of unit 812 breached both conditions.

¹ Alternative options available to developers are to reserve a percentage of units in another residential project they build, pay a fee, or, in some cases, dedicate land that will become affordable housing.

Below Market Rate Down Payment Assistance Program

Separate and in addition to the inclusionary housing requirement, MOHCD operates a program called the Below Market Rate Down Payment Assistance Loan Program (BMR-DALP), which provides down payment assistance for the purchase of below market rate units. The BMR-DALP is a subordinated loan that requires no monthly payments for 30 years. In addition to the principal amount owed at the end of the 30 year term, MOHCD is entitled to a share of the property appreciation equal to the proportion of the down payment supported by the BMR-DALP loan. To qualify residents must be first time home buyers, must live in the property as their primary residence, and must meet moderate or low income requirements. The owner of unit 812 at the Soma Grand was a recipient of a BMR-DALP loan in 2008.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would

- (1) approve and authorize the acquisition of a below market rate condominium located at 1160 Mission Street, Unit 812, San Francisco for up to \$300,000 to hold the Property for resale under the City's Below Market Rate Inclusionary Housing Program;
- (2) adopt findings that the conveyance is consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and
- (3) authorize and direct the execution of any documents necessary to implement this Resolution.

AMI-Based Valuation

An appraisal of the property is not required pursuant to the Notice of Special Restrictions under the Planning Code recorded against the title of the property in 2006. Rather BMR property valuation is calculated based on the Area Median Income (AMI) in place the year the purchase is made. When the City or a third party purchases the unit at foreclosure, the transaction is treated as a new sale². Households who pay more than 33 percent of their income for housing are considered to be housing cost-burdened, so MOHCD structures the pricing to ensure owners pay no more than one third of their income towards housing payments.

Using the 2018 annual income limit at 100 percent of AMI³ for a two-person household⁴, \$94,700, one third of the annual income, \$31,251, is used as the basis to calculate the mortgage the household could support inclusive of condo fees, taxes, and insurance. The maximum BMR sale price is \$348,799, as summarized in Table 1.

² The MOHCD price calculation method for a BMR sale by owner generates a lower sales price as the calculation relies on income limits in place the year the purchase was made.

³ Unadjusted Annual Income Limits, established by the United States Department of Housing and Urban Development

⁴ MOHCD prices new sale BMR Units based on the income level for a Household that is one person larger than the total number of bedrooms in the Unit in all cases except for studio BMR Units, which assume a one-person Household, and SRO Units, which are priced based on three-fourths (3/4) of the price for studio.

Table 1. Maximum Sales Price Calculation for 2 Person Household

Household Size	Annual	Monthly
2018 Area Median Income (AMI)	\$94,700	
Housing cost share of income (33%)	<u>X 0.33</u>	
Income available for housing costs	\$31,251	\$2,604
Less, annual Homeowner Association (HOA) fee	(8,496)	(708)
Less, property taxes @ 1.1792%	<u>(4,113)</u>	<u>(342)</u>
Annual income available for mortgage payments	\$18,642	\$1,554
10 Year Average Interest Rate*	4.3%	
Supportable Mortgage	\$313,919	
Down Payment	\$34,880	
Initial Affordable Price	\$348,799	

*Freddie Mac 10-year rolling average

MOHCD is willing to pay no more than \$300,000 for the purpose of the public auction. The City will incur seller transaction costs such as broker commissions, title insurance, inspections, and other seller fees or costs when they sell the unit in the lottery process. Another consideration is the unknown condition of the unit, which may affect the final BMR price. With \$300,000 the City is likely to be able to absorb additional costs and possible changes to the final BMR price. A third party that bids more than \$300,000 would bear the seller transaction fees mentioned above, but cannot sell the unit for more than the maximum sale price of \$348,799.

Loan repayment

The owner purchased the property directly from the developer in 2008 at the below market rate price of \$221,698. He paid the down payment with the assistance of a BMR-DALP loan in the principal amount of \$33,255 to cover 15 percent of the purchase price. The payoff amount owed to MOHCD includes the principal amount of the BMR-DALP loan, \$33,255, plus the equitable share of appreciation, in this case 15 percent or \$10,587, for a total \$43,842 owed to MOHCD. Based on mortgage payments made by the owner to date, the first mortgage lender, Selene Finance, is owed the loan balance of \$167,656. In the event the unit is sold for the maximum BMR sale price and all liens are paid off, remaining proceeds are \$82,325. Table 2 shows estimated uses in the event that the unit sells for the maximum affordable price.

Table 2. Estimated Sources and Uses

Estimated Sources	
Maximum BMR Sale Price	348,799
Uses	
1st loan payoff	167,656
BMR DALP payoff	43,842
HOA Delinquency (as of 6/4/17)	35,355
Est. Closing Costs (including commission)	19,621
Total	266,474
Proceeds to Seller	82,325

In April 2018, the City Attorney's Office obtained a Default Judgment of \$210,000 against the owner for civil penalties, attorneys' fees, and costs related to violations of the Planning Code and unfair business practices. The proceeds of \$82,325 shown in Table 2 above will be applied to the Default Judgment.

Trustee Sale

Pursuant to California Civil Code, any property subject to a non-judicial foreclosure must be sold at a public auction. MOHCD cannot facilitate the transfer of the property to a qualified homebuyer at the public auction due to the BMR program requirement that all BMR units be sold through a lottery. As a result, the transfer of the property from the mortgage company's possession to a new owner-occupant requires multiple steps: a bank sale by auction, then a MOHCD resale by lottery.

According to MOHCD's Homeownership & Below Market Rate Compliance Manager, Ms. Cissy Yin, MOHCD staff will announce the affordability restrictions placed on the BMR unit at the public auction, so that the price restrictions and the resale price of the unit is understood in advance of bidding. As the unit cannot be sold for more than \$348,799, due to its permanent affordability restriction, it is unlikely to be purchased for more than that amount. MOHCD is willing to bid no more than \$300,000. In the event that a third party bids more than \$300,000 at the trustee sale, MOHCD has the legal right to require the third party to sell it back to MOHCD immediately in order to sell the property through the standard lottery process⁵. In brief, the trustee sale is a legal requirement, but given the unit's restrictions, bidding is unlikely to proceed as at an unrestricted auction.

FISCAL IMPACT

MOHCD has a vested interest in the repayment of its DALP loan. Whoever purchases the property at the public auction takes the title subject to the existing liens and restrictions. If the winning bid is in any amount higher than the first mortgage loan balance of \$167,656, all

⁵ MOHCD could also require the third party winning bidder to sell the unit directly to a qualified homebuyer selected through a MOHCD-administered lottery at the BMR maximum sale price, but not sell the unit to MOHCD. This will reduce transaction costs and time.

surplus funds will be made available for the remaining beneficiaries to claim based on their lien position. Lien positions are outlined below in Table 3.

Table 3. Lien Priority

Position	Lien	Amount
First	Selene Finance loan payoff	\$167,656
Second	BMR lien	No cash value
Third	MOHCD BMR DALP	\$43,842
Fourth	Homeowner Association dues	\$35,355
Fifth	City Attorney Judgement	\$210,000

MOHCD is requesting authorization to bid up to \$300,000 for the BMR unit, because, in the event that the auction of the units does not receive bids (in the absence of MOHCD bidding), the unit would revert to the lender (Selene Finance), and MOHCD's BMR-DALP loan along with all junior liens would be eliminated. If MOHCD acquires the property, the BMR-DALP loan will be repaid when MOHCD resells the property through the City lottery process.

RECOMMENDATION

Approve the resolution.

<p>Item 7 File 18-0359</p>	<p>Department: Human Services Agency (HSA)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve the grant agreement between the Human Services Agency (HSA), and the non-profit Brilliant Corners to provide Scattered Site Housing and Rental Subsidy Administration (SSHRSA) services to seniors and adults with disabilities for the five-year period from July 1, 2018, through June 30, 2023, for a total not to exceed amount of \$16,916,977. The proposed grant agreement does not include any extension options. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The Human Services Agency (HSA) provides Scattered Site Housing and Rental Subsidy Administration (SSHRSA) services to seniors and adults with disabilities within the City and County of San Francisco. Funded by the Community Living Fund administered through HSA’s Department of Aging and Adult Services (DAAS), the SSHRSA program aims to facilitate independent community living for eligible residents within the City. Services include rental unit identification and acquisition, rental subsidy administration, tenant-landlord liaison services, housing retention services, unit habitability, tenant well-being inspections, and management of unit modifications for reasonable accommodations. • According to HSA, the non-profit Brilliant Corners was chosen again as the SSHRSA provider for the proposed grant agreement through sole source rather than a competitive bidding process because the organization is currently the only San Francisco provider of scattered site housing for seniors and adults with disabilities. In addition, Brilliant Corners currently holds the master leases of all units inhabited by the program participants and the leases are not transferable. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed resolution would approve the grant agreement between HSA and Brilliant Corners for a total not-to-exceed amount of \$16,916,977, including a 10 percent contingency of \$1,537,907. The grant is fully funded by the Community Living Fund, which receives General Fund monies. • The proposed budget was developed by Brilliant Corners in collaboration with HSA program staff. The current contract’s annual amount is \$3,038,086, while the proposed agreement’s annual amount is \$3,075,814. The majority of the funding is allocated for rental subsidies, while the other budgeted items are dependent on factors such as changes in rent, fair market value, client income etc. Consequently, the amounts in these categories may vary year-to-year depending on these factors and other operational issues. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

The Human Services Agency (HSA) provides Scattered Site Housing and Rental Subsidy Administration (SSHRSA) services to seniors and adults with disabilities within the City and County of San Francisco. Funded by the Community Living Fund¹ administered through HSA's Department of Aging and Adult Services (DAAS), the SSHRSA program aims to facilitate independent community living for eligible residents within the City. Services include rental unit identification and acquisition, rental subsidy administration, tenant-landlord liaison services, housing retention services, unit habitability, tenant well-being inspections, and management of unit modifications for reasonable accommodations. SSHRSA provides housing options for individuals in skilled nursing facilities in San Francisco, including Laguna Honda Hospital and Zuckerberg San Francisco General Hospital, or individuals who are at imminent risk for nursing home or institutional placement but are willing and able to live in the community with appropriate support.

In July 2013, the Board of Supervisors approved a resolution authorizing the third amendment to the contract between Department of Public Health (DPH) and the West Bay Housing Corporation (now known as Brilliant Corners) to (1) extend the term retroactively from July 1, 2013 through June 30, 2018 and (2) increase the total contract amount by \$16,480,867 from \$9,569,430 to \$26,050,297 (File 13-0512). The purpose of the contract was to provide SSHRSA services. According to Ms. Rocio Duenas, HSA Contract Manager, the contract was transferred to HSA because the target population is more aligned with the agency's services and purpose.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new grant agreement between the Human Services Agency (HSA), and the non-profit Brilliant Corners to provide Scattered Site Housing and Rental Subsidy Administration (SSHRSA) services to seniors and adults with disabilities for the five-year period from July 1, 2018, through June 30, 2023, for a total not to exceed amount of \$16,916,977. The proposed grant agreement does not include any extension options.

¹ The San Francisco Administrative Code, Section 10.100-12, created the Community Living Fund (CLF) to support aging in place and community placement alternatives for individuals who may otherwise require care within an institution. The CLF provides for home and community-based services, or a combination of equipment and services, that will help individuals who are currently, or at risk of being, institutionalized to continue living independently in their homes, or to return to community living. This is the source of funding for the entire term of the contract.

Sole Source Agreement

According to Ms. Duenas, the non-profit Brilliant Corners was chosen again as the SSHRSA provider for the proposed grant agreement through sole source rather than a competitive solicitation process because the organization is currently the only San Francisco provider of scattered site housing for seniors and adults with disabilities. In addition, Brilliant Corners currently holds the master leases of all units inhabited by the program participants and the leases are not transferable. Ms. Duenas states that the master lease model allows the program to maintain a pool of housing placements for this population. Because of the master leases, changing contractors would likely result in disruptions and displacements for clients, as well as possible loss of units and a decrease in the available housing pool.

The Human Services Agency conducts an internal determination of sole source grant agreements to non-profit organizations, subject to Human Services Commission or the Department of Adult and Aging Services Commission approval². The Human Services Agency uses the same criteria as the City's Office of Contract Administration to award sole source agreements, including (a) goods and services are only available through one source, (b) only one prospective vendor is willing to contract with the City; and (c) the goods or services are licensed or patented to a single vendor. The Department of Adult and Aging Services Commission approved the award of the sole source grant agreement to Brilliant Corners on March 7, 2018.

Grant Agreement Services

As part of the proposed grant agreement, Brilliant Corners will provide scattered site housing and rental subsidy administration through HSA's Department of Aging and Adult Services. The program's goal is to provide rapid re-housing and community integration for the individuals being transitioned out of Laguna Honda and other skilled nursing facilities³ who are considered at risk of institutionalization. Brilliant Corners currently provides subsidies for 102 participants and has served 108 participants thus far in FY 2017-18. Brilliant Corners transitioned nine new individuals from facilities to the community and is anticipating five additional move-ins. Under the new grant agreement, Brilliant Corners will conduct regular inspections to ensure unit habitability and the well-being of participants. As the master lease holder, Brilliant Corners will also serve as a liaison between the landlord and the program participants including initial occupancy, lease violations, and overall maintenance and concerns. According to Ms. Duenas, the proposed grant agreement will allow eligible, low-income, and at-risk individuals who are willing and able to living in the community an opportunity to do so while freeing up limited institution beds for those who need it.

² While Administrative Code Chapter 21 requires sole source goods and services to be made in accordance with the Director of the Office of Contract Administration's regulations, Section 21.02 states that grants to nonprofit organizations to provide community services are not covered by Chapter 21.

³ Referrals were accepted from the following Skilled Nursing Facilities: Central Gardens, Tunnell Center, Kindred Golden Gate, California Pacific Medical Center (CPMC) Davies, Zuckerberg San Francisco General Hospital Unit 4A

FISCAL IMPACT

The proposed resolution would approve the grant agreement between HSA and Brilliant Corners for a total not-to-exceed amount of \$16,916,977, including a 10 percent contingency⁴ of \$1,537,907, as shown in Table 1 below. The grant is fully funded by the Community Living Fund, which receives General Fund monies.

Table 1: Brilliant Corners Proposed Grant Budget from FY18-19 through FY22-23

Expenditures	FY18-19	FY19-20	FY20-21	FY21-22	FY22-23	Total
Salaries and Benefits	\$348,641	\$348,641	\$348,641	\$348,641	\$348,641	\$1,743,204
Operating Expenses	159,089	101,638	101,003	100,508	99,813	562,052
Indirect Cost (15 %) ⁵	76,159	67,542	67,447	67,372	67,268	345,788
Client Pass Through ⁶	2,491,925	2,557,993	2,558,723	2,559,293	2,560,092	12,728,026
Subtotal	\$3,075,814	\$3,075,814	\$3,075,814	\$3,075,814	\$3,075,814	\$15,379,070
Contingency (10%)						1,537,907
Total						\$16,916,977

According to Ms. Duenas, the proposed budget was developed by Brilliant Corners in collaboration with HSA program staff. The current contract's annual amount is \$3,038,086, while the proposed agreement's annual amount is \$3,075,814. The majority of the funding is allocated for rental subsidies, while the other budgeted items are dependent on factors such as changes in rent, fair market value, client income etc. Consequently, the amounts in these categories may vary year-to-year depending on these factors and other operational issues.

RECOMMENDATION

Approve the proposed resolution.

⁴ According to Ms. Duenas, the 10 percent contingency is allocated only if and when there is a need for the funds and must be preapproved by the department.

⁵ According to HSA, indirect costs are organizational costs that cannot be isolated to an individual program or contract. The agency allows contractors to allocate indirect costs as an additive of direct costs not to exceed 15 percent of direct costs.

⁶ Direct Client Pass Through expenditures are funds that are paid directly by the contractor on behalf of clients of the program. This includes rental subsidy payments and client utility payments. These funds are not included in the indirect calculation.



SAN FRANCISCO PLANNING DEPARTMENT

General Plan Referral

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Date: June 4, 2018

Case No. Case No. 2017-001087GPR
Transfer of Office Community Investment and Infrastructure
(OCII) Real Estate Parcels to the Mayor's Office of Housing and
Community Development (MOHCD)

Block/Lot No.: Various (see Attachment for full list)

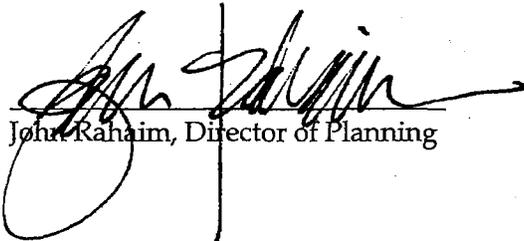
Project Sponsor: Benjamin McCloskey
Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Applicant: Same as Above

Staff Contact: Robin Abad-Ocubillo – (415) 575-9123
robin.abad@sfgov.org

Recommendation: Finding the project, on balance, is in conformity with
the General Plan

*Recommended
By:*


John Rahaim, Director of Planning

PROJECT DESCRIPTION

The Project is the proposed transfer of real estate parcels from the Office of Community Investment and Infrastructure (OCII) to the Mayor's Office of Housing and Community Development (MOHCD). Under State Redevelopment Dissolution Law, the Office of Community Investment and Infrastructure (OCII) has certain real estate parcels which OCII is required to fund and develop as affordable housing. As development of each parcel is completed, the parcels are required to be conveyed from OCII to the City, through the Mayor's Office of Housing and Community Development (MOHCD). All parcels are comprised of land owned by the City with long-term leases to affordable housing developers. Parcels under consideration include locations in Transbay, Hunters Point Shipyard and Mission Bay (see Attachment for complete list of sites). Board of Supervisors File No. 161317 contains legislation in which the City would accept the transfer of parcels from OCII to MOHCD. The submittal is for a General Plan Referral to recommend whether the Project is in conformity with the General

Plan, pursuant to Section 4.105 of the Charter, and Section 2A.52 and 2A.53 of the Administrative Code.

ENVIRONMENTAL REVIEW

On June 4, 2018, the Environmental Planning Division of the Planning Department determined that the Project is not defined as a project under CEQA Guidelines Sections 15378 and 1506(c)(2) because it does not result in a physical change in the environment..

GENERAL PLAN COMPLIANCE AND BASIS FOR RECOMMENDATION

The Project is the proposed transfer of real estate parcels from the Office of Community Investment and Infrastructure (OCII) to the Mayor's Office of Housing and Community Development (MOHCD). The Project is consistent with the Eight Priority Policies of Planning Code Section 101.1 as described in the body of this letter and is, on balance, **in-conformity** with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

POLICY 1.3

Work proactively to identify and secure opportunity sites for permanently affordable housing.

OCII's real estate assets include parcels designated for permanently affordable housing. The transfer of these properties to MOHCD will ensure the City retains these sites for this purpose.

POLICY 1.10

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

The locations of the parcels proposed for transfer include many areas of the city with existing or planned investment in multi-modal transportation infrastructure (Transbay, Mission Bay, Hunters Point Shipyard). Housing in these areas will provide many opportunities for walking, biking and public transit for residents.

OBJECTIVE 4

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

POLICY 4.4

Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.

OCII's real estate assets include parcels designated for permanently affordable housing. The transfer of these properties to MOHCD will ensure the City retains these sites for this purpose including permanently affordable rental housing units.

OBJECTIVE 8

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

POLICY 8.1

Support the production and management of permanently affordable housing.

OCII's real estate assets include parcels designated for permanently affordable housing. The transfer of these properties to MOHCD will ensure the City retains these sites for this purpose. All parcels are comprised of land that will be owned by the City with long-term leases for developers and managers of long-term affordable housing developments.

PROPOSITION M FINDINGS – PLANNING CODE SECTION 101.1

Planning Code Section 101.1 establishes Eight Priority Policies and requires review of discretionary approvals and permits for consistency with said policies. The Project is found to be consistent with the Eight Priority Policies as set forth in Planning Code Section 101.1 for the following reasons:

Eight Priority Policies Findings

The subject project is found to be consistent with the Eight Priority Policies of Planning Code Section 101.1 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 would have no adverse effect on existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses. No sites proposed for transfer contain existing neighborhood-serving retail uses.

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

The Project would have no adverse effect on the City's housing stock or on neighborhood character. The existing housing and neighborhood character will be not be negatively affected

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

The Project would help secure and increase the supply of affordable housing in the City. Transfer of the properties from OCII to MOHCD will ensure long-term preservation of affordable housing developments.

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

The Project would not result in commuter traffic impeding MUNI's transit service, overburdening the streets or altering current neighborhood parking.

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 residential employment and ownership in these sectors be enhanced.

The Project would not affect the existing economic base in this area. No parcels contain existing industrial or service sector uses.

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

The Project would not adversely affect achieving the greatest possible preparedness against injury and loss of life in an earthquake. Transfer of the properties from OCII to MOHCD will help ensure the long-term preservation of affordable housing developments under all circumstances, including in the case of an earthquake.

7. That landmarks and historic buildings be preserved.

The Project will have no effect on landmarks or historic buildings. No parcels proposed for transfer contain historic landmarks or buildings.

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

The Project would have no adverse effect on parks and open space or their access to sunlight and vista.

RECOMMENDATION:	Finding the Project, on balance, in-conformity with the General Plan
------------------------	---

Attachment:

- List of Parcels Proposed for Transfer to MOHCD

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 PETER J. KEITH, State Bar #206482
Chief Attorney
3 Neighborhood and Resident Safety Division
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8 Attorneys for Plaintiffs
9 CITY AND COUNTY OF SAN FRANCISCO and
PEOPLE OF THE STATE OF CALIFORNIA

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 UNLIMITED JURISDICTION

14 CITY AND COUNTY OF SAN
FRANCISCO, a Municipal Corporation; and
15 the PEOPLE OF THE STATE OF
CALIFORNIA, by and through Dennis J.
16 Herrera, City Attorney for the City and County
of San Francisco,
17 Plaintiffs,
18 vs.
19 GREGORY GARVER and DOES ONE
20 through FIFTY,
21 Defendants.

Case No. CGC-17-560891
**PLAINTIFFS MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
MOTION FOR DEFAULT JUDGMENT AND
PERMANENT INJUNCTION AGAINST
DEFENDANT GREGORY GARVER**
Hearing Date:
Hearing Judge:
Time: 9:00 AM
Place: Dept. 514
Date Action Filed: August 23, 2017
Trial Date: Not Yet Set

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4 *Bristol Convalescent Hosp. v. Stone*

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7 (1999) 20 Cal.4th 1637

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1 **Treatises**

2 William L. Stern, *Business & Professions Code § 17200 Practice*
3 (The Rutter Group 2015) ¶3:217

4 **San Francisco Codes**

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1 **SUMMARY OF CASE**

2 This action arises out of Defendant Gregory Garver’s (“Defendant Garver”) unlawful and
3 unfair business practices in his ownership and use of the property located at 1160 Mission Street, Unit
4 812, San Francisco, California (the “Property”), which is intended for low-income households as part
5 of the San Francisco Mayor’s Office of Housing and Community Development’s Inclusionary
6 Affordable Housing Program. This program requires developers to set aside a certain number of units
7 to be sold to low or middle income households at below market rates. The purchasing households
8 agree to abide by restrictions and conditions; including requirements that they be first-time
9 homebuyers and that they live in the Property as a primary residence.

10 Since at least 2012, Defendant has failed to reside in the Property as a primary residence and
11 instead has used the Property for rental income – leasing it to rent paying tenants. Defendant Garver
12 rented out the Property from at least November 2012 until at least July 2016 and again from at least
13 May 2017 through at least June 2017. Defendant Garver regularly solicits the Property for rent on
14 Trulia.com, Hotpads.com, Craigslist.com, Facebook.com and other apartment listing websites.
15 Defendant Garver has also listed the Property for sale at market rate.

16 On August 23, 2017, Plaintiffs the People of the State of California (the “People”) and the City
17 and County of San Francisco (the “City”) (collectively “Plaintiffs”), filed a Complaint against
18 Defendant Garver alleging causes of action for violations of the San Francisco Planning Code,
19 violations of the Unfair Competition Law (“UCL”), codified as Business and Professions Code section
20 17200, et al., and for public nuisance. The Complaint and Summons were personally served on
21 Defendant Garver in the vicinity of the Property on September 6, 2017.

22 On December 5, 2017, Default was entered against Defendant Garver when he failed to
23 properly respond to the Complaint. Plaintiffs now request entry of Default Judgment against
24 Defendant Garver for civil penalties, attorneys’ fees, and costs. Plaintiffs also request a Permanent
25 Injunction, ordering Defendant Garver to comply with the restrictions of the Program or sell the
26 Property in accordance with the requirements and procedures of the BMR Program. The injunctive
27 relief should also authorize the appointment of a receiver, should Defendant Garver be unable or
28 unwilling to comply with the terms of the injunction.

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STATEMENT OF FACTS

Defendant Garver has owned the Property, located in San Francisco’s South of Market District, since December 2008. (Declaration of Cissy Yin (“Decl. Yin”) ¶8, Exh. A; Request for Judicial Notice (“RJN”) ¶4, Exh. D.) The Property is a one-bedroom, one-bathroom condominium located in the Soma Grand – a 246-unit condominium complex. (Declaration of Stefan Hafenegger (“Decl. Hafenegger”) ¶2.)

The Property is part of San Francisco’s Inclusionary Affordable Housing Program (the “Program”). (Decl. Yin ¶6.) The Program, administered by the San Francisco Mayor’s Office of Housing and Community Development (“MOHCD”) and guided by San Francisco Planning Code section 415 (formerly codified as section 315), aims to make housing more affordable for qualifying low to middle income San Franciscans by requiring housing developers to set aside a certain percentage of units to be rented or sold at a Below Market Rate (“BMR”), known as BMR units. (Decl. Yin ¶3; RJN ¶10, Exh. J.) In order to purchase a BMR unit, qualifying purchasers must agree to abide by the restrictions and conditions of the Program, including that: (1) they must reside in the BMR unit as a primary residence; and (2) that they must refrain from renting out the BMR unit, in whole or in part, without written consent of MOHCD. (Decl. Yin ¶3.) The restrictions and conditions of the Program are memorialized in a Procedures Manual, with MOHCD periodically publishes pursuant to its authority and mandate under the Planning Code. (Decl. Yin ¶4.) To date, MOHCD has published three Procedures Manuals – in 1992 (“1992 Manual”), 2007 (“2007 Manual”), and 2013 (“2013 Manual”). (*Ibid.*) The Procedures Manual in effect at the time of the initial purchase of the BMR unit governs the regulation of that unit until it is sold. (*Ibid.*)

The Property, along with twenty-eight other units in the Soma Grand, was designated as a BMR unit by virtue of San Francisco Planning Commission Motion No. 16692. (Decl. Yin ¶7.) This designation was recorded with the San Francisco Assessor-Recorder’s Office (“Assessor-Recorder”) on August 21, 2006 as a “Notice of Special Restrictions Under the Planning Code” (“Notice of Special Restrictions”). (Yin Decl. ¶7, Exh. A.)

Defendant Garver purchased the Property in 2008. (Decl. Yin ¶8, Exh. B; RJN ¶4, Exh. B.) As required by MOHCD, to purchase a BMR unit, Defendant Garver agreed to abide by the restrictions

1 and conditions of the Program, subject to the provisions of the 2007 Manual. (Decl. Yin ¶¶9, 12-4,
2 Exh. C.) Defendant Garver signed a BMR Affidavit (“Affidavit”) affirming that he understood that the
3 Property was a BMR unit that was subject to the restrictions and conditions of the Program. (Decl. Yin
4 ¶12, Exh. D.) In the Affidavit, Defendant Garver further affirmed that he understood that he could not
5 rent the Property and that he must occupy the Property as a primary residence. (*Ibid.*) Defendant
6 Garver also signed an “Acknowledgment” – which was recorded with the Assessor-Recorder –
7 acknowledging that he had received a copy of the 2007 Manual and the Notice of Special Restrictions
8 and that he understood and would comply with the conditions and restrictions contained therein. (Decl.
9 Yin ¶13, Exh. E.) Further, Defendant Garver granted MOHCD a promissory note (“Promissory Note”)
10 secured by a deed of trust (“Deed of Trust”). (Decl. Yin ¶14, Exh. F, G.) In the Promissory Note,
11 Defendant Garver once again acknowledged that he had received the 2007 Manual and the Notice of
12 Special Restrictions. (*Ibid.*)

13 Despite understanding the restrictions and conditions of the Program, starting in at least
14 November 2012, Defendant Garver began renting out the Property to rent paying tenants. (Decl. Yin
15 ¶15; Declaration of Melissa Lall (“Decl. Lall”) ¶5; Decl. Hafenegger ¶4.) Tenant Stefan Hafenegger
16 (“Mr. Hafenegger”) located the Property listed for rent on Craigslist.com and when he inquired about
17 the listing, Defendant Garver responded. (Decl. Hafenegger ¶¶2-3; Decl. Lall ¶5.) Defendant Garver
18 showed Mr. Hafenegger the Property and provided Mr. Hafenegger with a lease agreement (“Lease”),
19 which both Defendant Garver and Mr. Hafenegger signed on October 25, 2012. (Decl. Hafenegger ¶3,
20 Exh. A.) The Lease was a 6-month lease that converted to a month-to-month lease after the initial six-
21 month period. (*Ibid.*) Mr. Hafenegger paid Defendant Garver \$3,000 as a security deposit and \$2,400
22 per month to rent the Property. (*Ibid.*) Mr. Hafenegger moved into the Property on approximately
23 November 1, 2012 and lived there until approximately July 31, 2016. (Decl. Hafenegger ¶4.) During
24 Mr. Hafenegger’s tenancy, he made a total of forty-six (46) rental payments to Defendant Garver.
25 (*Ibid.*) During Mr. Hafenegger’s tenancy, Defendant Garver never resided at the Property. (Decl.
26 Hafenegger ¶4; Decl. Lall ¶5.) Defendant Garver regularly received mail at the Property, which – per
27 Defendant Garver’s request – Mr. Hafenegger forwarded to an address in Palm Springs, California.
28

1 (*Ibid.*) Mr. Hafenegger terminated his tenancy at the Property and moved out at the end of July 2016,
2 due a rent increase. (Decl. Hafenegger ¶5; Decl. Lall ¶5.)

3 Beginning in December 2016, Defendant Garver made repeated attempted to rent out the
4 Property in online classifieds and social media sites such as Facebook.com, Craigslist.com,
5 Trulia.com, and Hotpads.com. (Decl. Lall ¶ 7, Exh. A; Decl. Yin ¶17, Exh. H.) Defendant Garver
6 listed the Property for rent on at least the following dates: April 12, 2017, April 18, 2017, June 2,
7 2017, June 14, 2017, and November 21, 2017. (*Ibid.*) Defendant Garver also listed the Property for
8 sale on July 19, 2017. (*Ibid.*) From May 2017 through June 2017, Defendant Garver again began
9 renting the Property for profit to rent paying tenants. (RJN Exh. A (“Complaint”) 6:25-27.)

10 PROCEDURAL HISTORY

11 Plaintiffs filed their Complaint against Defendant Garver on August 23, 2017. (RJN, Exh. A.)
12 On September 6, 2017, Defendant Garver was personally served with the Complaint, Summons, etc.
13 (RJN, Exh. B.) When Defendant Garver did not file a proper responsive pleading, Plaintiffs filed a
14 Request for Entry of Default, which was entered on December 5, 2017. (RJN, Exh. C.)

15 LEGAL ARGUMENT

16 I. THE COURT SHOULD ENTER DEFAULT JUDGMENT AGAINST DEFENDANT GARVER

17 A plaintiff may seek default judgment if: (1) a defendant fails to answer a complaint despite
18 being properly served; and (2) default has been entered against the defendant. (Code Civ. Proc.
19 §585(b).) At the hearing on a motion for entry of default judgment, plaintiff need only establish a
20 prima facie case in order for the court to grant default judgment. (*Johnson v. Stanhiser* (1999) 72
21 Cal.App.4th 357, 361.) The court “shall hear the evidence offered by the plaintiff, and shall render
22 judgment in plaintiff’s favor for that relief, not exceeding the amount stated in the complaint, . . . as
23 appears by the evidence to be just.” (Code Civ. Proc. §585(b).) The court “may permit the use of
24 affidavits, in lieu of personal testimony, as to all or any part of the evidence” heard at the default
25 judgment hearing. (Code Civ. Proc. §585(d).)

26 The party against whom default has been entered “confesses the material allegations of the
27 complaint . . .” for the purposes of the hearing. (*Johnson, supra*, 72 Cal.App.4th at 361.) Thus, the
28

1 court can and should accept all of the allegations of the Complaint as true. (*Bristol Convalescent Hosp.*
2 *v. Stone* (1968) 258 Cal.App.2d 848, 859 [defaulting defendant admits “the absolute verity of all the
3 allegations of the complaint giving rise to liability”]; *Los Angeles v. Los Angeles F.&M. Co.* (1907)
4 150 Cal. 647, 649 [defaulting defendant admits the absolute verity of all the allegations of the
5 complaint and no amount of evidence could establish the facts more effectually for the purposes of
6 rendering the judgment against such defendant].)

7 **A. Default Property Was Entered Against Defendant**

8 Plaintiffs’ personally served Defendant Garver on September 6, 2017. (RJN, Exh. B.)
9 Defendant Garver did not timely respond, and default was entered against him on December 5, 2017.
10 (RJN, Exh. C.)

11 **B. Plaintiffs Have Established a Prima Facie Case Against Defendant**

12 Plaintiffs have established each of the three causes of action alleged in the complaint: (1) for
13 violations of the San Francisco Planning Code; (2) for violations of the Unfair Competition Law; and
14 (3) for general and *per se* public nuisance.

15 The facts and evidence show that, since at least November 2012, Defendant Garver failed to
16 reside at the Property, and instead treated it as an income property, marketing it for rent and sale and
17 leasing it to rent paying tenants. Thus, Defendant Garver unequivocally violated the San Francisco
18 Planning Code, the Unfair Competition Law, and created a public nuisance. Plaintiffs are entitled to
19 entry of Default Judgment against Defendant Garver on all causes of action alleged in the Complaint.

20 **1. Defendant Garver Has Maintained the Property in Violation of the San
21 Francisco Planning Code, as Alleged in the First Cause of Action in the
Complaint**

22 Defendant Garver violated the following sections of the San Francisco Planning Code:

- 23 • Planning Code Section 174: by failing to abide by the conditions, stipulations, special
restrictions, and other limitations placed on the Property.
- 24 • Planning Code section 303(d) by failing to abide by the conditional use authorization
25 imposed on the Property by the San Francisco Planning Commission.
- 26 • Planning Code section 415 by failing to comply conditions and restrictions of the
27 Inclusionary Affordable Housing Program, including those imposed by the 2007
Manual.

1 San Francisco Planning Code section 174 states that “every condition, stipulation, special
2 restriction and other limitation imposed by administrative actions pursuant to this Code . . . shall be
3 complied with in the development and use of land and structures.” Failure to comply with any such
4 condition “shall constitute a violation of the provisions of this Code.” (Planning Code §174.) Planning
5 Code section 303(d) states that a violation of any condition imposed on a property constitutes a
6 violation of the Planning Code. Planning Code section 415 mandates that the San Francisco Planning
7 Department and the MOHCD “periodically publish a Procedures Manual for monitoring and
8 enforcement of the policies and procedures for implementation of this Program” and further states that
9 the Procedures Manual in effect at the time of the initial purchase “shall govern the regulation of that
10 unit.” Planning Code section 176 states that “[A]ny use, structure, feature or condition in violation of
11 this Code is hereby found and declared unlawful and a public nuisance.”

12 The evidence shows that Defendant Garver rented the Property from November 2012 through
13 July 2016 and again from May 2017 through June 2017, (Decl. Yin ¶15; Decl. Lall ¶5; Decl.
14 Hafenegger ¶4; Complaint 6:25-27), and that Defendant Garver failed to use the Property as a primary
15 residence. (Decl. Hafenegger ¶4; Decl. Lall ¶5.) Further, Defendant Garver made at least seven attempts
16 to rent or sell the Property. (Decl. Lall ¶ 7, Exh. A; Decl. Yin ¶17, Exh. H) Defendant Garver’s actions
17 violated Planning Code sections 174, 303(d), and 415, and violated the conditions and restrictions
18 placed on the Property by the 2007 Manual, the Affidavit, the Acknowledgment, and the Notice of
19 Special Restrictions.

20 The San Francisco Planning Code authorizes the San Francisco City Attorney to file a lawsuit
21 to enforce the provisions of the Planning Code and authorizes a civil penalty of not less than \$200 for
22 each day that Defendants committed or permitted violations of the Planning Code at the Property and
23 reasonable attorney’s fees and cost incurred by Plaintiffs in enforcing the Planning Code. (San
24 Francisco Planning Code §§176(b)(2), (c)(2), (f).) The Planning Code also authorizes injunctive relief,
25 including requiring Defendants to either comply with the Planning Code or otherwise sell the Property
26 to a qualified and deserving household. (Planning Code §§176(b)(2),(f).)

1 **2. Defendant Garver Has Engaged in Unlawful and Unfair Business Practices**
2 **in Violation of the UCL, as Alleged in the Second Cause of Action in the**
3 **Complaint.**

4 The UCL, which confers standing on the San Francisco City Attorney to prosecute actions on
5 behalf of the People of the State of California, is exceptionally broad in scope. (Bus. & Prof. Code
6 §17204.) The UCL prohibits “any person” from engaging in “unfair competition,” which it defines to
7 mean and include “any unlawful, unfair, or fraudulent business act or practice.” (Bus. & Prof. Code
8 §§17200, 17203.)

9 “Because the [UCL] is framed in the disjunctive, a business practice need only meet one of the
10 three criteria [i.e. unfair, unlawful, or fraudulent] to be considered unfair competition.” (*McKell v.*
11 *Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1471.) By defining unfair competition to
12 include any “unlawful . . . business practice,” the UCL “borrows violations of other laws and treats
13 them as unlawful practices that the unfair competition law makes independently actionable.” (*Cel-*
14 *Tech Comm’ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180 [internal quotation
15 marks omitted].) “Virtually any law – federal, state or local – can serve as a predicate for an action
16 under Business and Professions Code section 17200.” (*Ticconi v. Blue Shield of California Life &*
17 *Health Ins. Co.* (2008) 160 Cal.App.4th 528, 539.) For instance, a California court has recognized that
18 violations of a city’s building and health and safety laws constitute unlawful business practices under
19 the UCL. (*Hernandez v. Stabach* (1983) 145 Cal.App.3d 309, 314.)

20 Moreover, a claim based on an “unlawful” business act or practice does not depend on whether
21 a private right of action exists with respect to the underlying law at issue. Section 17200 allows a
22 remedy even if the underlying statute confers no private right of action. (See *Stop Youth Addiction Inc.*
23 *v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 561-567.) Nor is an actual injury to the consuming public
24 or competitors a required element of proof of an unlawful prong violation of the UCL. (*People v.*
25 *E.W.A.P. Inc.* (1980) 106 Cal.App.3d 315, 319; see also *People v. Toomey* (1984) 157 Cal.App.3d 1,
26 23 [in action designed to protect the public, only the violation of the statute is necessary to justify
27 injunctive relief and civil penalties].) Nor is it necessary to show that the defendant intended to injure
28 anybody. (William L. Stern, *Bus. & Prof. Code § 17200 Practice* (The Rutter Group 2015) ¶3:21.)
“The Legislature intended th[e] sweeping language [of the UCL] to include anything that can properly

1 be called a business practice and that at the same time is forbidden by law.” (*Bank of the West v.*
2 *Superior Court* (1992) 2 Cal.4th 1254, 1266. [internal quotation marks omitted].)

3 Here, Defendant Garver treats his BMR unit as a rental income property – a business practice.
4 Defendant Garver’s actions violate the San Francisco Planning Code and constitute a public nuisance
5 – and are thus an unlawful business practices. Defendant Garver’s actions also constitute an unfair
6 business practice, as they unfairly disadvantage landlords who follow the law and purchased their
7 rental income property at market rate. Defendant Garver’s violations of state and local law constitute
8 “unlawful” and “unfair” acts within the meaning of the UCL and establish a prima facie case on
9 Plaintiff’s Second Cause of Action. (See *Hernandez, supra*, 145 Cal.App.3d at 314.)

10 **3. Defendant Garver Has Maintained the Property as a Public Nuisance and a**
11 ***Per Se* Public Nuisance, as Alleged in the Third Cause of Action in the**
Complaint.

12 Civil Code section 3479 defines a nuisance as “[a]nything which is injurious to health . . . or is
13 . . . offensive to the senses, or an obstruction to the free use of property, so as to interfere with the
14 comfortable enjoyment of life or property.” A public nuisance is “one which affects at the same time
15 an entire community or neighborhood, or any considerable number of persons, although the extent of
16 the annoyance or damage inflicted upon individuals may be unequal.” (Civ. Code §3480.) To be
17 enjoined, the nuisance must also be substantial and unreasonable. (*People v. Acuna* (1997) 14
18 Cal.4th 1090, 1105.) As stated in San Francisco Planning Code section 176: any structure, lot, feature,
19 or condition in violation of the Planning Code is unlawful and is a *per se* public nuisance.

20 It is a settled point of law that a City is empowered to declare what constitutes a nuisance and
21 to take action to abate it. (Gov’t Code §38771 “[b]y ordinance the city legislative body may declare
22 what constitutes a nuisance”]; *City and County of San Francisco v. Padilla* (1972) 23 Cal.App.3d 388,
23 401 [the violation of a local ordinance can constitute a public nuisance].) The Supreme Court has
24 outlined a court’s function relative to a statutory nuisance:

25 Where the Legislature has determined that a defined condition or activity is a
26 nuisance, it would be usurpation of the legislative power for a court to
27 arbitrarily deny enforcement merely because in its independent judgment the
28 danger caused by a violation was not significant. The function of the courts in
such circumstances is limited to determining whether a statutory violation in
fact exists . . . (*City of Bakersfield v. Miller* (1966) 64 Cal.2d 93, 100.)

1 Defendant Garver's violations of the restrictions and conditions of the Program include renting
2 out a BMR unit – otherwise reserved for low-to-middle income households – in the midst of a housing
3 crisis. Since at least 2012, Defendant Garver failed to occupy the Property as a primary residence.
4 Defendant Garver rented out the Property from at least November 2012 through at least July 2016 and
5 from at least May 2017 through at least June 2017. Defendant Garver repeatedly attempted to rent or
6 sell the Property. Therefore, Defendant Garver failed to comply with the restrictions, conditions,
7 stipulations, and limitations imposed by the Notice of Special Restrictions, BMR Affidavit, and the
8 2007 Manual – in violation of San Francisco Planning Code sections 174, 303(d), and 415. Thus,
9 Plaintiffs have established a prime facie case for public nuisance and *per se* public nuisance, as alleged
10 in the third cause of action of the Complaint.

11 **II. THE COURT SHOULD GRANT THE RELIEF REQUESTED**

12 Plaintiffs request the following relief from Defendant Garver:

- 13 1. Civil penalties for violations of the San Francisco Planning Code in the amount of
14 **\$61,000** for violations from May 1, 2017 through June 30, 2017; and
- 15 2. Civil penalties for UCL violations in the amount of **\$112,500** for unlawful and unfair
16 business practices committed each month from August 2013 through August 2017, and
- 17 3. A Permanent Injunction, ordering Defendant Garver comply with the restrictions and
18 conditions of the Program, including those imposed by the 2007 Manual, and henceforth maintain the
19 Property in compliance with the law; or sell the Property in accordance with the procedures
20 established by the 2007 Manual; or
- 21 4. The Appointment of a Receiver; and
- 22 5. Reasonable attorneys' fees in the amount of **\$34,050 plus \$1,554.30 in costs.**

23 As further detailed below, Plaintiffs are entitled to the requested relief.

24 **A. DEFENDANT GARVER SHOULD BE ORDERED TO PAY CIVIL PENALTIES
25 PURSUANT TO SAN FRANCISCO PLANNING CODE SECTION 176(c)(2)**

26 San Francisco Planning Code section 176(c)(2) provides that property owners **shall** be liable
27 for civil penalties of **at least** \$200 for each day that a violation of the Planning Code is committed or
28

1 permitted to continue.¹ Thus, the imposition of penalties under the Planning Code is mandatory and
2 cannot be waived.²

3 Here, the imposition of civil penalties in excess of the statutory minimum are warranted.
4 Defendant Garver willfully violated the San Francisco Planning Code for years by unlawfully renting
5 out the Property – a BMR unit otherwise reserved for deserving households – for profit to rent paying
6 tenants. Defendant Garver purchased the Property at well below market rate, under the condition that
7 he would occupy the Property and not rent it out. Thus, Defendant Garver intentionally profited from
8 and took advantage of San Francisco’s housing crisis by renting out a BMR unit and otherwise
9 depriving a deserving San Franciscan of an affordable home.

10 As such, Defendant Garver maintained the Property in violation of the Planning Code from at
11 least May 1, 2017 through June 30, 2017. Considering the egregiousness of Defendant’s conduct,
12 Plaintiffs request \$61,000 in Planning Code penalties (\$1,000 per day for 61 days between May 1,
13 2017 and June 30, 2017).

14 **B. PLAINTIFF PEOPLE OF THE STATE OF CALIFORNIA IS ENTITLED TO**
15 **CIVIL PENALTIES UNDER THE UCL**

16 Defendant Garver is liable to the People for civil penalties or up to \$2,500 for each violation of
17 the UCL. (Bus. & Prof. Code §17206.) Indeed, once a UCL violation is found in a case brought in the
18 name of the People of the State of California, it is error for a court not to impose penalties.³ (*People v.*
19 *Custom Craft Carpets* (1984) 159 Cal.App.3d 679, 686; see also Bus. & Prof. Code §17206(b) [“The
20 court *shall* impose a civil penalty for each violation of this chapter.”] [emphasis added].)

21 The People request **\$112,500** in civil penalties from Defendant Garver for violations of the
22 UCL from August 2013 through August 2017 (\$2,500 x 45 UCL violations). As further explained
23 below, the People’s request is warranted.

25 _____
26 ¹ Remedies provided in the Planning Code are cumulative to other remedies provided by law.

27 ² Pursuant to Government Code section 36901, the maximum penalty that can be imposed
28 cannot exceed \$1,000 per day.

³ Remedies provided for in the UCL are cumulative to remedies available under the San
28 Francisco Planning Code. (See Bus. & Prof. Code §17205.)

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1. Collectively, Defendants Committed At Least 45 Violations of the UCL

What constitutes a single violation of the UCL for purposes of imposing a civil penalty depends on the circumstances of the case, including the type of violation involved, the number of victims, and the repetition of the conduct constituting the violation. (*Toomey, supra*, 157 Cal.App.3d at 22 [citing *People v. Witzerman* (1972) 29 Cal.App.3d 169, 180].) In one case, each time a person read or responded to a single misleading newspaper advertisement was considered a separate violation under section 17206 violation because counting violations based on this criteria “would be reasonably related to the gain or the opportunity for gain” for defendant from the false advertisement. (*People v. Superior Court (Olson)* (1979) 96 Cal.App.3d 181, 197-98.) Applying this these factors where the defendant is a landlord who is unlawfully renting out a BMR unit, the violation should be considered on a monthly basis under section 17206 because such calculation properly takes into account the monthly nature of rentals. (*People v. Beaumont Irr., Ltd.* (2003) 111 Cal.App.4th 102, 130.) Moreover, each time Defendant Garver attempted to rent or sell the Property in violation of its restriction or condition should be considered a violation under section 17206.

Here, from November 2012 through July 2016 and again from May 2017 through June 2017, Defendant Garver used his Property for rental income and accepted rent on a monthly basis. Beginning in at least December 2016, Defendant Garver posted the Property for rent or sale on at least six occasions. Following the holdings in *Beaumont* and *Olson*, there is ample evidence to support a finding that Defendant committed at least 45 violations of the UCL (Defendant collected rented on 39 occasions since August 2013 – four years prior to filing of this Complaint) where Defendant used or attempted to use the Property as rental income property, for which this Court must impose a penalty.

2. The Court Should Impose \$2,500 Per Violation

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The next question in the civil penalty analysis is the amount of penalty that should be imposed for each violation of the UCL. Section 17206 sets for the criteria for determining penalties: “in assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant’s

1 misconduct, and the defendant's assets, liabilities, and net worth." Here, Defendant Garver profited
2 from San Francisco's housing crisis by acquiring and renting out a BMR unit for years. The
3 misconduct was willful, longstanding, and pervasive. It is particularly egregious because it deprived a
4 deserving San Franciscan of a precious resources in this City – an affordable home. This misconduct
5 violates the restrictions of the Program, the San Francisco Planning Code, and has created a public
6 nuisance. A \$2,500 penalty per violation is appropriate.

7 **C. DEFENDANT GARVER WAS PUT ON NOTICE OF CIVIL PENALTIES**
8 **THEY FACED UPON DEFAULT**

9 The allegations in the body of the Complaint make clear that Defendant has been maintaining
10 the Property in violation of the law for years. The Complaint's "Prayer for Relief" sought at least
11 \$200 a day in civil penalties under the Planning Code and \$2,500 per violation for each unlawful act
12 and each unfair act alleged in the Complaint. (Complaint 12:18-22.)

13 The Complaint has given Defendant fair warning of his financial liability exposure. (See *Nat'l*
14 *Diversified Svcs, Inc. v. Bernstein* (1985) 168 Cal.App.3d 410, 417-18 [courts may look to allegations
15 in the body of the complaint to determine whether a defendant has been informed of the maximum
16 liability he or she will face for choosing to default]; *People ex rel. Lockyer v. Brar* (2005) 134
17 Cal.App.4th 659, 667-68 [complaint sought \$2,500 for each violation of the UCL proven at trial, but in
18 an amount of not less than \$1,000,000; court determined that complaint gave fair warning of an
19 exposure of at least \$3,750,000 -- \$2,500 multiplied by 1500 alleged violations].)

20 Accordingly, this court should impose the civil penalties requested by Plaintiffs.

21 **D. PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF AGAINST**
22 **DEFENDANT GARVER**

23 Code of Civil Procedure section 731 authorizes a City Attorney to bring an action to abate a
24 public nuisance, while the San Francisco Planning Code and the UCL specifically authorize the
25 issuance of injunctive relief.

26 The San Francisco Planning Code provides that the City Attorney may institute proceedings for
27 injunctive relief "against any person for violations of the Planning Code." (Planning Code §176(g).)
28 Likewise, the UCL similarly authorizes the City Attorney to bring an action to enjoin unfair and/or
unlawful business practices. (Bus. & Prof. Code §17203.)

1 California courts have consistently approved injunctive relief as a proper remedy for nuisance
2 abatement on real property when the nuisance is caused by failure to maintain a property in
3 compliance with local and state health and safety laws. (*City and County of San Francisco v City*
4 *Investment Corp.* (1971) 15 Cal.App.3d 1031, 1042 [fire code]; *Padilla, supra*, 23 Cal.App.3d at 401
5 [planning code]; *Miller, supra*, 64 Cal.2d at 104 [building code].)

6 By way of the Injunction sought in this matter, Plaintiffs here seek to enforce the conditions
7 and restrictions of the Program and the San Francisco Municipal Codes. This action is consistent with
8 Plaintiffs' goal of maintaining and preserving the Property as a below market rate unit. There is no
9 adequate legal remedy available to Plaintiffs that can satisfy this goal. Defendant's ongoing refusal to
10 maintain the Property in compliance the conditions and restrictions of the Program threatens San
11 Francisco's affordable housing stock.

12 Should Defendant fail to comply with the Permanent Injunction, the Court should also
13 authorize Plaintiffs to pursue the appointment of a Receiver pursuant to California Code of Civil
14 Procedure section 564(b)(9) and California Business and Professions Code §17203.

15 **E. PLAINTIFFS ARE ENTITLED TO THEIR ATTORNEY'S FEES AND COSTS**

16 Planning Code section 176(c)(2) authorizes Plaintiffs to seek recovery "of any attorneys' fees
17 and costs . . . incurred by the City" in bringing a civil action for violations of the Planning Code.

18 Where attorneys' fees are recoverable by statute, the "inquiry in California ordinarily begins
19 with the 'lodestar,' i.e., the number of hours reasonable expended multiplied by the reasonable hourly
20 rate . . . The reasonable hourly rate is that prevailing in the community for similar work." (*PLCM*
21 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) This is also true where the party seeking fee
22 recovery is a government entity, such as Plaintiffs, even when Plaintiffs' counsel does not charge the
23 prevailing market rate to Plaintiffs. (*City of Santa Rosa v. Patel* (2010) 191 Cal.App.4th 65, 70-71.)
24 The court may make its own determination of the value of an attorney's services without the necessity
25 for expert testimony. (*PLCM Group, Inc., supra*, 22 Cal.4th at 1096.)

26 As further detailed in the Declaration of Deputy City Attorney Samuel Ray, filed herewith,
27 Plaintiffs expended public resources bringing this action against Defendant Garver, including
28 investigation, correspondence, drafting pleadings, and drafting this motion. During the pendency of

1 this action, Mr. Ray's time was billed at \$225 per hour, which given his level of experience, is below
2 market rate for his time. This rate represents the employee's actual salary plus overhead and fringe
3 benefits.⁴ For the purposes of this motion, Plaintiffs only seek recovery of these attorneys' time at their
4 current billed rates, rather than the higher marker rates.⁵ Plaintiffs request a total of **\$34,050** in
5 attorneys' fees for 150 attorney hours at \$225 per hour plus **\$1,554.30** in costs incurred so far. The
6 Court should award the reasonable fees and expenses requested by Plaintiffs.

7 **CONCLUSION**

8 For the reasons stated herein, Plaintiffs are entitled to the issuance of a Default Judgment and
9 Permanent Injunction, as well as an award of civil penalties, attorney's fees, and costs.

10 Dated: March 15, 2018

11 DENNIS J. HERRERA
12 City Attorney
13 PETER J. KEITH
14 Chief Attorney
15 SAMUEL C. RAY
16 Deputy City Attorney

17 By: /s/ Samuel C. Ray
18 SAMUEL C. RAY

19 Attorneys for Plaintiffs
20 CITY AND COUNTY OF SAN FRANCISCO and
21 PEOPLE OF THE STATE OF CALIFORNIA

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26 ⁴ When a government agency seeks to recovery attorneys' fees based on the attorneys' actual
27 salaries, it is proper to include an hourly overhead component consisting of employee fringe benefits
28 and office operation expenses. (See e.g., *City of Oakland v. McCullough* (1996) 46 Cal.App.4th 1, 7.)

⁵ Fee awards may reflect current rates at current experience levels to compensate for the delay
in fee recovery. (See e.g., *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 583-584.)

1 **PROOF OF SERVICE**

2 I, MORRIS ALLEN, declare as follows:

3 I am a citizen of the United States, over the age of eighteen years and not a party to the above-
4 entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building,
5 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

6 On March 15, 2018, I served the following document(s):

7 **PLAINTIFFS MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
8 MOTION FOR DEFAULT JUDGMENT AND PERMANENT INJUNCTION AGAINST
9 DEFENDANT GREGORY GARVER**

10 on the following persons at the locations specified:

11 Gregory Garver
12 1160 Mission Street, Unit 812
13 San Francisco, CA 94103

14 in the manner indicated below:

15 **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and
16 correct copies of the above documents in addressed envelope(s) and placed them at my
17 workplace for collection and mailing with the United States Postal Service. I am readily
18 familiar with the practices of the San Francisco City Attorney's Office for collecting and
19 processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for
20 collection would be deposited, postage prepaid, with the United States Postal Service that same
21 day.

22 I declare under penalty of perjury pursuant to the laws of the State of California that the
23 foregoing is true and correct.

24 Executed March 15, 2018, at San Francisco, California.

25 
26 MORRIS ALLEN

RECORDING REQUESTED BY,

AND WHEN RECORDED MAIL TO:

**The Mortgage Law Firm, PLC
27455 Tierra Alta Way, Ste. B
Temecula, CA 92590
(619) 465-8200**

**20189K5741860003
San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC 2018-K574186-00
Acct 2009-Pacific Coast Title Company
Wednesday, JAN 31, 2018 14:16:40
Ttl Pd \$98.00 Nbr-0005755111
oji/RE/1-3**

APN: 3702-112

NOTICE OF TRUSTEE'S SALE

TS# 133710

Property Address: 1160 Mission Street Apt 812, San Francisco, CA 94103

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

The Mortgage Law Firm, PLC
27455 TIERRA ALTA WAY, STE. B
TEMECULA, CA 92590
(619) 465-8200

Trustee Sale No. 133710 Title No. 95517487 Space above for Recorder's use only

NOTICE OF TRUSTEE'S SALE

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED

注：本文件包含一个信息摘要

참고사항: 본 첨부 문서에 정보 요약서가 있습니다

NOTA: SE ADJUNTA UN RESUMEN DE LA INFORMACIÓN DE ESTE DOCUMENTO

TALA: MAYROONG BUOD NG IMPORMASYON SA DOKUMENTONG ITO NA NAKALAKIP

LƯU Ý: KÈM THEO ĐÂY LÀ BẢN TRÌNH BÀY TÓM LƯỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED 10/01/2009. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

On 02/22/2018 at 2:00 PM, The Mortgage Law Firm, PLC, as duly appointed Trustee under and pursuant to Deed of Trust recorded 10/07/2009, as Instrument No. 2009-1855916-00 Reel J993 Image 0033, in book xx, page xx, of Official Records in the office of the County Recorder of San Francisco County, State of California, executed by Gregory Garver, a Single Man,

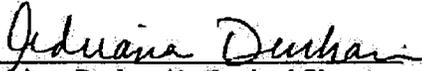
WILL SELL AT PUBLIC AUCTION TO HIGHEST BIDDER FOR CASH, CASHIER'S CHECK/CASH EQUIVALENT or other form of payment authorized by 2924h(b), (payable at time of sale in lawful money of the United States), At the Van Ness Avenue entrance to City Hall, 400 Van Ness Avenue, San Francisco, CA 94102. All right, title and interest conveyed to and now held by it under said Deed of Trust in the property situated in said County and State, described as: FULLY DESCRIBED IN THE ABOVE DEED OF TRUST. APN 3702-112

The street address and other common designation, if any, of the real property described above is purported to be: 1160 Mission Street Apt 812, San Francisco, CA 94103

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein. Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by said Deed of Trust, with interest thereon, as provided in said note(s), advances, if any, under the terms of said Deed of Trust, fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is: \$167,656.49

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee, and the successful bidder shall have no further recourse. The beneficiary under said Deed of Trust heretofore executed and delivered to the undersigned a written Declaration of Default and Demand for Sale, and written Notice of Default and Election to Sell. The undersigned caused a Notice of Default and Election to Sell to be recorded in the county where the real property is located.

Dated: 1/29/2018 THE MORTGAGE LAW FIRM, PLC


Adriana Durham/Authorized Signature

27455 TIERRA ALTA WAY, STE. B, Temecula, CA 92590 (619) 465-8200
FOR TRUSTEE'S SALE INFORMATION PLEASE CALL 714-730-2727

The Mortgage Law Firm, PLC.
may be attempting to collect a
debt. Any information obtained
may be used for that purpose.

NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property.

NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call (714) 730-2727 for information regarding the trustee's sale or visit this Internet Web site - www.servicelinkASAP.com - for information regarding the sale of this property, using the file number assigned to this case: 133710. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

RECORDING REQUESTED BY:

DENNIS J. HERRERA
City Attorney
PETER J. KEITH
Chief Attorney
SAMUEL C. RAY
Deputy City Attorney

WHEN RECORDED MAIL TO:

NAME Samuel C. Ray
Deputy City Attorney
MAILING ADDRESS 1390 Market Street
Seventh Floor
CITY, STATE San Francisco, CA 94102-5406
ZIP CODE


San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC- 2018-K604353-00
Acct 17-CITY ATTORNEY
Friday, APR 20, 2018 15:10:31
Ttl Pd \$0.00 Rcpt # 0005793059
OJ1/JL/1-3

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

ABSTRACT OF JUDGMENT—CIVIL AND SMALL CLAIMS

Property Address: 1160 Mission Street, Unit 812, San Francisco, California, Assessor's Block 3702, Lot 112

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address, and State Bar number):
 After recording, return to
Samuel C. Ray SBN: 308921
 Office of the City Attorney
 Fox Plaza, 1390 Market Street, Seventh Floor
 San Francisco, CA 94102
 TEL. NO.: (415) 554-3868 FAX NO. (optional): (415) 437-4644
 E-MAIL ADDRESS (optional): samuel.ray@sfcityatry.org
 ATTORNEY FOR JUDGMENT CREDITOR ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **SAN FRANCISCO**
 STREET ADDRESS: 400 McAllister Street
 MAILING ADDRESS: 400 McAllister Street, Room 103
 CITY AND ZIP CODE: San Francisco, 94102
 BRANCH NAME: Civic Center Courthouse

FOR RECORDER'S USE ONLY

PLAINTIFF: CITY AND COUNTY OF SAN FRANCISCO
 DEFENDANT: GREGORY GARVER

CASE NUMBER:
 CGC-17-560891

ABSTRACT OF JUDGMENT—CIVIL AND SMALL CLAIMS Amended

FOR COURT USE ONLY

1. The judgment creditor assignee of record applies for an abstract of judgment and represents the following:

a. Judgment debtor's Name and last known address
 Gregory Garver
 1160 Mission Street, Unit 821
 San Francisco, CA 94103

b. Driver's license no. [last 4 digits] and state: 2603 CALIF Unknown
 c. Social security no. [last 4 digits]: Unknown

d. Summons or notice of entry of sister-state judgment was personally served or mailed to (name and address):
 Gregory Garver, SOMA Grand Condominiums, 1160 Mission Street, 8th Floor, San Francisco, CA 94103

2. Information on additional judgment debtors is shown on page 2.

4. Information on additional judgment creditors is shown on page 2.

3. Judgment creditor (name and address):
 See page 2

5. Original abstract recorded in this county:

a. Date:
 b. Instrument No.:

Date: April 20, 2018
 Samuel C. Ray

(TYPE OR PRINT NAME)



(SIGNATURE OF APPLICANT OR ATTORNEY)

6. Total amount of judgment as entered or last renewed:
 \$ 209,104.30

10. An execution lien attachment lien is endorsed on the judgment as follows:

7. All judgment creditors and debtors are listed on this abstract.

a. Amount \$
 b. In favor of (name and address):

8. a. Judgment entered on (date): April 12, 2018
 b. Renewal entered on (date):

9. This judgment is an installment judgment.

11. A stay of enforcement has
 a. not been ordered by the court.
 b. been ordered by the court effective until (date):
 12. a. I certify that this is a true and correct abstract of the judgment entered in this action.
 b. A certified copy of the judgment is attached.



This abstract issued on (date):
 APR 20 2018

Clerk, by Edward F. Santos Deputy
CLERK OF THE COURT

ABSTRACT OF JUDGMENT—CIVIL AND SMALL CLAIMS

PLAINTIFF: CITY AND COUNTY OF SAN FRANCISCO
DEFENDANT: GREGORY GARVER

COURT CASE NO.:
CGC-17-560891

NAMES AND ADDRESSES OF ADDITIONAL JUDGMENT CREDITORS:

13. Judgment creditor (*name and address*):

City and County of San Francisco, a Municipal Corporation
c/o Samuel C. Ray, Deputy City Attorney
1390 Market Street, 6th Floor
San Francisco, CA 94102

14. Judgment creditor (*name and address*):

People of the State of California
c/o Samuel C. Ray, Deputy City Attorney
1390 Market Street, 6th Floor
San Francisco, CA 94102

15. Continued on Attachment 15.

INFORMATION ON ADDITIONAL JUDGMENT DEBTORS:

16. Name and last known address

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Driver's license no. [last 4 digits] and state:

Unknown

Social security no. [last 4 digits]:

Unknown

Summons was personally served at or mailed to (*address*):

17. Name and last known address

----------	----------

Driver's license no. [last 4 digits] and state:

Unknown

Social security no. [last 4 digits]:

Unknown

Summons was personally served at or mailed to (*address*):

18. Name and last known address

----------	----------

Driver's license no. [last 4 digits] and state:

Unknown

Social security no. [last 4 digits]:

Unknown

Summons was personally served at or mailed to (*address*):

19. Name and last known address

----------	----------

Driver's license no. [last 4 digits] and state:

Unknown

Social security no. [last 4 digits]:

Unknown

Summons was personally served at or mailed to (*address*):

20. Continued on Attachment 20.

Inclusionary Housing BMR File Review Checklist

OWNERSHIP PERMANENT FILE

(please print)

Property Address: 1160 mission st.
 Unit Number(s): 812 Zipcode: 94103
 Owner Name(s): Gregory Garver
 Property Type: Ownership File Type: Permanent File

OWNERSHIP PERMANENT FILE DOCUMENT CHECKLIST

<i>Tab 1: Required Documents</i>	<i>Tab 3: Resale Documentation</i>
<input checked="" type="checkbox"/> MOH Promissory Note	<input type="checkbox"/> Pricing Letters
<input checked="" type="checkbox"/> MOH Deed of Trust R?	<input type="checkbox"/> Misc. Pricing Documentation
<input checked="" type="checkbox"/> MOH Acknowledgement	<input type="checkbox"/> Special Assessments Documentation
<input checked="" type="checkbox"/> MOH Right of First Refusal R?	<input type="checkbox"/> Capital Improvement Documentation
<i>Tab 2: Supplemental Documents</i>	
<input checked="" type="checkbox"/> Grant Deed	
<input type="checkbox"/> Additional Deeds of Trust and Notes	<i>Tab 4: Refinancing Documentation</i>
<input checked="" type="checkbox"/> HUD-1 Settlement Statement	<input type="checkbox"/> Refinancing Letters
<input checked="" type="checkbox"/> ALTA- TITLE POLICY	<input type="checkbox"/> Subordination Agreements

Tab 1: Required Documents

**THIS IS A CERTIFIED TRUE
COPY OF THE ORIGINAL**

NOTE

December 26, 2008
[Date]

SAN FRANCISCO
[City]

Old Republic Title Company
California
[State]

1160 Mission St Apt 812
SAN FRANCISCO, CA 94103
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 166,273.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is **JPMorgan Chase Bank, N.A.**

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **7.250 %**.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the **1st** day of each month beginning on **February 01, 2009**. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on **January 01, 2039**, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at **P.O. Box 78420, Phoenix, AZ 85062-8420**

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ **1,134.28**

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of **Fifteen** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **6.000%** of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

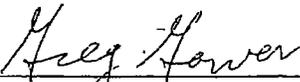
10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.



GREGORY GARVER

(Seal)
-Borrower

[Sign Original Only]

City Note

(Secured by Deed of Trust)

Inclusionary Housing Below Market Rate Downpayment Assistance Loan Program (BMR DALP)

BMR Loan #: BMR-08-1025

Date: 12/29/08

Principal Amount: \$ 33,255

San Francisco, California

Interest Rate: 0%

Borrower's Name: Gregory Garver

Property Address: 1160 Mission Street, Unit 812 San Francisco, CA 94103

1. Borrower's Promise to Pay. For value received, the undersigned ("Borrower") hereby promises to pay to the City and County of San Francisco, a municipal corporation ("Lender") the principal amount of U.S. Thirty Three Thousand Two Hundred Fifty Five (\$ 33,255) (the "Principal Amount") plus a Share of Appreciation (as defined in Section 7 below) in the value of the Property as defined in Section 7 below, to the order of the Lender. The interest rate on the principal amount is 0%.
2. Borrower acknowledges that the loan in the Principal Amount made to Borrower by Lender as of the date of this Note was made pursuant to the BMR Downpayment Assistance Loan Program (BMR DALP). Borrower represents and warrants that, as of the date of this Note, Borrower qualifies as a low-income household as determined by the California Department of Housing and Community Development.
3. Borrower acknowledges that Thirty Three Thousand Two Hundred Fifty Five (\$ 33,255) of the Principal Amount are funded by BMR DALP.
4. Use of Principal Amount. The Lender has provided the Principal Amount to Borrower to finance a portion of Borrower's down payment or closing cost for the purchase of a single-family residence located at 1160 Mission Street, Unit 812 San Francisco, CA 94103 (the "Property"). The purchase price of the Property ("Purchase Price") is Two Hundred Twenty One Thousand Six Hundred Ninety Eight (\$221,698) (the "Purchase Price").
5. Security. The Borrower's obligations under this Note are secured by a Deed of Trust and Assignment of Rents executed by Borrower, as Trustor, for the benefit of Lender, as Beneficiary (the "City Deed of Trust").
6. Time and Place of Payments
 - (a) The Principal Amount of this Note, together with the Share of Appreciation (as defined in Section 7 below), shall be due and payable in full on the Maturity Date to the City and County of San Francisco at the Mayor's Office of Housing, 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103 or at such other place as the City may from time to time designate.
 - (b) The Maturity Date shall be the earliest to occur of the following:
 - (i) The date which is thirty (30) years from the date of this Note;
 - (ii) An acceleration by Lender of this Note in the event of a default hereunder or under the City Deed of Trust; or
 - (iii) The date of the first sale or transfer of the Property to occur after the date of this Note. For the purposes of this Note, "sale or transfer" shall mean: (i) any rental of the Property where the Borrower no longer occupies the property as a principal residence, (ii) the recording of any encumbrance against the Property other than as consented to in writing by Lender; or (iii) any transfer of title to the Property, including but not limited to a transfer through inheritance, entering into any installment sales contract giving the purchaser or a third party a right to possess the Property or any portion of the Property before transfer of title, and/or a judicial sale on execution or other legal process of foreclosure or trustee's sale of the Property (regardless of whether initiated by the Lender); provided, however, that "transfer"

does not include the following:

- (A) a transfer resulting from death of a Borrower where the transfer is to a Co-Borrower; or
 - (B) a transfer resulting from a decree of dissolution of marriage or legal separation or from a property settlement agreement incidental to such a decree in which one of the Borrowers becomes the sole owner of the Property;
 - (C) a transfer between co-Borrowers; or
 - (D) a transfer through inheritance where the transferee is otherwise eligible to purchase the Property under the BMR Program requirements as set out: (i) Planning Code § 315, (ii) the Planning Commission Motion No. **16692 and 16996** adopted on **December 4, 2003 and April 28, 2005 respectively**, (iii) the "Notice of Special Restrictions Under the City Planning Code" recorded in the Official Records of San Francisco County on **August 21, 2006** as Document No. **2006-1232677-00**, and (iv) the City and County of San Francisco Inclusionary Housing Monitoring and Procedures Manual issued by the San Francisco Planning Commission applicable to the Property (collectively, the "Restriction").
7. Share of Appreciation. On the Maturity Date or on the date of any prepayment under Section 8, the Borrower agrees to repay to Lender the Principal Amount, default interest (if any), plus the "Share of Appreciation" calculated under this Section 7. The Share of Appreciation is defined as **Fifteen Percent (15%)** of the increase in the affordable resale value (as determined by the Mayor's Office of Housing or its successor) of the Property, if any, from the date of Borrower's purchase of the Property through the Maturity Date. The Share of Appreciation has been determined by dividing the Principal Amount by the affordable resale value of the Property as of the date of this Note.
8. Borrower's Right to Prepay. The Borrower may repay the Principal Amount, together with default interest (if any) and the Share of Appreciation as of the date of such prepayment, calculated under Section 7 above, provided that such prepayment is in full and not in part. No prepayment charge will be imposed by the Lender.
9. Loan Charges. If any law which applies to this loan and which sets maximum loan charges is finally interpreted so that any amounts collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. The Lender may choose to make this refund by making a direct payment to Borrower or by another method determined by Lender.
10. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application.
- a. Borrower shall have sixty (60) days from execution of this Note to occupy, establish, and use the Property as Borrower's principal residence. Except as otherwise expressly permitted by the Restriction, Borrower shall continue to occupy the residence as his or her principal residence. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default under this Note if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's reasonable judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Note. Borrower may cure such a default and reinstate Borrower's obligations, by causing the action or proceeding to be dismissed with a ruling that, in Lender's reasonable determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Note or Lender's security interest.
 - b. Borrower shall also be in default under this Note if Borrower, during the loan application process, gave materially false or inaccurate information statements to Lender (or failed to provide Lender with any material information) in connection with the Loan evidenced by the Note, including, but not limited to, representations concerning (1) Borrower's intent to occupy the Property as a principal residence; (2) Borrower's income; and (3) Borrower's eligibility as a first time homebuyer under the requirements of the BMR Program; (4) Borrower's completion of the approved Homebuyer Education Course and (5) Borrowers household size and composition.

things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to comply with all of the Borrower's obligations set forth in this Note. The Lender may enforce its rights under this Note against each person individually or against all of us together.

14. Waivers. The Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Lender to demand payment of amounts due. "Notice of dishonor" means the right to require the Lender to give notice to other persons that amounts due have not been paid.
15. Subordination. The indebtedness evidenced by this Note, and any other financial obligation which may hereafter be imposed on Borrower by the Lender, is as of the date of this Note subordinate to: (i) the indebtedness evidenced by a note in the original principal amount of \$166,273 payable to JP Morgan Chase Bank, N.A. which note is secured by a first deed of trust on the Property (the "First Deed of Trust"), and (ii) the indebtedness evidenced by a note (the "Second City Note") made by Borrower in the original principal amount of \$353,302 payable to the City and County of San Francisco. The Second City Note represents the difference between the appraised fair market value of the Property without regard to the Restriction less the restricted purchase price of the Property and is secured by a second deed of trust on the Property (the "BMR Lien"). Any further subordination of this Note to current or future financing secured by a deed of trust on the Property shall be at the sole discretion of the Lender.
16. Sunshine Ordinance. The Borrower understands that under Section 67.24(e) of San Francisco Administrative Code, applications for financing and all other records of communications between the City and the Borrower must be open to public inspection immediately after a contract has been awarded. All information provided by Borrower which is covered by that ordinance (as it may be amended) will be made available to the public upon appropriate request.

Borrower:



Gregory Garver

DO NOT DESTROY THIS NOTE: WHEN PAID, THIS NOTE AND DEED OF TRUST SECURING THE SAME MUST BE SURRENDERED TO CITY FOR CANCELLATION BEFORE RECONVEYANCE WILL BE MADE.

**PROMISSORY NOTE SECURED BY DEED OF TRUST
Inclusionary Housing Program**

\$353,302 (Principal Amount)

San Francisco, California

Date: 12/29/08

FOR VALUE RECEIVED, the undersigned, **Gregory Garver** (Maker) hereby promises to pay to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (Holder), the principal sum of **Three Hundred Fifty Three Thousand Three Hundred Two and 00/100 Dollars (\$353,302)**.

1. Purchase of Dwelling Unit at Restricted Purchase Price

Maker desires to purchase a unit located at **1160 Mission Street, Unit 812, San Francisco, CA 94103** ("BMR unit"). The BMR unit shall include one parking space, designated as # (No Parking Space) (the "parking space"). The purchase price of the BMR unit, including the parking space, has been established pursuant to the following documents (collectively, the "Restriction"):

- (1) **Planning Commission Motion No.16692 and 16996**, adopted on **December 4, 2003 and April 28, 2005 respectively**;
- (2) Interest on the principal amount at the rate of 0% per annum.
- (3) A "Notice of Special Restrictions Under the City Planning Code" ("NSR") recorded in the official records of the San Francisco County on **August 21, 2006** as **Document 2006-1232677-00**;
- (4) "City and County of San Francisco Residential Inclusionary Housing Monitoring and Procedures Manual ("Procedures Manual") adopted by the San Francisco Planning Commission June 2007.

2. Calculation of Principal Amount of Note.

The original principal amount of this note is equal to **Three Hundred Fifty Three Thousand Three Hundred Two and 00/100 Dollars (\$353,302)**. This amount is equal to the appraised Fair Market Value of the BMR Unit without regard to the Restriction (**\$575,000**) less the restricted purchase price of the BMR Unit (**\$221,698**), as required by the Restriction.

3. **Interest.** No interest shall accrue on the principal balance of this note.

4. **Event of Default.**

a. Maker's failure to comply with any provision contained in the Restriction shall constitute an Event of Default under this Note; provided that if such failure concerns a rental or sublease of the BMR Unit in violation of the Restriction, such failure shall not constitute an Event of Default unless Maker fails to cure such default within thirty (30) days after the receipt of written notice from Holder. Holder's ability to cure such defaults (i.e., through the termination of a tenancy which violates the Restriction) is subject to all applicable local, state and/or federal laws to the contrary.

b. Upon the occurrence of an Event of Default, following the expiration of any applicable notice and cure periods described in Subparagraph 5(a), the entire principal balance of this Note, together with all accrued interest, shall be immediately due and payable. In addition, Holder may pursue all rights and remedies available to Holder at law or in equity.

5. **Forgiveness.** Upon a sale of the BMR unit for a resale price that is established pursuant to the documents referenced in Paragraph 1, above, the entire principal balance of this Note, together with all accrued and unpaid interest thereon, shall be forgiven, this Note shall be canceled and returned to Maker and the Deed of Trust shall be reconveyed only upon the happening of each of the following events:

a. During the period which Maker owns the BMR Unit, Maker shall have complied in all respects with the terms of the Restriction;

b. Any sale, rental or sublease of the BMR Unit must be in compliance with the terms of the

Restriction, including but not limited to the requirement that, upon any resale of the BMR Unit, the City may require prospective purchaser to execute and deliver to the Holder a note, deed of trust and grant of right of first refusal in substantially the form of this Note, Deed of Trust and Grant of Right of First Refusal with respect to purchase of Property executed by maker concurrently herewith; except that the principal amount of such Note shall reflect the difference between the resale price and fair market value of the BMR Unit at the time of such resale.

c. If the conditions in this Section 5 are not satisfied, the entire principal balance and accrued interest on this Note shall be due and payable as a condition to such sale.

d. The resale price and resale transaction of the BMR unit must include the parking space at no additional charge.

6. **Security.** Repayment of this Note is secured by a deed of trust (the "Deed of Trust"), which Deed of Trust shall be recorded in the official records of San Francisco County, California, as a lien on the BMR Unit, subject only to those exceptions to title approved in writing by Holder.

7. **Terms of Payment.**

a. All payments under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

b. All payments shall be made payable to Holder and mailed or delivered in person to Holder's office at 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103, or to such other place as Holder of this Note may from time to time designate.

c. Notwithstanding any other provisions of this Note, or any instrument securing the obligations of Maker under this note, if, for any reason whatsoever, the payment of any sums by Maker pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that Holder may legally charge under the laws of the State of California, then amount by which payment exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall Maker be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

8. **Waivers.**

a. Maker expressly agrees that the term of this Note or the date of any payment due hereunder may be extended from time to time with Holder's consent, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Maker.

b. No extension of time for payment of this Note or any installment hereof made by agreement by Holder with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.

c. The obligations of Maker under this Note shall be absolute and Maker waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

9. **Miscellaneous Provisions**

a. All notices and consents required under this Note or the Deed of Trust shall be made in writing and shall be deemed communicated by personal delivery or by United States Mail, postage prepaid, as of the earlier of actual receipt of seven days from mailing, addressed as follows:

To Maker: **Gregory Garver**
1160 Mission Street, Unit 812
San Francisco, CA 94103

To Holder: Mayor's Office of Housing
1 South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attn: Inclusionary Program

b. In event of litigation arising from the enforcement of or a default under this Note or the Deed of Trust, the non-prevailing party promises to pay all reasonable costs and expenses, including reasonable attorney's fees, incurred by the prevailing party in such litigation.

c. This Note may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

d. This Note shall be governed by and construed in accordance with the laws of the State of California.

e. Time is of the essence for the performance of all obligations of Maker hereunder.

10. **Termination.**

Notwithstanding the foregoing paragraph, upon foreclosure on the Property by a third party lender or other transfer of the property in lieu of foreclosure or upon an assignment to HUD of a mortgage which was made to secure Borrower's purchase of the Property, the lien of the Deed of Trust shall be extinguished if the foreclosure or other transfer recognizes any contractual or legal rights of the City and the Maker to take actions that would avoid the lien of the Deed of Trust to be extinguished. However, this Note, the Deed of Trust and Maker's obligations hereunder shall be revived according to their original terms if, following any foreclosure or transfer in lieu of foreclosure, the owner of record before the foreclosure or transfer or assignment, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Property.

Buyer(s)

Signature: Greg Garver
Gregory Garver

Signature: _____

Signature: _____

Signature: _____

(Please add additional lines if necessary)

(THIS DOCUMENT MUST BE NOTARIZED)

State of California

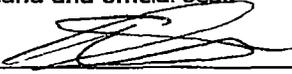
County of San Francisco

On 29th day of December, 2008 before me, Sharon Chan a Notary Public, personally appeared Gregory Garver, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature: _____



Name: Sharon Chan
(typed or printed)



(Seal)

FREE RECORDING DEL ESTED PURSUANT
TO GOV. CODE SECTION 27362.

RECORDING REQUESTED BY:



City and County of San Francisco
Mayor's Office of Housing

San Francisco Assessor-Recorder
Phil Ting, Assessor-Recorder
DOC- 2008-I703369-00

WHEN RECORDED MAIL TO:

Acct 21-Mayor's Office of Housing Development
Wednesday, DEC 31, 2008 12:40:15
Ttl Pd \$0.00 Rcpt # 0003597856
REEL J798 IMAGE 0379
ogi/GG/2-4

Mayor's Office of Housing of the
City and County of San Francisco
1 South Van Ness Avenue, Fifth
San Francisco, California 94103
Attention: Inclusionary Program

14
①

ORX-0070071398C

Space Above This Line for Recorder's Use

Lot: 112; Block: 372

1160 Mission St, #812
SF, CA 94103

DEED OF TRUST AND ASSIGNMENT OF RENTS

This Deed of Trust, made this day December 29th, 2008 between, **Gregory Garver** herein called TRUSTOR, whose address is **1160 Mission Street, Unit 812, San Francisco, CA 94103; Old Republic Title Company**, herein called TRUSTEE; and THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, herein called BENEFICIARY, witnesseth: that Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, that real property situated in the City and County of San Francisco, State of California, described in Exhibit A attached hereto and made a part thereof.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and apply such rents, issues and profits.

For the Purpose of Securing: 1. The promissory note executed by Trustor in favor of Beneficiary, each dated of even date herewith, and performance of agreement of Trustor incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by the aforesaid promissory note in the principal amount not to exceed **Three Hundred Fifty Three Thousand Three Hundred Two and 00/100 Dollars (\$353,302)**. Payment of such further sums as the then record owner of said property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

To protect the Security of This Deed of Trust, Trustor Agrees: By the execution and delivery of this Deed of Trust and the note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in the office of the Recorder of the City and County of San Francisco on October 23, 1961 in Book A-332 of Official Records, at page 905, hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

In the event of default by the Trustor under this Deed of Trust, or if the herein described property or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, alienated or refinanced by the Trustor, or by the operation of law or otherwise, without the written consent of the Beneficiary hereof, all obligations secured by this instrument irrespective of the maturity dates expressed therein, at the option of the Beneficiary

hereof and without demand or notice shall immediately become due and payable.
The undersigned Trustor requests that a copy of any Notice of Default and of any Notice
of Sale hereunder be mailed to him at his address herein before set forth.

TRUSTOR(S):

Buyer(s)

Signature: _____
Gregory Garver



Signature: _____

Signature: _____

Signature: _____

(Please add additional lines if necessary)

(THIS DOCUMENT MUST BE NOTARIZED)

State of California

County of San Francisco

On 29th day of December, 2008 before me, Sharon Chan a Notary Public, personally appeared Gregory Garver, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 

Name: Sharon Chan
(typed or printed)



(Seal).

EXHIBIT A

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Parcel One:

Condominium Unit 812 (Lot No. 112) of Parcel A of Parcel Map of 1160 Mission Street, filed May 4, 2007, in Book 100 of Condominium Maps, Pages 113-115 inclusive, as such Unit is shown on the Condominium Plan ("Plan"), recorded November 21, 2007, Series No. 2007-I 491992-00, Official Records and defined in the Declaration of Covenants and Restrictions for Soma Grand Residences ("Declaration"), recorded November 21, 2007, Series No. 2007-I 491994-00, Official Records, and any amendments and/or annexations recorded pursuant thereto.

Parcel Two:

An undivided .294% interest as Tenant In Common in and to the Residential Common Area lying within the above referenced Parcel Map of 1160 Mission Street, as shown on the Plan and defined in the Declaration, excepting and reserving therefrom the following:

- A.) All condominium units shown on the Plan and described in the Declaration.
- B.) Exclusive Use Common Areas for possession, use and enjoyment of those areas designated on the Plan and defined in the Declaration.
- C.) Non-exclusive easement for use, enjoyment, ingress, egress and support in and to the Residential Common Area as shown on the Plan and described in the Declaration.
- D.) All easements as defined in the Declaration and in Article 2 of the Soma Grand Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement ("REA"), recorded November 21, 2007, Series No. 2007-I 491993-00 Official Records.

Parcel Three:

Non-exclusive easements for use, enjoyment, ingress, egress and support in and to the Residential Common Area, as shown on the Plan and described in the Declaration, for the benefit of Parcel One hereinabove.

Parcel Four:

All easements as described in Article 2 of said REA.

Being Assessor's Lot 112; Block 3702

ORTC 00270074595C
Lot: 112; Block: 3702
1160 Mission St., #82

Free Recording Requested Pursuant to
Government Code Section 27383

18
When recorded, mail to:
Mayor's Office of Housing of the
City and County of San Francisco
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attn.: Chandra Egan

①
BMR-DALP Loan # BMR-08-1025



San Francisco Assessor-Recorder
Phil Ting, Assessor-Recorder
DOC- 2008-I703374-00

Acct 21-Mayor's Office of Housing Development

Wednesday, DEC 31, 2008 12:40:51

Ttl Pd \$0.00 Rcpt # 0003597861

REEL J798 IMAGE 0384

ogi/GG/1-9

Space above This Line for Recorder's Use

DEED OF TRUST AND ASSIGNMENT OF RENTS

Residential Inclusionary Housing Below Market Rate Downpayment Assistance Loan Program (BMR DALP)

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust") is made as of 12/29/08, by **Gregory Garver** ("Borrower" or "Borrowers") to **Old Republic Title Company** ("Trustee") for the benefit of the City and County of San Francisco, a municipal corporation, whose address is c/o Mayor's Office of Housing, 1 South Van Ness Avenue, 5th Floor, San Francisco, California 94103 ("Lender"). This Deed of Trust is being made in accordance with the City's Below Market Rate (BMR) Downpayment Assistance Loan Program (BMR DALP). Borrower represents and warrants that, as of the date of this Note, Borrower qualifies as a low-income household as determined by the California Department of Housing and Community Development.

Borrower owes Lender the principal sum of Thirty Three Thousand Two Hundred Fifty Five (\$ 33,255). This debt (the "City Loan") is evidenced by Borrower's note ("Note") dated the same date as this Deed of Trust and executed by Borrower. Capitalized terms used in this Deed of Trust and not defined shall have the meanings set forth in the Note. The Note provides for payment of the principal amount of the Note, together with a Share of Appreciation (as defined in the Note) on the Maturity Date.

In addition to the City Loan, the Borrower obtained: (i) a secured loan (the "First Deed of Trust Loan") from **JP Morgan Chase Bank, N.A.** (the "First Lien Holder"), which loan is secured by a first deed of trust lien on the Property (the "First Deed of Trust"), and (ii) a secured loan from the City and County of San Francisco evidenced by a note made by Borrower, representing the difference between the appraised fair market value of the Property without regard to the Restriction (as defined in Section 5 herein) less the restricted purchase price of the Property, which note is secured by a second deed of trust on the Property (the "BMR Lien"). The documents evidencing or securing the First Deed of Trust Loan are collectively referred to herein as the First Deed of Trust Loan Documents. The First Deed of Trust and the BMR Lien shall collectively be referred to herein as the "Senior Liens."

This Deed of Trust secures to Lender: (a) the repayment of the debt evidenced by the Note, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest as provided in the Note, advanced under Section 8 of this Deed of Trust to protect the security of this Deed of Trust; (c) payment of all other sums advanced by Lender to Borrower when evidenced by an instrument stating that those sums are secured by this Deed of Trust; and (d) the performance of Borrower's covenants and agreements under this Deed of Trust and the Note.

1. **Grant in Trust.** For valuable consideration, Borrower irrevocably grants and transfers and assigns to Trustee, in trust, with power of sale, subject to the rights of the First Lien Holder under the First Deed of Trust and to the rights of Lender under the BMR Lien, the real property located in San Francisco County, California, which has the address of 1160 Mission Street, Unit 812, San Francisco, CA 94103 and is further described in Exhibit A attached hereto;

TOGETHER WITH all the improvements now or hereafter erected on the property; all easements, appurtenances, and fixtures now or hereafter a part of the property; all replacements of and additions to the Property; and all rents, issues and profits from the property, subject to Trustor's right to collect and retain the same as they become due and payable so long as there is no existing default hereunder. All of the foregoing is referred to in this Deed of Trust as the "Property."

2. **Title.** Borrower covenants that Borrower holds fee title to the Property and has the right to grant and convey

the Property and, except for the First Deed of Trust, BMR Lien, and other encumbrances of record acceptable to the First Lien Holder and the Lender, the Property is unencumbered. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to such encumbrances of record.

3. **Payment of Principal and Shared Appreciation; Prepayment and Late Charges.** Borrower shall promptly pay when due all amounts evidenced by the Note. Borrower shall have the right, without any prepayment charge, to prepay the principal amount of the Note, together with the Share of Appreciation and any default interest that may be due, provided that such prepayment is in full and not in part.

4. **Prior Deeds of Trust; Charges; Liens.**

a. The Borrower shall perform all of the Borrower's obligations under the Senior Liens, including Borrower's covenants to make payments when due. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Deed of Trust, and leasehold payments or ground rents, if any. Borrower shall pay these obligations directly and on time to the person or entity owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

b. Except for the Senior Liens, Borrower shall promptly discharge any other lien which shall have attained priority over this Deed of Trust unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which, in the Lender's sole discretion, operate to prevent the enforcement of the lien; or (c) obtains from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. Except for the Senior Liens, if Lender determines that any part of the Property is subject to a lien which may attain priority over this Deed of Trust, Lender may give Borrower a notice identifying the lien. Borrower shall discharge such lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Subordination.**

a. Lender and Borrower acknowledge and agree that this Deed of Trust is subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Liens, and to all advances heretofore made or which may hereafter be made pursuant to the Senior Liens, including all sums advanced for the purpose of protecting or further securing the liens of the Senior Liens, curing defaults by the Borrower under the Senior Liens or for any other purpose expressly permitted by the Senior Liens. Notwithstanding the foregoing, in the event of a foreclosure or deed in lieu of foreclosure under the First Deed of Trust, any provisions set forth in the Restriction (as defined below), this Deed of Trust, or in any other collateral agreement that restrict the use of the Property to low or moderate income households or otherwise restrict the Borrower's ability to sell the Property shall remain in full force and effect on subsequent owners or purchasers of the Property. For the purposes of this Deed of Trust, the "Restriction" shall mean the requirements set forth in: (i) Planning Code § 315, (ii) the Planning Commission Motion No. **16692 and 16996** adopted on **December 4, 2003 and April 28, 2005 respectively**, (iii) the "Notice of Special Restrictions Under the City Planning Code" recorded in the Official Records of San Francisco County on **August 21, 2006** as Document No. **2006-1232677-00** and (iv) the City and County of San Francisco Inclusionary Housing Monitoring and Procedures Manual issued by the San Francisco Planning Commission applicable to the Property

b. Further, if the First Lien Holder acquires title to the Property pursuant to a deed in lieu of foreclosure, the lien of this Deed of Trust shall automatically terminate upon the First Lien Holder's acquisition of title, provided that (i) the Lender has been given written notice of a default under the First Deed of Trust and (ii) the Lender shall not have cured the default under the First Deed of Trust, or diligently pursued curing the default as reasonably determined by the First Lien Holder, within 90 days from the date of notice sent to the Lender.

6. **Hazard or Property Insurance.**

a. Borrower shall keep the improvements now existing or hereafter erected on the Property insured on an all-risk form, excluding earthquake and flood, for one hundred percent (100%) of the replacement value, with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, and at Borrower's cost which shall be added to the Principal Amount and secured by this Deed of Trust, obtain coverage to protect Lender's rights in the Property in accordance with Section 8.

b. All insurance policies and renewals, including the issuer of such policies, shall be acceptable to Lender and shall include a standard mortgagee clause. All requirements hereof pertaining to insurance shall be deemed satisfied if the Borrower complies with the insurance requirements under the First Deed of Trust. All original policies of insurance required pursuant to the First Deed of Trust may be held by the First Lien Holder; provided, however, Lender shall be named as a loss payee as its interest may appear and shall be named as an additional insured. If Lender requires, Borrower shall promptly give to Lender copies of all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier, the First Lien Holder and Lender. Lender may make proof of loss if not made promptly by the First Lien Holder or the Borrower.

c. Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not impaired as determined by Lender in its sole discretion. If the restoration or repair is not economically feasible or Lender's security would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days from the date of a written notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Deed of Trust, whether or not then due. The 30-day period will begin when the notice from Lender that the insurance carrier has offered to settle a claim is given.

d. Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the payments referred to in the Note or change the amount of the payments. If under Section 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to the acquisition.

e. Notwithstanding the above, the Lender's rights to collect and apply the insurance proceeds hereunder shall be subject and subordinate to the rights of the First Lien Holder to collect and apply such proceeds in accordance with the First Deed of Trust.

7. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.**

a. Borrower shall have sixty (60) days from execution of this Deed of Trust to occupy, establish, and use the Property as Borrower's principal residence. Except as otherwise expressly permitted by the Restriction, Borrower shall continue to occupy the residence as his or her principal residence. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default under this Deed of Trust if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's reasonable judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Deed of Trust. Borrower may cure such a default and reinstate Borrower's obligations, as provided in Section 21, by causing the action or proceeding to be dismissed with a ruling that, in Lender's reasonable determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Deed of Trust or Lender's security interest.

b. Borrower shall also be in default under this Deed of Trust if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the Loan evidenced by the Note, including, but not limited to, representations concerning (1) Borrower's intent to occupy the Property as a principal residence; (2) Borrower's income; (3) Borrower's eligibility as a first time homebuyer under the requirements of the BMR Program; (4) Borrower's completion of an approved Homebuyer Education Course, and (5) Borrowers household size and composition.

c. The Borrower acknowledges that this Property is subject to certain use and occupancy restrictions which are evidenced by the Restriction, generally limiting the Property's use to low and

moderate income housing as further described in the Restriction. The Restriction also requires Borrower to occupy and use the Property as Borrower's principal residence and prohibit the Borrower from renting the Property at any time, except with under limited circumstances set forth in the Restriction. Any violation of the Restriction by Borrower shall be deemed a default hereunder.

8. **Protection of Lender's Rights in the Property.**

a. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Deed of Trust (including sums secured by the First Deed of Trust), appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this Section 8, Lender is not required to do so.

b. Any amounts disbursed by Lender under this Section 8 shall become additional debt of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, these amounts shall become a part of the Principal Amount of the Loan for the purpose of calculating the Share of Appreciation due to the Lender under the Note.

c. Prior to taking any actions under this Section 8, however, Lender shall notify the First Lien Holder of such default in the manner provided in Section 21, and shall provide the First Lien Holder with the opportunity to cure any such default under this Deed of Trust within the time period provided for in Section 22 herein. All amounts advanced by the First Lien Holder to cure a default hereunder shall be deemed advanced by the First Lien Holder and shall be secured by the First Deed of Trust in accordance with the First Loan Documents. In addition, the Lender agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the First Lien Holder at least 60 days' prior written notice. Borrower acknowledges that any action by Lender hereunder to foreclose or accept a deed in lieu of foreclosure may, at Lender's option, be subject to any "due on sale" provisions of the First Deed of Trust.

d. Lender and Borrower further agree that a default hereunder shall constitute a default under the First Deed of Trust. In the event of a default hereunder, following any applicable notice and cure periods, the First Lien Holder shall have the right to exercise all rights and remedies under the First Deed of Trust.

9. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. **Condemnation.**

a. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of the First Deed of Trust and the BMR Lien.

b. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the taking, unless Borrower and Lender otherwise agree in writing, the Lender shall receive payment of the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower, and the amount secured by this Deed of Trust shall be reduced by the amount paid to the Lender. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

Holder prior written notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

c. Notwithstanding Lender's right to invoke any remedies hereunder, as provided in Section 8 above, Lender agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the First Lien Holder at least 60 days' prior written notice.

18. **Borrower's Right to Reinstate.** If Borrower meets certain conditions specified below, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Deed of Trust; or (b) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Deed of Trust and the Note as if no acceleration had occurred; (b) cures any default; (c) pays all expenses incurred by Lender in enforcing this Deed of Trust, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unchanged. Upon reinstatement by Borrower, this Deed of Trust and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 21.

19. **Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Deed of Trust) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects payments due under the Note and this Deed of Trust. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with Section 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. **Hazardous Substances.**

a. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below) on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law (as defined below). The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

b. Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Prior to taking any such remedial action, however, the Borrower shall notify the Lender and the First Lien Holder that such remedial action is necessary and shall obtain the First Lien Holder's prior written consent for such remedial action.

As used in this Section 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Section 20, "Environmental Law" means federal, state or local laws that relate to health, safety or environmental protection.

21. **Borrower's Default**

a. **Failure to Pay as Required.** If Borrower fails to pay any amount due hereunder or under the Note when due, Borrower will be in default under this Deed of Trust.

b. **Non-Monetary Default.** If Borrower fails to perform any of the terms, covenants or obligations under this Deed of Trust or the Note, or if any representation or warranty made by Borrower under this Deed of Trust or the Note proves to have been incorrect in any material respect when made, Borrower shall be in default under this Deed of Trust.

c. **Cross-Default.** If Borrower is in default with respect to any other funding obligation for the Property,

including but not limited to the Restriction, the First Deed of Trust Loan, and the BMR Lien, and the default remains uncured following the expiration of any applicable cure periods, Borrower will be in default under this Deed of Trust.

22. **Acceleration; Remedies.**

a. Lender shall give notice to Borrower and the First Lien Holder prior to acceleration following Borrower's default in this Deed of Trust. The notice shall specify: (i) the default; (ii) the action required to cure the default; (iii) a date, not less than 30 days from the date the notice is given to Borrower (and with respect to the First Lien Holder, 60 days from the date the notice is given to the First Lien Holder), by which the default must be cured; and (iv) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale.

b. If the default is not cured by the Borrower on or before the date specified in the notice, and the First Lien Holder has not exercised its right to cure the default, then Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Notwithstanding Lender's right to invoke any remedies hereunder, as provided in Section 8 above, the Lender agrees that it will not commence foreclosure proceedings or accept a deed in lieu of foreclosure, or exercise any other rights or remedies hereunder until it has given the First Lien Holder at least 60 days' prior written notice. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 21, including, but not limited to, reasonable attorneys' fees.

c. If Lender invokes the power of sale, Lender or Trustee shall mail copies of a notice of sale in the manner prescribed by applicable law to Borrower, the First Lien Holder and to the other persons prescribed by applicable law. Trustee shall give notice of sale by public advertisement for the time and in the manner prescribed by applicable law. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property to any later time on the same date by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

d. Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (i) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (ii) to all sums secured by this Deed of Trust; and (iii) any excess to the person or persons legally entitled to it.

23. **Release.** Upon payment of all sums secured by this Deed of Trust, Lender shall reconvey this Deed of Trust without charge to Borrower. Borrower shall pay any recordation costs.

24. **Substitute Trustee.** Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

BY SIGNING BELOW, the Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

Borrower: 
Signature - Gregory Garver

Signature -

(ALL SIGNATURES MUST BE NOTARIZED)

State of California

County of San Francisco

On 29th day of December, 2008 before me, Sharon Chan a Notary Public, personally appeared Gregory Garver, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 

Name: Sharon Chan
(typed or printed)



(Seal)

EXHIBIT A

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Parcel One:

Condominium Unit 812 (Lot No. 112) of Parcel A of Parcel Map of 1160 Mission Street, filed May 4, 2007, in Book 100 of Condominium Maps, Pages 113-115 inclusive, as such Unit is shown on the Condominium Plan ("Plan"), recorded November 21, 2007, Series No. 2007-I 491992-00, Official Records and defined in the Declaration of Covenants and Restrictions for Soma Grand Residences ("Declaration"), recorded November 21, 2007, Series No. 2007-I 491994-00, Official Records, and any amendments and/or annexations recorded pursuant thereto.

Parcel Two:

An undivided .294% interest as Tenant In Common in and to the Residential Common Area lying within the above referenced Parcel Map of 1160 Mission Street, as shown on the Plan and defined in the Declaration, excepting and reserving therefrom the following:

- A.) All condominium units shown on the Plan and described in the Declaration.
- B.) Exclusive Use Common Areas for possession, use and enjoyment of those areas designated on the Plan and defined in the Declaration.
- C.) Non-exclusive easement for use, enjoyment, ingress, egress and support in and to the Residential Common Area as shown on the Plan and described in the Declaration.
- D.) All easements as defined in the Declaration and in Article 2 of the Soma Grand Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement ("REA"), recorded November 21, 2007, Series No. 2007-I 491993-00 Official Records.

Parcel Three:

Non-exclusive easements for use, enjoyment, ingress, egress and support in and to the Residential Common Area, as shown on the Plan and described in the Declaration, for the benefit of Parcel One hereinabove.

Parcel Four:

All easements as described in Article 2 of said REA.

Being Assessor's Lot 112; Block 3702

FREE RECORDING REQ. IN PURSUANT
TO CIV. CODE SECTION 4383

RECORDING REQUESTED BY:



City and County of San Francisco
Mayor's Office of Housing

San Francisco Assessor-Recorder
Phil Ting, Assessor-Recorder
DOC- 2008-1703372-00

WHEN RECORDED MAIL TO:

Mayor's Office of Housing of the
City and County of San Francisco
1 South Van Ness Avenue, Fifth Floor
San Francisco, California 94103
Attention: Inclusionary Program

Acct 21-Mayor's Office of Housing Development
Wednesday, DEC 31, 2008 12:40:37
Ttl Pd \$0.00 Rcpt # 0003597859
REEL J798 IMAGE 0382
ogi/GG/1-3

14
①

OPR-000700775906

Space Above This Line for Recorder's Use

Lot: 112; Block 372

**ACKNOWLEDGEMENT OF SPECIAL USE RESTRICTION AND RESIDENCE
ELEMENT**

1160 Mission St.
#812
SF, CA 94118

Gregory Garver (Purchaser) intend to purchase 1160 Mission Street, Unit 812, San Francisco, CA 94103 ("the BMR Unit") of that certain real property situated in the City and County of San Francisco, State of California, more particularly described as follows ("the property").

[See Attached Legal Description Exhibit A]

Purchaser acknowledges the receipt of the Notice of Special Restrictions under the City Planning Code ("NSR") recorded in the Official Records of San Francisco County against said property on August 21, 2006 as Document #2006-1232677-00.

The NSR includes San Francisco Planning Commission Motion 16692 and 16996 (the "Motion") adopted December 4, 2003 and April 28, 2005 respectively. A copy of the NSR is attached hereto as Exhibit B.

Purchaser acknowledges receipt of the City and County of San Francisco Residential Inclusionary Affordable Housing Program Monitoring and Procedures Manual 2007 ("Procedures Manual") adopted by the Planning Commission on June 2007.

Purchaser acknowledges and agrees that the BMR unit shall remain subject to the NSR and the Procedures Manual. In the event of any inconsistency between the NSR and the Procedures Manual, the NSR shall control.

A copy of the BMR Affidavit is attached hereto as Exhibit C.

A copy of the Conflict of Interest Affidavit is attached hereto as Exhibit D.

Dated: December 29th, 2008

Buyer(s)
Signature: Greg Garver
Gregory Garver

Signature: _____

Signature: _____

Signature: _____

(Please add additional lines if necessary) (THIS DOCUMENT MUST BE NOTARIZED)

State of California

County of San Francisco

On 29th day of December, 2008 before me, Sharon Chan a Notary Public, personally appeared Gregory Garver, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ she/they executed the same in ~~his~~ her/their authorized capacity(ies), and that by ~~his~~ her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____



Name: Sharon Chan
(typed or printed)



(Seal)

EXHIBIT A

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Parcel One:

Condominium Unit 812 (Lot No. 112) of Parcel A of Parcel Map of 1160 Mission Street, filed May 4, 2007, in Book 100 of Condominium Maps, Pages 113-115 inclusive, as such Unit is shown on the Condominium Plan ("Plan"), recorded November 21, 2007, Series No. 2007-I 491992-00, Official Records and defined in the Declaration of Covenants and Restrictions for Soma Grand Residences ("Declaration"), recorded November 21, 2007, Series No. 2007-I 491994-00, Official Records, and any amendments and/or annexations recorded pursuant thereto.

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- C.) Non-exclusive easement for use, enjoyment, ingress, egress and support in and to the Residential Common Area as shown on the Plan and described in the Declaration.
- D.) All easements as defined in the Declaration and in Article 2 of the Soma Grand Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement ("REA"), recorded November 21, 2007, Series No. 2007-I 491993-00 Official Records.

Parcel Three:

Non-exclusive easements for use, enjoyment, ingress, egress and support in and to the Residential Common Area, as shown on the Plan and described in the Declaration, for the benefit of Parcel One hereinabove.

Parcel Four:

All easements as described in Article 2 of said REA.

Being Assessor's Lot 112; Block 3702

City and County of San Francisco
Residential Inclusionary Affordable Housing Below-Market-Rate (BMR) Program

BMR AFFIDAVIT

I, the undersigned, am purchasing the property at
1160 Mission, Unit 812, San Francisco, California
94103. I understand that this unit is restricted by the City and County of San
Francisco for the purpose of assisting low- to moderate-income first-time homebuyers.

I affirm the following:

1. I am a first time homebuyer in that I have not held title to any property in the past three (3) years.
3. The number of people who will occupy the property is 1.
4. I will occupy and remain in the home as my principal place of residence within sixty (60) days of the close of escrow.
5. I understand that I cannot change or amend the title to my unit without permission from the Mayor's Office of Housing or its successor.
6. I understand that any first parking space purchased with my unit must be resold with my unit upon resale as a part of the maximum below-market-rate price that is set by the Mayor's Office of Housing or its successor and that any first parking space purchased after the closing of my unit must also be sold with my unit upon resale within the maximum below-market-rate price that is set by the Mayor's Office of Housing or its successor.
7. Upon resale, I understand that my unit will be repriced based on the change in Median Income from the date on which I purchased my unit to the date on which I will sell my unit.
8. I understand that only approved and eligible capital improvements made after the unit is 10 years old may be added on to the resale price of my unit.
9. I understand that I cannot rent my property in part or whole without written approval from the Mayor's Office of Housing or its successor and that I must remain in compliance with the guidelines set forth in the City and County of San Francisco Residential Inclusionary Affordable Housing Program Monitoring and Procedures Manual.

Date: December 29th, 2008

Buyer(s)

Signature: Greg Garver
Gregory Garver

Signature: _____

Signature: _____

Signature: _____

(Please add additional lines if necessary)

**City and County of San Francisco
Residential Inclusionary Affordable Housing Below-Market-Rate (BMR)
Program**

CONFLICT OF INTEREST AFFIDAVIT

I, the undersigned, am purchasing the property at 872 1/2 1160 Mission St
Unit 812, San Francisco, California 94103. I understand that this property
is restricted by the City and County of San Francisco for the purpose of assisting
low- to moderate-income first-time homebuyers.

As a condition of purchase and in compliance with the requirements of the
Procedures Manual published by the Department of City Planning and approved
by the San Francisco Planning Commission in June 2007 (Section K - Conflict of
Interest), I certify that no member of the household who will be residing in the
property is an employee, director, or officer of any of the following, or a family
member of any employee, director, or officer of any of the following:

- The project sponsor or its agents, including the sales agent;
- The project architect or its agents;
- The project attorney or its agents;
- The prime contractor or its agents.

The undersigned each executes this Affidavit, subject to penalties of perjury, and
certifies that the foregoing is true and correct in all respects.

Buyer(s)

Signature: Greg Garver
Gregory Garver

Signature: _____

Signature: _____

Signature: _____

(Please add additional lines if necessary)

FREE RECORDING REL. SETED PURSUANT

TO GOV. CODE SECTION 07383

15

9

RECORDING REQUESTED BY:
City and County of San Francisco
Mayor's Office of Housing

AND WHEN RECORDED MAIL T
Mayor's Office of Housing
1 South Van Ness Avenue, Fifth F
San Francisco, CA 94103
Attention: Inclusionary Program



San Francisco Assessor-Recorder
Phil Ting, Assessor-Recorder
DOC- 2008-I703371-00
Acct 21-Mayor's Office of Housing Development
Wednesday, DEC 31, 2008 12:40:26
Ttl Pd \$0.00 Rcpt # 0003597858
REEL J798 IMAGE 0381
og1/GG/1-4

007C-0227007895C

Lot 112; Block 3402

1160 Mission St; #812

SF, CA 94103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT OF RIGHT OF FIRST REFUSAL
WITH RESPECT TO PURCHASE OF PROPERTY
Inclusionary Housing Program**

This Grant of Right of First Refusal is made on December 29th, 2008 by Gregory Garver "Buyer" of 1160 Mission Street, Unit 812, San Francisco, CA 94103 ("the Property"), to the City and County of San Francisco, through the Director, Mayor's Office of Housing, 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103 or its designated agent (hereinafter "City").

a. The property is more particularly as follows:

See Exhibit "A" attached hereto and made a part hereof.

b. The Property is subject to the requirements of Planning Commission in compliance with the Planning Code 315 and recorded under the Notice of Special Restrictions on August 21, 2006 as Document 2006-I232677-00 and requires, among other things, that the Property be made available at a specified purchase price to a buyer whose income level does not exceed a specified percentage of the median income for the San Francisco area. These restrictions have enabled the buyer to purchase the unit.

In consideration for the Buyer's ability to purchase the property at less than its fair market value Buyer agrees as follows:

1. If Buyer desires to sell the above-described Property, Buyer shall notify the Mayor's Office of Housing ("MOH") or its successor of the intended. If Buyer receives from a third party (the "Proposed Purchaser") a bona fide offer for the purchase thereof, Buyer shall disclose the terms of such offer to the City, in writing, within 10 days following the receipt of the offer by Buyer.
2. City shall have 45 days after receiving notice of the terms of the offer within which to elect to purchase the property on terms identical to those offered by the Proposed Purchaser. City shall notify Buyer within such 45-day period whether City desires to purchase the Property. Within 30 days of such notice by the City, Buyer and the City shall enter into a formal contract of sale containing all terms of the original bona fide offer made to the Buyer.
3. If the City fails to give the notice as provided in Paragraph 2 or if City fails to enter into a formal and binding contract within the 30 days set forth in Paragraph 2, Buyer may sell the Property to the Proposed Purchaser on the terms contained in the offer described in Paragraph 1. Such sale shall be subject to all requirements of the Motion including but not limited to a requirement that the Proposed Purchaser grant a right of first refusal to the City or City fails to enter into a formal and binding contract of sale within the 30 days set forth in

Paragraph 2.

4. Within 30 days of City's notice of intent to purchase as set forth in Paragraph 2, Buyer shall obtain evidence of marketable title to the property and submit the same to City for examination. Thereafter, City shall have 10 days within which to notify Buyer as to any defects in or objections to the title as so evidenced, and Buyer shall have the opportunity to remedy any such defects or objections within 10 days after City's notice to Buyer. If by the end of the last period specified, Buyer cannot show satisfactory title, City shall have the option of either (a) continuing the transaction with such contract modification as the parties may mutually agree to, or (b) rescinding the contract before the parties.
5. City shall have the right to assign its interests under this Grant of Right of First Refusal and/or to designate an individual or entity to exercise its rights under this Grant of Right of First Refusal.
6. Notwithstanding anything to the contrary set forth herein, the right of first refusal granted to the City herein shall not apply to a lender upon foreclosure of any bona fide mortgage, deed of trust or other security interest encumbering the property or deed in lieu thereof; provided however, that this Grant of Right of First Refusal shall remain in full force and effect with respect to any subsequent sale or conveyance of the Property. For purposes hereof, a "bona fide" mortgage, deed of trust or security interest shall not include an instrument under which the trustor or mortgagor is a family member of related business entity of the Buyer.
7. The rights and obligations of Buyer and City hereunder shall bind and inure to the benefit of Buyer and City and their personal representatives and successors and assigns.

Executed at San Francisco, California on this date first written above.

Buyer(s)

Signature: _____
Gregory Garver



Signature: _____

Signature: _____

Signature: _____

(Please add additional lines if necessary)

(THIS DOCUMENT MUST BE NOTARIZED)

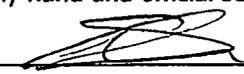
State of California

County of San Francisco

On 29th day of December, 2008 before me, Sharon Chan a Notary Public, personally appeared Gregory Garver, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:  _____

Name: Sharon Chan
(typed or printed)



(Seal)

EXHIBIT A

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Parcel One:

Condominium Unit 812 (Lot No. 112) of Parcel A of Parcel Map of 1160 Mission Street, filed May 4, 2007, in Book 100 of Condominium Maps, Pages 113-115 inclusive, as such Unit is shown on the Condominium Plan ("Plan"), recorded November 21, 2007, Series No. 2007-I 491992-00, Official Records and defined in the Declaration of Covenants and Restrictions for Soma Grand Residences ("Declaration"), recorded November 21, 2007, Series No. 2007-I 491994-00, Official Records, and any amendments and/or annexations recorded pursuant thereto.

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- C.) Non-exclusive easement for use, enjoyment, ingress, egress and support in and to the Residential Common Area as shown on the Plan and described in the Declaration.
- D.) All easements as defined in the Declaration and in Article 2 of the Soma Grand Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement ("REA"), recorded November 21, 2007, Series No. 2007-I 491993-00 Official Records.

Parcel Three:

Non-exclusive easements for use, enjoyment, ingress, egress and support in and to the Residential Common Area, as shown on the Plan and described in the Declaration, for the benefit of Parcel One hereinabove.

Parcel Four:

All easements as described in Article 2 of said REA.

Being Assessor's Lot 112; Block 3702

Tab 2: Supplemental

RECORDING REQUESTED BY:

Old Republic Title Company

Order #: 0227613052-SC
APN #: Block 3702; Lot 112

WHEN RECORDED MAIL TO

Gregory Garver
1160 Mission Street #812
San Francisco, CA 94103

**THIS IS A CERTIFIED TRUE
COPY OF THE ORIGINAL**

Old Republic Title Company

SPACE ABOVE THIS LINE FOR RECORDERS USE

Grant Deed

Monument Preservation Fee is \$10.00

The undersigned grantor(s) declare(s): NOT FOR PUBLIC RECORD-SEE SEPARATE DECLARATION

Documentary transfer tax is

- computed on full value of property conveyed, or
- computed on full value less of liens and encumbrances remaining at time of sale.
- Unincorporated area: City of San Francisco

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
1160 Mission Associates, LLC, a Delaware limited liability company

hereby **GRANT(S)** to Gregory Garver, a single man

that property in City of San Francisco, San Francisco County, State of California, described as:
See "Exhibit A" attached hereto and made a part hereof. Property commonly known as 1160 Mission Street #812,
San Francisco, CA 94103

Mail Tax Statements to Grantee at address above

Date October 02, 2007

State of California

County of San Francisco

On _____ before me,

_____ a Notary Public in and for said State, personally appeared

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

Name _____
(typed or printed)

1160 Mission Associates, LLC,
a Delaware Limited Liability Company
By: AGI-TMG MISSION, LLC
a Delaware limited liability company
Its: Administrative Member
By: TMG 1160, LLC,
a Delaware limited liability company
Its: Managing Member
By: TMG Partners,
a California corporation
Its: Managing Member

By: 
Cathy Greenwold
Its: Executive Vice President

State of California

County of San Francisco

On October 6, 2008 before me, M. Olivia Hernandez a Notary Public, personally appeared Cathy Greenwold, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature M. Hernandez

Name: M. Olivia Hernandez
(typed or printed)

(Seal)

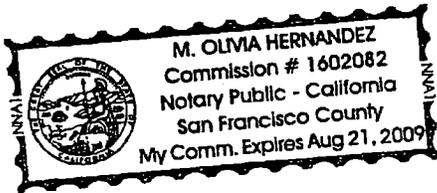


EXHIBIT A

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Parcel One:

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Non-exclusive easements for use, enjoyment, ingress, egress and support in and to the Residential Common Area, as shown on the Plan and described in the Declaration, for the benefit of Parcel One hereinabove.

Parcel Four:

All easements as described in Article 2 of said REA.

Being Assessor's Lot 112; Block 3702

Recording Requested By:
Zenaida Rosales

Return To:

WAREHOUSE INTAKE
700 Kansas Lane - Mail Code:
LA4-2153
Monroe, LA 71203

**THIS IS A CERTIFIED TRUE
COPY OF THE ORIGINAL**
[Signature]
Old Republic Title Company

Prepared By:
Zenaida Rosales
560 Mission Street
Suite 400
San Francisco, 94105

[Space Above This Line For Recording Data]

ORTC-0227007759 SC
Lot: 112; Block: 3702
1160 Mission St; #12
SF, CA 94103

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated **December 26, 2008** together with all Riders to this document.
- (B) "Borrower" is **Gregory Garver, Single Man**

Borrower's address is **351 King St APT 715, San Francisco, CA 94108**

Borrower is the trustor under this Security Instrument.

- (C) "Lender" is **JPMorgan Chase Bank, N.A.**

Lender is a **National Banking Association** organized and existing under the laws of **the United States**

1263420197

CALIFORNIA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Wolters Kluwer Financial Services
VMP®-6(CA) (0711)
Page 1 of 15

Initials *GG*

Form 3005 1/01

RTL12634201971123

Lender's address is 1111 Polaris Parkway, Columbus, OH 43240

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is Commonwealth Land Title Insurance Company

(E) "Note" means the promissory note signed by Borrower and dated December 26, 2008

The Note states that Borrower owes Lender One Hundred Sixty Six Thousand Two Hundred Seventy Three And Zero/100 Dollars

(U.S. \$ 166,273.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than January 01, 2039

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input checked="" type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard

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to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY

of

San Francisco

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

See Attached

Parcel ID Number: **112-3702**
1160 Mission St Apt 812
SAN FRANCISCO
("Property Address"):

which currently has the address of
[Street]
[City], California **94103** [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S.

currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

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in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with



the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender

to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct prepayment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.



16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA



requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.



NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

24. Substitute Trustee. Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument is recorded and the name and address of the successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by Applicable Law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

25. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.



The undersigned Borrower requests that a copy of any Notice of Default and any Notice of Sale under this Security Instrument be mailed to the Borrower at the address set forth above. A copy of any Notice of Default and any Notice of Sale will be sent only to the address contained in this recorded request. If the Borrower's address changes, a new request must be recorded.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

_____ (Seal)
GREGORY GARVER -Borrower

_____ (Seal)
-Borrower

_____ (Seal) -Borrower
_____ (Seal) -Borrower

_____ (Seal) -Borrower
_____ (Seal) -Borrower

_____ (Seal) -Borrower
_____ (Seal) -Borrower

State of California
County of San Francisco

} ss.

On *December 29, 2008*

before me,

Sharon Chan, a notary public

, personally appeared

Gregory Barver

, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

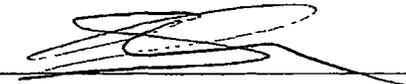
 (Seal)



EXHIBIT A

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Parcel One:

Condominium Unit 812 (Lot.No. 112) of Parcel A of Parcel Map of 1160 Mission Street, filed May 4, 2007, in Book 100 of Condominium Maps, Pages 113-115 inclusive, as such Unit is shown on the Condominium Plan ("Plan"), recorded November 21, 2007, Series No. 2007-I 491992-00, Official Records and defined in the Declaration of Covenants and Restrictions for Soma Grand Residences ("Declaration"), recorded November 21, 2007, Series No. 2007-I 491994-00, Official Records, and any amendments and/or annexations recorded pursuant thereto.

Parcel Two:

An undivided .294% interest as Tenant In Common in and to the Residential Common Area lying within the above referenced Parcel Map of 1160 Mission Street, as shown on the Plan and defined in the Declaration, excepting and reserving therefrom the following:

- A.) All condominium units shown on the Plan and described in the Declaration.
- B.) Exclusive Use Common Areas for possession, use and enjoyment of those areas designated on the Plan and defined in the Declaration.
- C.) Non-exclusive easement for use, enjoyment, ingress, egress and support in and to the Residential Common Area as shown on the Plan and described in the Declaration.
- D.) All easements as defined in the Declaration and in Article 2 of the Soma Grand Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement ("REA"), recorded November 21, 2007, Series No. 2007-I 491993-00 Official Records.

Parcel Three:

Non-exclusive easements for use, enjoyment, ingress, egress and support in and to the Residential Common Area, as shown on the Plan and described in the Declaration, for the benefit of Parcel One hereinabove.

Parcel Four:

All easements as described in Article 2 of said REA.

Being Assessor's Lot 112; Block 3702

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 26th day of December, 2008, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to JPMorgan Chase Bank, N.A.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

1160 Mission St Apt 812
SAN FRANCISCO, CA 94103

[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

Soma Grand

[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. Condominium Obligations. Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations, and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then, (i) Lender waives the provision in

1263420197

MULTISTATE CONDOMINIUM RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3140 1/01

Wolters Kluwer Financial Services

VMP®-8R (0411).01

Page 1 of 3

Initials: 

RTL12634201971123

Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association, or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender

F. Remedies. If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Condominium Rider



GREGORY GARVER (Seal)
-Borrower

(Seal)
-Borrower



OLD REPUBLIC TITLE COMPANY

B. TYPE OF LOAN

1. FHA 2. FmHA 3. Conv. Unins. 4. VA 5. Conv. Ins. 6. File Number 0227007759-SC 7. Loan Number 1263420197 8. Mortgage Insurance Case Number

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower: Gregory Garver, 351 King Street, #725, San Francisco, CA 94108. E. Name and Address of Seller: 100 Bush Street, 26th Floor, San Francisco, CA 94104. F. Name and Address of Lender: JPMorgan Chase Bank, NA, 2633 Camino Ramon, San Ramon, CA 94583.

G. Property Location: 1160 Mission Street, Unit #812, San Francisco, CA 94103. H. Settlement Agent: Old Republic Title Company, 475 Sansome Street, Suite 1700, San Francisco, CA 94111. I. Settlement Date: 12/31/2008.

J. SUMMARY OF BORROWER'S TRANSACTION K. SUMMARY OF SELLER'S TRANSACTION

Table with 4 columns: Item Number, Description, Amount, and Total. Rows include 100. GROSS AMOUNT DUE FROM BORROWER, 101. Contract sales price, 102. Personal property, 103. Settlement charges to borrower, 104. HOA January Dues, 105. pay for processing fee to Crist Elliott Machette Insurance, 106. City/town taxes, 107. County taxes, 108. Assessments, 109., 110., 111., 112., 113., 114., 120. GROSS AMOUNT DUE FROM BORROWER, 200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER, 201. Deposit or earnest money, 202. Principal amount of new loan 1st, 202. Principal amount of new loan 2nd, 202. Principal amount of new loan 3rd, 210. City/town taxes, 211. County taxes, 212. Assessments, 213., 214., 215., 216., 217., 218., 219., 220. TOTAL PAID BY/FOR BORROWER, 300. CASH AT SETTLEMENT FROM/TO BORROWER, 301. Gross amount due from borrower, 302. Less amounts paid by/for borrower, 303. CASH FROM TO BORROWER.

Section 5 of the Real Estate Settlement Procedures Act (RESPA) requires the following: HUD must develop a Special Information Booklet to help persons borrowing money to finance the purchase of residential real estate to better understand the nature and costs of real estate settlement services; Each lender must provide the booklet to all applicants from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate; Lenders must prepare and distribute with the Booklet a Good Faith Estimate of the settlement costs that the borrower is likely to incur in connection with the settlement. These disclosures are mandatory.

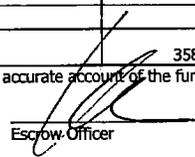
Section 4(a) of RESPA mandates that HUD develop and prescribe this standard form to be used at the time of loan settlement to provide full disclosure of all charges imposed upon the borrower and seller. These are third party disclosures that are designed to provide the borrower with pertinent information during the settlement process in order to be a better shopper. The Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information requested does not lend itself to confidentiality.

THIS IS A CERTIFIED TRUE COPY OF THE ORIGINAL

BY [Signature] Old Republic Title Company

L. SETTLEMENT CHARGES					
700. Total sales/broker's commission based on price \$ @ %=					
Division of commission (line 700) as follows:				Paid From Borrower's Funds At Settlement	Paid From Seller's Funds At Settlement
701. \$3,879.72 to Pacific Marketing Associates					
702.					
703. Commission disbursed at settlement					3,879.72
704.					
800. ITEMS PAYABLE IN CONNECTION WITH LOAN See Attachment for Subordinate Financing Charges				353,302.0	0
801. Loan Origination Fee					
802. Loan Discount					
803. Appraisal Fee					
804. Credit Report					
805. Lender's Inspection Fee					
806. Mortgage Insurance Application Fee					
807. Assumption Fee					
808. Tax Related Services to JPMorgan Chase				84.00	
809. Application fee to JPMorgan Chase \$395.00 (poc)					
810. Processing fee to JPMorgan Chase				495.00	
811. Underwriting fee to JPMorgan Chase				295.00	
812. Flood Cert to Quantrix				14.00	
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901. Interest, 12/31/08 to 01/01/09, 1 days @ \$33.03				33.03	
1000. RESERVES DEPOSITED WITH LENDER					
1003. County Property Taxes 6 mo. @ \$231.0000/mo.				1,386.00	
1008. Aggregate Accounting Adjustment				0.00	
1100. TITLE CHARGES					
1101. Settlement or closing fee to Old Republic Title Company				580.00	
1106. Notary Fees to Sharon Chan				60.00	
1108. Title insurance to Old Republic Title Company				901.25	
(includes above items numbers:) 1102, 1103, 1108, Endorsements and Additional Title Fees, if any					
1109. Lender's Coverage Liability Amount \$33,255.00 Premium \$100.00					
Lender's Coverage Liability Amount \$353,302.00 Premium \$100.00					
Lender's Coverage Liability Amount \$166,273.00 Premium \$123.75					
1110. Owner's Coverage Liability Amount \$221,698.00 Premium \$577.50					
1111. Environmental Protection Lien				25.00	
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201. Recording fees: Deed \$ 24.00 Mortgage \$ 64.00 Releases \$				88.00	
1202. City/county tax/stamps: Deed \$ 1,110.00 Mortgage \$				1,110.00	
1203. State tax/stamps: Deed \$ Mortgage \$					
1204. Monument Fee				10.00	
1205.					
1300. ADDITIONAL SETTLEMENT CHARGES					
1301.					
1302.					
1303.					
1304.					
1305.					
1306.					
1307.					
1308.					
1309.					
1310. Additional Charges (See attached)				350.25	210.00
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Section J and 502, Section K)				358,733.53	4,089.72

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of the transaction.

Escrow Officer  Date 12/31/08

Attachment to HUD Statement

NAME OF SELLER

1160 Mission Associates, LLC, a Delaware limited liability company

===== Continuation from Page1 =====

BUYER ADJUSTMENTS

SELLER ADJUSTMENTS

AMOUNTS PAID BY OR IN BEHALF OF BORROWER

DEPOSIT OR EARNEST MONEY -- LINE 201

Gregory Garver	22,013.59
Gregory Garver	4.79
Gregory H. Garver	6,650.94

PRINCIPAL AMOUNT OF NEW LOAN(S) -- LINE 202

JPMorgan Chase Bank, NA
2633 Camino Ramon
San Ramon, CA 94583
Loan No.: 1263420197

Position: 1
Principal amount 166,273.00

Mayor's Office of Housing City and County of San Francis
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Loan No.: Garver
Position: 2
Principal amount 353,302.00

Mayor's Office of Housing City and County of San Francis
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Loan No.: Garver
Position: 3
Principal amount 33,255.00

Attachment to HUD Statement

Lender Mayor's Office of Housing City and County of San Francisco
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Loan No. Garver

Subordinate Financing Charges

Item	Borrower	Seller
undisbursed funds	353,302.00	
Total	353,302.00	

Loan Policy of Title Insurance

American Land Title Association Loan Policy 6-17-06

Policy Number **A04009-LX-130572**

Issued by Old Republic National Title Insurance Company.

Any notice of claim and any other notice or statement in writing required to be given the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.



SOMA #12
Garver ALTA
Primary

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13 and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records, including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without knowledge.
9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage
 - (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (b) failure of any person or Entity to have authorized a transfer or conveyance;
 - (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (e) a document executed under a falsified, expired or otherwise invalid power of attorney;
 - (f) a document not properly filed, recorded or indexed in the Public Records, including failure to perform those acts by electronic means authorized by law; or
 - (g) a defective judicial or administrative proceeding.

(Continued on Next Page)

Loan Policy

American Land Title Association Loan Policy 6-17-06

Policy Number A04009-LX-130572



10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
11. The lack of priority of the lien of the Insured Mortgage upon the Title
 - (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor or material arising from construction of an improvement or work related to the Land when the improvement or work is either
 - (i) contracted for or commenced on or before Date of Policy; or
 - (ii) contracted for, commenced or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
 - (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.
12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.
13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title
 - (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

Issued through the Office of:
Old Republic Title Company
524 Gibson Drive
Roseville, CA 95678

Old Republic National Title Insurance Company
400 Second Avenue South
Minneapolis, Minnesota 55401

Authorized Signatory

By

President

Attest

Secretary

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

Old Republic National Title Insurance Company
400 Second Avenue South Minneapolis, Minnesota 55401

SCHEDULE A

Policy No: A04009-LX-130572 **Amount of Insurance:** \$353,302.00

Order No: 0227007759-SC **Premium:** \$100.00

December 31st, 2008 at 12:40:00

Date of Policy: PM

Address Reference:

1160 Mission Street, #812
San Francisco, CA

Loan No: Garver

1. Name of Insured:

The City and County of San Francisco, a Municipal Corporation, its successors and/or assigns, as defined in Paragraph 1 of the Conditions and Stipulations of this Policy

2. The estate or interest in the Land that is encumbered by the Insured Mortgage is:

Condominium as defined in section 783 of the California Civil Code

3. Title is vested in:

Gregory Garver, a single man

4. The Insured Mortgage and its assignments, if any, are described as follows:

Deed of Trust to secure an indebtedness of the amount stated below,

Amount	:	\$353,302.00
Trustor/Borrower	:	Gregory Garver
Trustee	:	Old Republic Title Company
Beneficiary/Lender	:	The City and County of San Francisco, a Municipal Corporation
Dated	:	December 29, 2008
Recorded	:	December 31, 2008 in Official Records under Recorder's Serial Number 2008-I703373-00
Loan No.	:	Garver
Returned to	:	Attention: Inclusionary Program, 1 South Van Ness Avenue, Fifth Floor San Francisco, California 94103

5. The Land referred to in this policy is described as follows:

Parcel One:

Condominium Unit 812 (Lot No. 112) of Parcel A of Parcel Map of 1160 Mission Street, filed May 4, 2007, in Book 100 of Condominium Maps, Pages 113-115 inclusive, as such Unit is shown on the Condominium Plan ("Plan"), recorded November 21, 2007, Series No. 2007-I 491992-00, Official Records and defined in the

Declaration of Covenants and Restrictions for Soma Grand Residences ("Declaration"), recorded November 21, 2007, Series No. 2007-I 491994-00, Official Records, and any amendments and/or annexations recorded pursuant thereto.

Parcel Two:

An undivided .294% interest as Tenant In Common in and to the Residential Common Area lying within the above referenced Parcel Map of 1160 Mission Street, as shown on the Plan and defined in the Declaration, excepting and reserving therefrom the following:

- A.) All condominium units shown on the Plan and described in the Declaration.
- B.) Exclusive Use Common Areas for possession, use and enjoyment of those areas designated on the Plan and defined in the Declaration.
- C.) Non-exclusive easement for use, enjoyment, ingress, egress and support in and to the Residential Common Area as shown on the Plan and described in the Declaration.
- D.) All easements as defined in the Declaration and in Article 2 of the Soma Grand Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement ("REA"), recorded November 21, 2007, Series No. 2007-I 491993-00 Official Records.

Parcel Three:

Non-exclusive easements for use, enjoyment, ingress, egress and support in and to the Residential Common Area, as shown on the Plan and described in the Declaration, for the benefit of Parcel One hereinabove.

Parcel Four:

All easements as described in Article 2 of said REA.

Being Assessor's Lot 112; Block 3702

6. This policy incorporates by reference those ALTA endorsements selected below:

- 4-06 Condominium
- 4.1-06
- 5-06 Planned Unit Development
- 5.1-06
- 6-06 Variable Rate
- 6.2-06 Variable Rate – Negative Amortization
- 8.1-06 Environmental Protection Lien Paragraph b refers to the following state statute(s): NONE
- 9-06 Restrictions, Encroachments, Minerals
- 13.1-06 Leasehold Loan
- 14-06 Future Advance-Priority
- 14.1-06 Future Advance-Knowledge
- 14.3-06 Future Advance-Reverse Mortgage
- 22-06 Location The type of improvement is a a condominium, and the street address is as shown above.

SCHEDULE B**Part I****Exceptions From Coverage**

Except as provided in Schedule B Part II, this policy does not insure against loss or damage, and the Company will not pay costs, attorney's fees, or expenses that arise by reason of:

1. Taxes and assessments, general and special, for the fiscal year 2008 - 2009, as follows:

Assessor's Parcel No	:	LOT 112; BLOCK 3702	
Bill No.	:	121450	
Code No.	:	01-000	
1st Installment	:	\$983.24	Marked Paid
2nd Installment	:	\$983.24	NOT Marked Paid
Land Value	:	\$32,280.00	
Imp. Value	:	\$136,297.00	
Exemption	:	\$168,577.00	

2. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.

PAID CURRENT TO THE DATE OF THIS POLICY

3. Any special tax which is now a lien and that may be levied within the City of San Francisco Unified School District Community Facilities District No. 90-1, notice(s) for which having been recorded.

NOTE: Among other things, there are provisions in said notice(s) for a special tax to be levied annually, the amounts of which are to be added to and collected with the property taxes.

NOTE: The current annual amount levied against this land is \$0.00.

NOTE: Further information on said assessment or special tax can be obtained by contacting:

Name : San Francisco Unified School District
Telephone No. : (415) 241-6480

4. Covenants, Conditions and Restrictions which do not contain express provision for forfeiture or reversion of title in the event of violation, but omitting any covenants or restriction if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Entitled : NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE
Executed by : 1160 Mission Associates, LLC
Dated : August 17, 2006
Recorded : August 21, 2006 in Reel J208 of Official Records, Image 0595 under Recorder's Serial Number 2006-I232677-00

Said restrictions consist of conditions attached to Planning Commission Motions 16692, 16693 and 16696, and conditions of granting Variance Case No. 2002.0628CEKVXI.

5. The right of the City and County of San Francisco to regulate and control the sale and occupancy of said Unit as part of said authority's low and moderate income housing program, as disclosed by the Notice of Special Restrictions last above referred to.

6. Recitals shown or noted upon a map as follows:

Map Entitled : Final Map 3849, 1160 Mission Street
Filed On : May 4, 2007 in Book 100 of Condominium Maps, at Pages 113-115 inclusive.

7. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : Grant of Easement
Granted To : Comcast of California III, Inc.
For : to construct, use, maintain, operate, alter, add to, repair, replace, reconstruct, inspect and remove at any time and from time to time a broadband communications system.
Dated : April 3, 2007
Recorded : July 26, 2007 in Reel J441 of Official Records, Image 792 under Recorder's Serial Number 2007-I 428013
Affects : Unspecified portions of said land.

8. Conditions contained and/or referred to in an instrument,

Entitled : Declaration of Use
 By : Eric Tao
 Dated : October 26, 2007
 Recorded : October 30, 2007 in Reel J507 of Official Records, Image 268
 under Recorder's Serial Number 2007-I 482132
 Which Among Other
 Things Provides : Revocable permission to occupy, construct and maintain minor
 sidewalk encroachments.

9. Conditions contained and/or referred to in an instrument,

Entitled : Declaration of Use
 By : Eric Tao
 Dated : October 26, 2007
 Recorded : October 30, 2007 in Reel J507 of Official Records, Image 269
 under Recorder's Serial Number 2007-I 482133
 Which Among Other
 Things Provides : Special Sidewalk (non-standard scoring).

10. Recitals shown or noted upon that certain Condominium Plan

Entitled : Residential Condominium Plan for SOMA GRAND, 1160 Mission Street
 Recorded : November 21, 2007 under Recorder's Serial Number 2007-I 491992.

11. Covenants, Conditions and Restrictions which do not contain express provision for forfeiture or reversion of title in the event of violation, but omitting any covenants or restriction if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Entitled : The SOMA GRAND, Declaration of Covenants, Conditions and
 Restrictions and Reciprocal Easement Agreement, a Subdivision of
 Airspace
 Executed by : 1160 Mission Associates, LLC, a Delaware limited liability company
 Dated : November 8, 2007
 Recorded : November 21, 2007 in Official Records under Recorder's Serial
 Number 2007-I 491993

NOTE: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

12. Covenants, Conditions, Restrictions, Limitations, Easements, Assessments, Reservations, Exceptions, Terms, Liens or Charges, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Entitled : Declaration of Covenants and Restrictions for the Soma Grand Residences
Executed By : 1160 Mission Associates, LLC, a Delaware limited liability company
Dated : November 8, 2007
Recorded : November 21, 2007 in Official Records under Recorder's Serial Number 2007-I 491994

NOTE: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

13. Easements for ingress, egress, private rights and/or utilities and incidental purposes, as disclosed by instruments of record affecting the "Common Area".

14. Conditions contained and/or referred to in an instrument,

Entitled : Notice of Non-Adversarial Procedure, Notice to Successors in Interest, Notice of Builder's Agent for Notice Under California Civil Code Sections 912(e), 912(f) and 912(h), and Notice of Relinquishment of Control
By : 1160 Mission Associates, LLC, a Delaware Limited Liability Company
Dated : December 3, 2007
Recorded : December 5, 2007 in Reel J530 of Official Records, Image 148 under Recorder's Serial Number 2007-I 497940

15. Deed of Trust to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof,

Amount : \$166,273.00
Trustor/Borrower : Gregory Garver, a single man
Trustee : Commonwealth Land Title Insurance Company
Beneficiary/Lender : JPMorgan Chase Bank, N.A.
Dated : December 26, 2008
Recorded : December 31, 2008 in Official Records under Recorder's Serial
Number 2008-I703372-00
Loan No. : 1263420197
Returned to : Warehouse Intake, 700 Kansas Lane - Mail Code: LA4-2153,
Monroe, LA 71203.

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SCHEDULE B

Part II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:

1. Deed of Trust to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof,

Amount : \$33,255.00
Trustor/Borrower : Gregory Garver
Trustee : Old Republic Title Company
Beneficiary/Lender : The City and County of San Francisco, a Municipal Corporation
Dated : December 29, 2008
Recorded : December 31, 2008 in Official Records under Recorder's Serial
Number 2008-I703374-00
Loan No. : Garver
Returned to : Attention: Chandra Egan, 1 South Van Ness Avenue, Fifth Floor
San Francisco, California 94103

ENDORSEMENT

Attached to:
Policy No: A04009-LX-130572
Order No: 0227007759-SC



**OLD REPUBLIC NATIONAL
TITLE INSURANCE COMPANY**
a Corporation, of Minneapolis, Minnesota

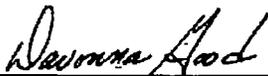
The Company hereby assures the Insured that the Company will not deny liability under the policy or any endorsements issued therewith solely on the grounds that the policy and/or endorsement(s) were issued electronically and/or lack of signatures in accordance with Paragraph 14(c) of the Conditions.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

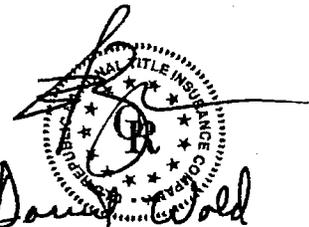
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

Countersigned:

By


Validating Officer

By


Secretary

President

Attest

Secretary

ENDORSEMENT

Attached to:
Policy No: A04009-LX-130572
Order No: 0227007759-SC



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY a Corporation, of Minneapolis, Minnesota

The Company insures against loss or damage sustained by reason of:

1. The existence, at Date of Policy, of any of the following:
 - (a) Covenants, conditions or restrictions under which the lien of the Insured Mortgage can be cut off, subordinated, or otherwise impaired;
 - (b) Present violations on the Land of any enforceable covenants, conditions or restrictions;
 - (c) Except as shown in Schedule B, encroachments of buildings, structures or improvements located on the Land onto adjoining lands, or any encroachments onto the Land of buildings, structures or improvements located on adjoining lands.
2.
 - (a) Any future violations on the Land of any covenants, conditions or restrictions occurring prior to acquisition of the Title by the Insured, provided such violations result in impairment or loss of the lien of the Insured Mortgage, or result in impairment or loss of the Title if the Insured shall acquire the Title in satisfaction of the Indebtedness;
 - (b) Unmarketability of the Title by reason of any violations on the Land, occurring prior to acquisition of the Title by the Insured, of any covenants, conditions or restrictions.
3. Damage to existing improvements, including lawns, shrubbery or trees
 - (a) That are located or encroach upon that portion of the Land subject to any easement shown in Schedule B, which damage results from the exercise of the right to use or maintain such easement for the purposes for which the same was granted or reserved;
 - (b) Resulting from the exercise of any right to use the surface of the Land for the extraction or development of the minerals excepted from the description of the Land or shown as a reservation in Schedule B.
4. Any final court order or judgment requiring removal from any land adjoining the Land of any encroachment shown in Schedule B.

As used in this endorsement, the words "covenants, conditions or restrictions" do not refer to or include the terms, covenants, conditions or restrictions contained in any lease.

As used in this endorsement, the words "covenants, conditions or restrictions" do not refer to or include any covenant, condition or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions or substances except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated : December 31st, 2008

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

Countersigned:

By Devonna Hood
Validating Officer

By [Signature] President

Attest David Wald Secretary

ENDORSEMENT

Attached to:
Policy No: A04009-LX-130572
Order No: 0227007759-SC



**OLD REPUBLIC NATIONAL
TITLE INSURANCE COMPANY**
a Corporation, of Minneapolis, Minnesota

The Company insures against loss or damage sustained by the Insured by reason of:

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.
2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.
3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents. The restrictive covenants do not contain any provisions that will cause a forfeiture or reversion of the Title. As used in this paragraph 3, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
4. The priority of any lien for charges and assessments at Date of Policy provided for in the condominium statutes and condominium documents over the lien of any Insured Mortgage identified in Schedule A.
5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
6. Any obligation to remove any improvements that exist at Date of Policy because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.
7. The failure of the Title by reason of a right of first refusal, to purchase the unit and its common elements that was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated : December 31st, 2008

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

Countersigned:

By *Deanna Good*
Validating Officer

By

President

Attest

Secretary

ENDORSEMENT

Attached to:
Policy No: A04009-LX-130572
Order No: 0227007759-SC



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY a Corporation, of Minneapolis, Minnesota

The Company insures against loss or damage sustained by reason of the failure of the dimensions of the exterior boundary of "The Common Area" referred to in Schedule A of this policy, being the exterior boundary of the project at Date of Policy, to be correctly shown on that map recorded

November 21st, 2007 in Official Records under Recorder's Serial Number 2007-I 491992-00,

in the office of the County Recorder of San Francisco County.

The Company further insures against loss or damage sustained by reason of the failure of the Title to include a residence, within the project boundaries, which residence is designated as Unit 812, as shown on that map recorded

November 21st, 2007 in Official Records under Recorder's Serial Number 2007-I 491992-00,

in the office of the County Recorder of San Francisco County, and is known as 1160 Mission Street, #812, San Francisco, CA

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated : December 31st, 2008

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

Countersigned:

By *Devonna Hood*
Validating Officer

By *[Signature]* President
Attest *David Wald* Secretary

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Section 10 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of:
 - (i) the amount of the principal disbursed as of Date of Policy;
 - (ii) the amount of the principal disbursed subsequent to Date of Policy;
 - (iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;
 - (iv) interest on the loan;
 - (v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
 - (vi) the expenses of foreclosure and any other costs of enforcement;
 - (vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;
 - (viii) the amounts to pay taxes and insurance; and,
 - (ix) the reasonable amounts expended to prevent deterioration of improvements;but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.
- (e) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;
 - i. the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
 - ii. successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - iii. successors to an Insured by its conversion to another kind of Entity;
 - iv. a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured, or
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;
 - F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness

secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

- (ii) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance or other matter insured against by this policy.
- (f) "Insured Claimant": An Insured claiming loss or damage.
- (g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.
- (h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (k) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (l) "Title": The estate or interest described in Schedule A.
- (m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions. (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction and it expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation,

shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.
- (i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or
- (ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

- (b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.
- (i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
- (ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of
- (i) the Amount of Insurance,
- (ii) the Indebtedness,
- (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or
- (iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,
- (i) the Amount of Insurance shall be increased by 10%, and
- (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date of the claim was made by the Insured Claimant or as of the date it is settled and paid.

- (c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.
- (d) In addition to the extent of liability under (a), (b), and (c) the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

- (a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.
- (b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) **The Company's Right to Recover**
Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.
If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.
- (b) **The Insured's Rights and Limitations**
 - (i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of

the Insured Mortgage.

- (ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

- (c) **The Company's Rights Against Non-insured Obligors**

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an Insured under this policy.

13. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim, shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance.

15. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid and all other provisions shall remain in full force and effect.

16. CHOICE OF LAW; FORUM

- (a) **Choice of Law:** The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured, and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 400 Second Avenue South, Minneapolis, Minnesota 55401-2499.

Loan Policy of Title Insurance

SOMA # 812
Garver ALTA JALP

American Land Title Association Loan Policy 6-17-06



Policy Number A04009-LX-130573

Issued by Old Republic National Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notanized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records, including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage
 - (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (b) failure of any person or Entity to have authorized a transfer or conveyance;
 - (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notanized, or delivered;
 - (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (e) a document executed under a falsified, expired or otherwise invalid power of attorney;
 - (f) a document not properly filed, recorded or indexed in the Public Records, including failure to perform those acts by electronic means authorized by law; or
 - (g) a defective judicial or administrative proceeding.

(Continued on Next Page)

Loan Policy

American Land Title Association Loan Policy 6-17-06

Policy Number A04009-LX-130573



10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
11. The lack of priority of the lien of the Insured Mortgage upon the Title
 - (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor or material arising from construction of an improvement or work related to the Land when the improvement or work is either
 - (i) contracted for or commenced on or before Date of Policy; or
 - (ii) contracted for, commenced or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
 - (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.
12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.
13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title
 - (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

Issued through the Office of:
Old Republic Title Company
524 Gibson Drive
Roseville, CA 95678

Old Republic National Title Insurance Company
400 Second Avenue South
Minneapolis, Minnesota 55401

Authorized Signatory

By

President

Attest

Secretary

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

Declaration of Covenants and Restrictions for Soma Grand Residences ("Declaration"), recorded November 21, 2007, Series No. 2007-I 491994-00, Official Records, and any amendments and/or annexations recorded pursuant thereto.

Parcel Two:

An undivided .294% interest as Tenant In Common in and to the Residential Common Area lying within the above referenced Parcel Map of 1160 Mission Street, as shown on the Plan and defined in the Declaration, excepting and reserving therefrom the following:

- A.) All condominium units shown on the Plan and described in the Declaration.
- B.) Exclusive Use Common Areas for possession, use and enjoyment of those areas designated on the Plan and defined in the Declaration.
- C.) Non-exclusive easement for use, enjoyment, ingress, egress and support in and to the Residential Common Area as shown on the Plan and described in the Declaration.
- D.) All easements as defined in the Declaration and in Article 2 of the Soma Grand Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement ("REA"), recorded November 21, 2007, Series No. 2007-I 491993-00 Official Records.

Parcel Three:

Non-exclusive easements for use, enjoyment, ingress, egress and support in and to the Residential Common Area, as shown on the Plan and described in the Declaration, for the benefit of Parcel One hereinabove.

Parcel Four:

All easements as described in Article 2 of said REA.

Being Assessor's Lot 112; Block 3702

6. This policy incorporates by reference those ALTA endorsements selected below:

- 4-06 Condominium
- 4.1-06
- 5-06 Planned Unit Development
- 5.1-06
- 6-06 Variable Rate
- 6.2-06 Variable Rate – Negative Amortization
- 8.1-06 Environmental Protection Lien Paragraph b refers to the following state statute(s): NONE
- 9-06 Restrictions, Encroachments, Minerals
- 13.1-06 Leasehold Loan
- 14-06 Future Advance-Priority
- 14.1-06 Future Advance-Knowledge
- 14.3-06 Future Advance-Reverse Mortgage
- 22-06 Location The type of improvement is a a condominium, and the street address is as shown above.

SCHEDULE B

**Part I
Exceptions From Coverage**

Except as provided in Schedule B Part II, this policy does not insure against loss or damage, and the Company will not pay costs, attorney's fees, or expenses that arise by reason of:

1. Taxes and assessments, general and special, for the fiscal year 2008 - 2009, as follows:

Assessor's Parcel No	:	LOT 112; BLOCK 3702	
Bill No.	:	121450	
Code No.	:	01-000	
1st Installment	:	\$983.24	Marked Paid
2nd Installment	:	\$983.24	NOT Marked Paid
Land Value	:	\$32,280.00	
Imp. Value	:	\$136,297.00	
Exemption	:	\$168,577.00	

2. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.

PAID CURRENT TO THE DATE OF THIS POLICY

3. Any special tax which is now a lien and that may be levied within the City of San Francisco Unified School District Community Facilities District No. 90-1, notice(s) for which having been recorded.

NOTE: Among other things, there are provisions in said notice(s) for a special tax to be levied annually, the amounts of which are to be added to and collected with the property taxes.

NOTE: The current annual amount levied against this land is \$0.00.

NOTE: Further information on said assessment or special tax can be obtained by contacting:

Name : San Francisco Unified School District
 Telephone No., : (415) 241-6480

4. Covenants, Conditions and Restrictions which do not contain express provision for forfeiture or reversion of title in the event of violation, but omitting any covenants or restriction if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Entitled : NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE
 Executed by : 1160 Mission Associates, LLC
 Dated : August 17, 2006
 Recorded : August 21, 2006 in Reel J208 of Official Records, Image 0595 under Recorder's Serial Number 2006-1232677-00

Said restrictions consist of conditions attached to Planning Commission Motions 16692, 16693 and 16696, and conditions of granting Variance Case No. 2002.0628CEKVXI.

5. The right of the City and County of San Francisco to regulate and control the sale and occupancy of said Unit as part of said authority's low and moderate income housing program, as disclosed by the Notice of Special Restrictions last above referred to.

6. Recitals shown or noted upon a map as follows:

Map Entitled : Final Map 3849, 1160 Mission Street
 Filed On : May 4, 2007 in Book 100 of Condominium Maps, at Pages 113-115 inclusive.

7. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Instrument : Grant of Easement
 Granted To : Comcast of California III, Inc.
 For : to construct, use, maintain, operate, alter, add to, repair, replace, reconstruct, inspect and remove at any time and from time to time a broadband communications system.
 Dated : April 3, 2007
 Recorded : July 26, 2007 in Reel J441 of Official Records, Image 792 under Recorder's Serial Number 2007-I 428013
 Affects : Unspecified portions of said land.

8. Conditions contained and/or referred to in an instrument,

Entitled : Declaration of Use
 By : Eric Tao
 Dated : October 26, 2007
 Recorded : October 30, 2007 in Reel J507 of Official Records, Image 268
 under Recorder's Serial Number 2007-I 482132

Which Among Other Things Provides : Revocable permission to occupy, construct and maintain minor sidewalk encroachments.

9. Conditions contained and/or referred to in an instrument,

Entitled : Declaration of Use
 By : Eric Tao
 Dated : October 26, 2007
 Recorded : October 30, 2007 in Reel J507 of Official Records, Image 269
 under Recorder's Serial Number 2007-I 482133

Which Among Other Things Provides : Special Sidewalk (non-standard scoring).

10. Recitals shown or noted upon that certain Condominium Plan

Entitled : Residential Condominium Plan for SOMA GRAND, 1160 Mission Street
 Recorded : November 21, 2007 under Recorder's Serial Number 2007-I 491992.

11. Covenants, Conditions and Restrictions which do not contain express provision for forfeiture or reversion of title in the event of violation, but omitting any covenants or restriction if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Entitled : The SOMA GRAND, Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement, a Subdivision of Airspace
 Executed by : 1160 Mission Associates, LLC, a Delaware limited liability company
 Dated : November 8, 2007
 Recorded : November 21, 2007 in Official Records under Recorder's Serial Number 2007-I 491993

NOTE: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

12. Covenants, Conditions, Restrictions, Limitations, Easements, Assessments, Reservations, Exceptions, Terms, Liens or Charges, but omitting any covenants or restrictions if any, based upon race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Title 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons, as provided in an instrument.

Entitled : Declaration of Covenants and Restrictions for the Soma Grand Residences
 Executed By : 1160 Mission Associates, LLC, a Delaware limited liability company
 Dated : November 8, 2007
 Recorded : November 21, 2007 in Official Records under Recorder's Serial Number 2007-I 491994

NOTE: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

13. Easements for ingress, egress, private rights and/or utilities and incidental purposes, as disclosed by instruments of record affecting the "Common Area".

14. Conditions contained and/or referred to in an instrument,

Entitled : Notice of Non-Adversarial Procedure, Notice to Successors in Interest, Notice of Builder's Agent for Notice Under California Civil Code Sections 912(e), 912(f) and 912(h), and Notice of Relinquishment of Control
 By : 1160 Mission Associates, LLC, a Delaware Limited Liability Company
 Dated : December 3, 2007
 Recorded : December 5, 2007 in Reel J530 of Official Records, Image 148 under Recorder's Serial Number 2007-I 497940

15. Deed of Trust to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof,

Amount : \$166,273.00
Trustor/Borrower : Gregory Garver, a single man
Trustee : Commonwealth Land Title Insurance Company
Beneficiary/Lender : JPMorgan Chase Bank, N.A.
Dated : December 26, 2008
Recorded : December 31, 2008 in Official Records under Recorder's Serial Number 2008-I703372-00
Loan No. : 1263420197
Returned to : Warehouse Intake, 700 Kansas Lane - Mail Code: LA4-2153, Monroe, LA 71203.

16. Deed of Trust to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof,

Amount : \$353,302.00
Trustor/Borrower : Gregory Garver
Trustee : Old Republic Title Company
Beneficiary/Lender : The City and County of San Francisco, a Municipal Corporation
Dated : December 29, 2008
Recorded : December 31, 2008 in Official Records under Recorder's Serial Number 2008-I703373-00
Loan No. : Garver
Returned to : Attention: Inclusionary Program, 1 South Van Ness Avenue, Fifth Floor San Francisco, California 94103

SCHEDULE B

Part II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:

None reported

ENDORSEMENT

Attached to:
Policy No: A04009-LX-130573
Order No: 0227007759-SC



**OLD REPUBLIC NATIONAL
TITLE INSURANCE COMPANY**
a Corporation, of Minneapolis, Minnesota

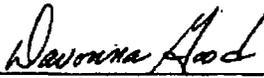
The Company hereby assures the Insured that the Company will not deny liability under the policy or any endorsements issued therewith solely on the grounds that the policy and/or endorsement(s) were issued electronically and/or lack of signatures in accordance with Paragraph 14(c) of the Conditions.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

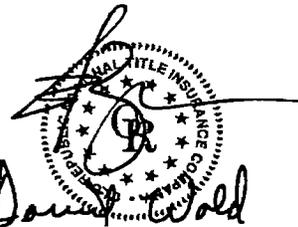
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

Countersigned:

By


Validating Officer

By



President

Attest

Secretary

ENDORSEMENT

Attached to:
Policy No: A04009-LX-130573
Order No: 0227007759-SC



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY a Corporation, of Minneapolis, Minnesota

The Company insures against loss or damage sustained by reason of:

1. The existence, at Date of Policy, of any of the following:
 - (a) Covenants, conditions or restrictions under which the lien of the Insured Mortgage can be cut off, subordinated, or otherwise impaired;
 - (b) Present violations on the Land of any enforceable covenants, conditions or restrictions;
 - (c) Except as shown in Schedule B, encroachments of buildings, structures or improvements located on the Land onto adjoining lands, or any encroachments onto the Land of buildings, structures or improvements located on adjoining lands.
2.
 - (a) Any future violations on the Land of any covenants, conditions or restrictions occurring prior to acquisition of the Title by the Insured, provided such violations result in impairment or loss of the lien of the Insured Mortgage, or result in impairment or loss of the Title if the Insured shall acquire the Title in satisfaction of the Indebtedness;
 - (b) Unmarketability of the Title by reason of any violations on the Land, occurring prior to acquisition of the Title by the Insured, of any covenants, conditions or restrictions.
3. Damage to existing improvements, including lawns, shrubbery or trees
 - (a) That are located or encroach upon that portion of the Land subject to any easement shown in Schedule B, which damage results from the exercise of the right to use or maintain such easement for the purposes for which the same was granted or reserved;
 - (b) Resulting from the exercise of any right to use the surface of the Land for the extraction or development of the minerals excepted from the description of the Land or shown as a reservation in Schedule B.
4. Any final court order or judgment requiring removal from any land adjoining the Land of any encroachment shown in Schedule B.

As used in this endorsement, the words "covenants, conditions or restrictions" do not refer to or include the terms, covenants, conditions or restrictions contained in any lease.

As used in this endorsement, the words "covenants, conditions or restrictions" do not refer to or include any covenant, condition or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions or substances except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated : December 31st, 2008

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

Countersigned:

By *Dawanna Hood*
Validating Officer

By *[Signature]* President

Attest *[Signature]* Secretary

ENDORSEMENT

Attached to:
Policy No: A04009-LX-130573
Order No: 0227007759-SC



**OLD REPUBLIC NATIONAL
TITLE INSURANCE COMPANY**
a Corporation, of Minneapolis, Minnesota

The Company insures against loss or damage sustained by the Insured by reason of:

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.
2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.
3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents. The restrictive covenants do not contain any provisions that will cause a forfeiture or reversion of the Title. As used in this paragraph 3, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
4. The priority of any lien for charges and assessments at Date of Policy provided for in the condominium statutes and condominium documents over the lien of any Insured Mortgage identified in Schedule A.
5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
6. Any obligation to remove any improvements that exist at Date of Policy because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.
7. The failure of the Title by reason of a right of first refusal, to purchase the unit and its common elements that was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated : December 31st, 2008

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

Countersigned:

By *Deanna Hood*
Validating Officer

By

President

Attest

Secretary

ENDORSEMENT

Attached to:
Policy No: A04009-LX-130573
Order No: 0227007759-SC



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY a Corporation, of Minneapolis, Minnesota

The Company insures against loss or damage sustained by reason of the failure of the dimensions of the exterior boundary of "The Common Area" referred to in Schedule A of this policy, being the exterior boundary of the project at Date of Policy, to be correctly shown on that map recorded

November 21st, 2007 in Official Records under Recorder's Serial Number 2007-I 491992-00,

in the office of the County Recorder of San Francisco County.

The Company further insures against loss or damage sustained by reason of the failure of the Title to include a a residence, within the project boundaries, which residence is designated as Unit 812, as shown on that map recorded

November 21st, 2007 in Official Records under Recorder's Serial Number 2007-I 491992-00,

in the office of the County Recorder of San Francisco County, and is known as 1160 Mission Street, #812, San Francisco, CA

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated : December 31st, 2008

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

Countersigned:

By *Deanna Acid*
Validating Officer

By *[Signature]* President
Attest *David Wald* Secretary

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Section 10 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of:
 - (i) the amount of the principal disbursed as of Date of Policy;
 - (ii) the amount of the principal disbursed subsequent to Date of Policy;
 - (iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;
 - (iv) interest on the loan;
 - (v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
 - (vi) the expenses of foreclosure and any other costs of enforcement;
 - (vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;
 - (viii) the amounts to pay taxes and insurance; and,
 - (ix) the reasonable amounts expended to prevent deterioration of improvements;but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.
- (e) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;
 - i. the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
 - ii. successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - iii. successors to an Insured by its conversion to another kind of Entity;
 - iv. a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured, or
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;
 - F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness

secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

- (ii) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance or other matter insured against by this policy.
- (f) "Insured Claimant": An Insured claiming loss or damage.
- (g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.
- (h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (k) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (l) "Title": The estate or interest described in Schedule A.
- (m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions. (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction and it expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation,

shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.
 - (i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or
 - (ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

- (b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.
 - (i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
 - (ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of
 - (i) the Amount of Insurance,
 - (ii) the Indebtedness,
 - (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or
 - (iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,
 - (i) the Amount of Insurance shall be increased by 10%, and
 - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date of the claim was made by the Insured Claimant or as of the date it is settled and paid.

- (c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.
- (d) In addition to the extent of liability under (a), (b), and (c) the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

- (a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.
- (b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) The Company's Right to Recover

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

- (b) The Insured's Rights and Limitations

- (i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of

the Insured Mortgage.

- (ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

- (c) The Company's Rights Against Non-insured Obligors

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an Insured under this policy.

13. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim, shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance.

15. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid and all other provisions shall remain in full force and effect.

16. CHOICE OF LAW; FORUM

- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured, and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 400 Second Avenue South, Minneapolis, Minnesota 55401-2499.

FREE RECORDING RE TESTED PURSUANT TO GOV. CODE SECTION 42731

RECORDING REQUESTED BY

~~OLD REPUBLIC TITLE COMPANY~~

ESCROW #: 0227007759-SC
APN #: Block 3702; Lot 112
WHEN RECORDED MAIL TO

17 Mayor's Office of Housing
c/o City and County of San Francisco
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

San Francisco Assessor-Recorder
Phil Ting, Assessor-Recorder
DOC- 2008-1703373-00
Acct 21-Mayor's Office of Housing Development
Wednesday, DEC 31, 2008 12:40:43
Ttl Pd \$0.00 Rcpt # 0003597860
REEL J798 IMAGE 0383
081/GG/1-1

SPACE ABOVE THIS LINE FOR RECORDER'S USE

REQUEST FOR COPY OF NOTICE OF DEFAULT

IN ACCORDANCE WITH SECTION 2924B, CIVIL CODE OF THE STATE OF CALIFORNIA, REQUEST IS HEREBY MADE THAT A COPY OF ANY NOTICE OF DEFAULT AND A COPY OF ANY NOTICE OF SALE UNDER THE DEED OF TRUST

RECORDED ON : 12/31/08
IN BOOK/REEL : _____ of Official Records
AT PAGE/IMAGE : _____
SERIES NUMBER : 08-I-7633029
COUNTY OF : San Francisco, State of California
EXECUTED BY : Gregory Garver as Trustor (s)
IN WHICH : Old Republic Title Company is named Trustee
AND : Mayor's Office of Housing City and County of San Francisco is named Beneficiary
BE MAILED TO : Mayor's Office of Housing City and County of San Francisco
WHOSE ADDRESS IS : 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

Gregory Garver
Gregory Garver

State of California

County of San Francisco

On December 29, 2008 before me, Sharon Chan a Notary Public, personally appeared Gregory Garver who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

Name: Sharon Chan
(typed or printed)

(Seal)



FREE RECORDED DEQUE ET PHASUA
TO GOV. CODE SECTION 1273

RECORDING REQUESTED BY

OLD REPUBLIC TITLE COMPANY

ESCROW #: 0227007759-SC
APN #: Block 3702; Lot 112
WHEN RECORDED MAIL TO

19
Mayor's Office of Housing
c/o City and County of San Francisco
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103



San Francisco Assessor-Recorder
Phil Ting, Assessor-Recorder
DOC- 2008-I703375-00
Acct 21-Mayor's Office of Housing Development
Wednesday, DEC 31, 2008 12:40:57
Ttl Pd \$0.00 Rcpt # 0003597862
REEL J798 IMAGE 0385
ogi/GG/1-1

SPACE ABOVE THIS LINE FOR RECORDER'S USE

REQUEST FOR COPY OF NOTICE OF DEFAULT

IN ACCORDANCE WITH SECTION 2924B, CIVIL CODE OF THE STATE OF CALIFORNIA, REQUEST IS HEREBY MADE THAT A COPY OF ANY NOTICE OF DEFAULT AND A COPY OF ANY NOTICE OF SALE UNDER THE DEED OF TRUST

RECORDED ON : 12/31/08
 IN BOOK/REEL : _____ of Official Records
 AT PAGE/IMAGE : _____
 SERIES NUMBER : 08-I 703374
 COUNTY OF : San Francisco, State of California
 EXECUTED BY : Gregory Garver as Trustor (s)
 IN WHICH : Old Republic Title Company is named Trustee
 AND : Mayor's Office of Housing City and County of San Francisco is named Beneficiary
 BE MAILED TO : Mayor's Office of Housing City and County of San Francisco
 WHOSE ADDRESS IS : 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

Meg Gower

 Gregory Garver

State of California
County of San Francisco

On December 29 2008 before me, Sharon Chan a Notary Public, personally appeared Gregory Garver, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature: _____
 Name: Sharon Chan
 (typed or printed)

(Seal)



C

D

Tab 3: Resale Documentation

Tab 4: Refinancing Documentation

PLANNING COMMISSION
hearing on December 4, 2003

Case No. 2002.0628CEKVX!
1160 Mission Street
Assessor's Block 3702,
Lots 37, 38 and 56
Motion No.16692
Page 1

12/1/14

12/4/2003

SAN FRANCISCO
PLANNING COMMISSION
MOTION NO. 16692

ADOPTING FINDINGS PURSUANT TO SECTION 309 OF THE SAN FRANCISCO PLANNING CODE RELATED TO A DETERMINATION OF COMPLIANCE FOR A BUILDING EXCEEDING 50,000 GROSS SQUARE FEET OF FLOOR AREA AND 75 FEET IN HEIGHT AND FOR THE GRANTING OF EXCEPTIONS TO THE PLANNING CODE STANDARDS FOR REDUCTIONS OF GROUND-LEVEL WIND CURRENTS IN C-3 DISTRICTS (SECTION 148) AND BUILDING BULK (SECTIONS 270 AND 272), WITH RESPECT TO A PROPOSAL TO CONSTRUCT A NEW, 23-STORY MIXED-USE (RESIDENTIAL AND PARKING) BUILDING CONTAINING UP TO 246 DWELLING UNITS AND 504 OFF-STREET PARKING SPACES, AT 1160 MISSION STREET, LOTS 37, 38 AND 56 IN ASSESSOR'S BLOCK 3702, IN A C-3-G (DOWNTOWN GENERAL COMMERCIAL) DISTRICT AND IN 150-S AND 240-S HEIGHT AND BULK DISTRICTS.

RECITALS

1. On March 5, 2003, Alexis Wong, president of Fox-Warfield, LLC, owner (hereinafter "Applicant"), filed an application with the Planning Department (hereinafter "Department") requesting, under Planning Code (hereinafter "Code") Section 309 Determination of Compliance for a building exceeding 75 feet in height and 50,000 gross square feet (hereinafter "gsf") and for the granting of exceptions to the Code requirements for reduction of ground-level wind currents in C-3 Districts (Section 148) and building bulk (Sections 270 and 272) (Case No. 20002.0628CEKVX!) on a 43,640-square-foot site (Lots 37, 38 and 56 in Assessor's Block 3702) at 1160 Mission Street, northwest side between Seventh and Eighth Streets, with additional frontage on Stevenson Street (hereinafter "Subject Property"). The proposed 489,652-gross-square-foot building would be 23 stories (approximately 234 feet) high and would contain up to 246 dwelling units and 504 off-street parking spaces. It would also include approximately 5,356 square feet of retail space (collectively hereinafter "Project").
2. The Department published a Final Mitigated Negative Declaration of Environmental Impact (hereinafter "FND") for Case No. 2002.0628CEKVX! on September 22, 2003. This Commission has reviewed and considered the information contained in this Final Negative Declaration of Environmental Impact Hereinafter "FND") and concurs with the findings

made therein. Such concurrence is reflected by the adoption by the Commission, on December 4, 2003, of CEQA findings as described in the FND in Motion No. 16691.

3. On December 4, 2003, the Commission conducted a duly-noticed public hearing for the Project on the request for approval pursuant to Code Section 309.
4. **MOVED**, That the Commission hereby makes the Determination of Compliance and authorizes the exceptions requested in Application No. 2002.0628CEKVX!) 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 of the materials submitted by the Applicant and having heard all testimony and arguments, this Commission finds, concludes and determines that:

1. Project Site. The Project site consists of Assessors Block 3702, Lots 37, 38 and 56 ("Subject Property") and covers an area of 43,640 square feet. The Project site is located at 1160 Mission Street, northeast side between First and Second Streets in the South of Market Area.
2. Existing Use. The Subject Property is vacant. It has been used, most recently, as a surface parking lot.
3. Surrounding Development. The Project site is in the Mid-Market area southeasterly of the Civic Center. Immediately next door to the northeast is the site of the new GSA Building being built by the Federal government. The GSA building will be a in the form of a slab approximately 280 feet in height. Immediately to the southwest is the site (approximately three acres, a through property from Market to Mission Streets) of the Trinity Properties' 1,410-unit residential redevelopment project (with 1,350 off-street parking spaces) which is proposed for phased construction over the next ten years. At present, this site houses the Trinity Plaza Apartments, 377 residential rental units with approximately 450 off-street parking spaces. The new development would feature five slab buildings (similar in form to the subject Project) from 12 to 24 stories in height. To the north lie two recently-constructed office buildings of 12 and 14 stories. Also to the north, across Stevenson Street, is the site of a proposed new hotel of approximately ten stories and 100 guest rooms. The area also has a number of mixed-use buildings, hotels and theatres. The Civic Center BART station is one half block to the north. The Project site is well served by transit of all varieties.

5. Requirement of Project Compliance with Code Section 309. This Section of the Planning Code (hereinafter "Code") requires review of Building or Site Permit applications for new buildings or for substantial alteration of existing buildings in C-3 Districts. It requires a public hearing by the Commission where there are exceptions requested and / or when the building exceeds 75 feet in height and / or 50,000 square feet of gross floor area. The Commission may approve a project, grant exceptions from certain requirements of the Code and/or impose conditions on an approval. A project is required to meet all applicable Code requirements or request exceptions as allowed under **Section 309(a)(1)-(9)**. Because the Project is located in a C-3-G District, and the Project proposal involves new construction of a 234-foot-tall building than contains in excess of 50,000 *gsf*, it is subject to Planning Commission review with respect to the Project's compliance with applicable Code requirements pursuant to **Section 309**. Two of the exceptions listed in Section 309 are being sought as part of the Project. They are Code standards for reduction of ground-level wind currents in C-3 Districts (**Section 148**) [**Section 309(a)(2)**] and for building bulk (**Sections 270 and 272**) [**Section 309(a)(9)**].

6. Compliance with C-3 District Code Requirements – Code Section 309. In determining if the Project would comply with applicable Code Sections, the Commission has reviewed the Project in reference to the Code Sections listed below. The Commission hereby finds as follows:
 6. Section 101.1(b)(1-8) establishes Eight Priority Planning Policies and requires review of permits for consistency with said policies. They are included in the preamble to the Master Plan and are the basis upon which inconsistencies in the General Plan are resolved:
 - (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 proposed Project would not remove or otherwise negatively impact any existing neighborhood-serving retail uses. The Project would enhance neighborhood-serving retail uses because it would provide approximately 6,000 square feet of ground-floor retail use fronting on Mission Street; more retail space than currently exists at the site. The short-term parking proposed as part of the project would enhance other retail and neighborhood-serving commercial and entertainment uses in the vicinity. These uses would create employment opportunities. The Project would add new residents, visitors and employees to the neighborhood, which may strengthen nearby neighborhood retail uses by broadening the consumer base and the demand for such retail services.

 - (2) That existing housing and neighborhood character be conserved and protected in order to

preserve the cultural and economic diversity of our neighborhoods;

The proposed Project design is articulated in such a way as to fit in well with the evolving neighborhood character of large slab buildings set in large open areas. The Project would add economic diversity by providing some retail space.

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

The Project would enhance the City's supply of housing by adding up to 246 new dwelling units in an emerging mixed-use area, with either 12 percent (if on site – 30 units) or 17 percent (if off site – 43 units), or a mixture thereof) would be affordable for either rental or sale per terms of the City's Inclusionary Affordable Housing Program. Alternately, the Applicant may select to pay an "in lieu" fee.

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

Traffic generated by the project would not impede MUNI transit service or local streets or neighborhood parking. The Project site is well served by transit. The proposed residential parking would be accessed from Stevenson Street. The commercial parking would be accessed from Mission Street, through a single driveway, with the proviso that the project sponsor work with the project sponsors of the adjoining Trinity Properties project to effect a sharing of the proposed driveway on that property. Ostensibly, at that future time, the Mission-Street driveway to the subject project would be closed and replace with retail space. In this manner, the goal of reduced or eliminated driveway entrances on the downtown portion of to Mission Street would be enhanced. The project would provide parking greater than Code-complying off-street parking spaces. By including more parking than is required, and limiting that parking to short-term, the Project would help implement the Mid-Market plan goals, one of which is to provide short-term parking in an organized manner in the Plan area (against which businesses in the area could draw rather than providing parking on their own sites).

- (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 would not remove any industrial or service uses, as no such uses are currently

operating on the site. The project would generate employment opportunities available to a diverse socio-economic range of city residents in its construction phase and, later, in its retail and parking components.

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

The project will be constructed according to current local building codes to insure a high level of seismic safety.

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

The subject site is a parking lot containing no structures. No landmarks or historic buildings would be affected by the project.

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

The project would have no impact on public parks, open space, or vistas. I was analyzed for its potential for shadow impacts on the City Hall Plaza and was found not to create any.

In summary, the proposed Project is consistent with and would promote the general and specific purposes of the Code provided under **Section 101.1(b)** in that, as designed, the Project would provide needed market rate and affordable housing and it would contribute to the character and stability of the neighborhood.

7. Code **Section 102.9(b)(16)** exempts area devoted to parking required by the Commission under Section 309 review as replacement for spaces displaced by the project. The Applicant seeks to have the Commission replace 168 parking spaces to be displaced by the Project.
8. **Section 124** of the Code establishes basic floor area ratios (hereinafter "FAR"). In the subject district, 6:1 is the base FAR. This figure is inclusive of residential uses. The base FAR in C-3-G Districts may be increased to 9:1. The Applicant proposes a building of approximately 8.53:1 FAR. Therefore, she will need to seek "TDR" (see discussion of **Section 128** below).
9. Pursuant to **Section 124(f)** thereunder, for buildings in C-3-G and C-3-S Districts other than those designated as Significant or Contributory pursuant to Article 11 of the Code, additional square footage above that permitted by the base floor area ratio limits set forth above may be approved for construction of dwellings on the site of the building

affordable for 20 years to households whose incomes are within 150 percent of the median income as defined herein, in accordance with the Conditional Use procedures and criteria as provided in **Section 303** of the Code.

- *The Applicant is considering filing a subsequent Conditional Use application to provide additional affordable dwelling units pursuant to the provisions of this section.*

10. **Section 128 -- Transfer of Development Rights** (hereinafter "TDR"). Subject to **Section 128(h)**, when TDR is necessary for the approval of a Site Permit for a project on a Development Lot, the Zoning Administrator must impose as a condition of approval of the Site Permit the requirement that the Department of Building Inspection not issue the first addendum to the site permit unless the Zoning Administrator has issued a written certification that the owner of the Development Lot owns the required amount of TDR. In the subject case, the Transfer ("donor") Lot as well as the Development ("receiver") Lot must be within the C-3-G District.

- *The subject Project would require the acquisition of approximately 110,000 square feet of TDR.. The Applicant is prepared to purchase (and to document same) this TDR, or, alternately, to procure it through the process established in Code Section 124(f) (see above).*

11. **Section 134** establishes rear yard requirements. In a C-3-G District, this requirement applies only to dwelling units and must be equal to 25 percent of the total depth of the lot on which the building is situated. In this district, the rear-yard area must be provided at the lowest story containing a dwelling unit, and at each succeeding level or story of the building. These requirements are intended to assure the protection and continuation of established mid-block, landscaped open spaces, and maintenance of a scale of development appropriate to each district, consistent with the location of adjacent buildings.

- *The project complies with the provisions of this Code Section.*

12. **Section 135** establishes standards for usable open space for dwelling units in various zoning districts. In the C-3-G District, it requires 36 square feet of usable open space per dwelling unit if that space is all private. Common usable open space may be substituted for private space at a ratio of 1.33 square feet to one (48 square feet per dwelling unit in the subject case). Accordingly, there would need to be at least 8,856 square feet of private open space or 11,808 square feet of common usable open space for the 246 proposed dwelling units.

- *Some of the units would have large private decks exceeding the private usable open space amounts thereby complying with this Section. A common deck on*

the podium (sixth) level, is proposed for the use of the future residents of the subject building. It would have 12,049 square feet, including a swimming pool. Therefore, the proposed project would comply with the usable open space standards of this Section.

13. **Section 138 – Open Space.** This Section establishes open space requirements in C-3 Districts. An applicant for a permit to construct a new building must provide open space in accordance with the standards set forth in this section. For residential uses, this requirement is that established in **Section 135** (see above).
14. **Section 138.1 – Pedestrian Streetscape Improvements.** This Section requires project sponsors to make street improvements where the proposed project includes the construction of a new building, substantial alterations to an existing building, or the addition of floor area equal to twenty percent or more of an existing building. The location, type, standards and maintenance of such improvements are to be determined by the Planning Commission.
 - *The Applicant will make the required improvements to the Subject Property and surrounding street areas.*
15. **Section 139 – Downtown Park Fund.** New downtown office developments are required to pay a per-square-foot fee to mitigate the increased demand on existing public parks in the Downtown Area. Residential projects are exempt from this requirement.
16. **Section 140—Dwelling Unit Exposure.** This Section requires that one room of each dwelling unit must look out onto the street, onto a Code-complying rear yard, a side yard at least 25 feet in width or onto a courtyard generally of minimum dimensions of at least 25 feet in each direction, which space must increase in its horizontal dimensions as it rises from its lowest level. The space must be unobstructed, except for certain specified permitted obstructions.
 - *Of the proposed 246 dwelling units in the subject building, 180 are side-facing units. They would be set back a minimum of 15 feet from the building's side property lines and would be exposed into the distance (over open areas on adjoining properties) increasingly as they rise from their lowest level (level six of the proposed structure). Technically, however, they would not comply with the "dwelling unit exposure" standards of this Section. Therefore, the project is the subject of a request for a Variance (Case No. 2002.0628CEKVX!) of the Section 140 dwelling-unit-exposure standards.*
17. **Section 146 – Shadows on Streets.** This Section provides that in order to maintain direct sunlight on public sidewalks in certain downtown areas during critical use periods, new

structures must avoid the penetration of a sun access plane as defined in Table 146 of the Planning Code.

- *The Project meets the standards set forth in Section 146(c) in that any new shadows would not be substantial and cannot be reduced without unduly restricting the development potential of the Project Site. The primary shadow cast by the Project is on Stevenson Street, which has limited pedestrian usage.*

18. **Section 147 – Shadows on Publicly Accessible Open Spaces.** This Section sets forth certain requirements and determinations regarding shadows being cast on public or publicly accessible open space. It seeks to reduce substantial shadow impacts on public plazas and other publicly accessible spaces other than those protected under Section 295.

- *The Project is designed in such a way as to retain sufficient sidewalk sunshine along Mission Street. The Project Site does not adjoin any of the streets specifically designated in Section 146(a). However, it would cast new shadow on United Nations Plaza during the morning hours in Winter. To eliminate this shadow would require a reduction of building height of about 50 percent, thus unduly restricting development in conflict with Code Section 146(c). The primary shadow cast by the Project is on Stevenson Street, which has limited pedestrian usage.*
- *The Project was substantially redesigned so as not to create any shadowing impact on City Hall Plaza thereby complying with the Section 295 standards. As a result, no shadows will be cast by the Project on Recreation and Park Department protected open spaces.*

A shadow fan analysis was completed in conjunction with the Project and showed no impact on any properties under the jurisdiction of the Recreation and Parks Department.

19. **Section 148 – Ground Level Wind Currents.** Pursuant to this Section, new buildings in C-3 Districts must be shaped, or other wind-baffling measures must be adopted, so that the developments will not cause ground-level wind currents to exceed coefficients contained in the text of the Section. When pre-existing ambient wind speeds exceed the comfort level, or when a proposed building or addition may cause ambient wind speeds to exceed the comfort level, the building must be designed to reduce the ambient wind speeds to meet the requirements. An exception may be granted, in accordance with the provisions of Section 309, allowing the building or addition to add to the amount of time that the comfort level is exceeded by the least practical amount if, (1) it can be shown that a building or addition cannot be shaped and other wind-baffling measures cannot be adopted to meet the foregoing requirements without creating an unattractive and ungainly building form and without unduly restricting the development potential of the building site in question, and (2) it is concluded

that, because of the limited amount by which the comfort level is exceeded, the limited location in which the comfort level is exceeded, or the limited time during which the comfort level is exceeded, the addition is insubstantial.

No exception may be granted and not building or addition may be permitted that causes equivalent wind speeds to reach or exceed the hazard level of 26 *mph* for a single hour of the year.

The Final Negative Declaration of Environmental Impact (hereinafter "FND") prepared for the Project proposal identified, under "*Current Conditions*", an average wind speed of approximately 12.7 miles per hour ("*mph*"). Thirteen of the 32 locations tested are at the Code pedestrian-comfort criterion of 11 *mph* with the other 18 test points exceeding this value.

Under the FND section entitled "*Existing Plus Project - Wind Hazard Conditions*", it indicates that, with the project, the wind hazard criterion would be exceeded at three of the 32 locations, compared to two of 32 locations with existing conditions. The wind hazard conditions at one existing exceedance location would decrease by 90 hours per year, and the other existing location would decrease by 23 hours per year. The third, new hazard exceedance location, on the south side of Mission street across from the project site, would exceed the hazard criterion for six hours per year. The total duration of all wind hazard exceedances would be 53 hours per year, compared with 164 hours per year under existing conditions, a reduction of 111 hours per year. The wind-tunnel test model did not include existing street trees along any of the streets in the test vicinity, so the test results are believed to overstate the hour per year wind speeds and hazard exceedance durations within the vicinity of the project site. Considering this, together with the test values which indicate a reduction in the duration of wind hazard exceedances at all locations by 111 hours, the project would be considered to comply with Code **Section 148**, with a condition of approval requiring planting and maintenance of the street trees (that are part of the Project proposal) along Mission Street.

When tested for "*Existing Plus Project-Pedestrian Comfort*", the average wind speed (for all 32 points) rose to 12.9 *mph* (0.2 *mph* higher than under existing conditions). The project would add five new exceedances and eliminate two existing exceedances, for a total of 22 exceedances, three more than under existing conditions. The conditions at the other existing exceedance locations would remain unchanged. Therefore, the project would require an exception to **Section 148** standards as a part of the **Section 309** review.

It is noteworthy that under "*Cumulative Conditions*", a wind-speed test involving the proposed project and five other proposed projects in the vicinity, the overall average wind speed would be lower, by less than one *mph*. With the cumulative scenario, as compared to the project scenario, wind speeds would increase at nine locations, remain unchanged at 13

locations, and decrease at ten locations.

None of the wind velocity measures, at any of the 32 test points, in any of the scenarios ("Current Conditions", "Existing Plus Project" or "Cumulative Conditions") exceeds the 26 mph.

- a. *The building or addition cannot be shaped and other wind-baffling measures cannot be adopted to meet the foregoing requirements without creating an unattractive and ungainly building form and without unduly restricting the development potential of the building site in question.*
- b. *In the subject case, the wind comfort level is exceeded to a minimal amount. One new wind hazard (as indicated by raw data, as described above) would be created for a total of six hours per year (which hazard can be mitigated by the planting of street trees along Mission Street in front of the Subject Property). There is amelioration of the existing wind situation in two of the test points and a slight increase in three others. In fact, on a cumulative basis, the overall wind speed would be reduced for the project and its environs. Therefore, the additional wind effect as a result of the Project would be insubstantial. This issue was covered in the FND prepared for the Project.*

As a result, it is appropriate for the Commission to grant the requested exception to Code standards for reduction of ground-level wind currents in this C-3 District site.

20. **Section 149 – Public Art.** In the case of construction of a new building or addition of floor area in excess of 25,000 square feet to an existing building in a C-3 District, this Section requires a project to include works of art costing an amount equal to one percent of the cost of construction of the building and requires the Commission to approve the type and location of the art work, but not the artistic merits of the specific art work proposed. The types of permitted art work include sculptures, bas-reliefs, murals, mosaics, decorative water features, or other work permanently affixed to the building. This issue was covered in the Negative Declaration prepared for the project. As designed, the project would comply with the terms of **Section 148.**

- *The applicant proposes artworks on the surface of the building and chooses glass as the artistic medium. After design development, she will bring her art scheme back to the Commission for a public presentation (before the approval of a Building Permit Application for the Project).*

21. **Section 151** contains the schedule of required off-street parking spaces. In the C-3 districts, no use other than dwelling units is required to provide off-street parking. In

relation to dwelling units in a the C-3-G District, this Section requires one off-street parking space for each four newly-created dwelling units

- *Consequently, the Project would be required to provide 62 such spaces to serve the 246 dwelling units proposed. The Code permits up to 50 percent above the required number of spaces as a matter of right (or 93 spaces, in this case); any additional parking requires Conditional Use authorization (see discussion of Section 204.5 below). spaces displaced by the Project.*

22. Section 152.1 contains the schedule of required off-street freight loading and service vehicle spaces in C-3 and South of Market Districts. In these districts, hotel, apartment and live-work projects of between 200,001 and 500,000 square feet of gross floor area must provide two off-street freight loading spaces.

- *The Project would comply with this requirement.*

23. Section 155 – General Standards as to Location and Arrangement of Off- Street Parking, Freight Loading and Service Vehicle Facilities. Required off-street parking and freight loading facilities must meet the following standards as to location and arrangement. In addition, facilities which are not required but are actually provided shall meet the standards set forth in this Section unless such standards are stated to be applicable solely to required facilities. Pursuant to this Section, downtown commercial parking must be short-term in nature. Additionally, handicapped parking and bicycle parking must be provided and driveways must not interfere with pedestrian movements.

- *The Project would comply with the standards and requirements of Section 155, et seq.*

24. Section 157 establishes additional criteria for Conditional Use applications for parking exceeding accessory amounts. In considering any application for a Conditional Use for parking for a specific use or uses, where the amount of parking provided exceeds the amount classified as accessory parking in Code Section 204.5, the Planning Commission must consider the following criteria in addition to those stated in Section 303(c) and elsewhere in this Code.

(a) Demonstration that trips to the use or uses to be served, and the apparent demand for additional parking, cannot be satisfied by the amount of parking classified by the 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 proposed short-term parking would help fulfill the goals of the proposed Mid-Market Redevelopment Plan which plan seeks to provide reservoirs of short-*

term parking for the needs of nearby businesses and emerging nighttime entertainment uses. The provision of one parking space for each two dwelling units represents a compromise between the three-spaces-for-four-units proposal of the Applicant and the one-space-per-four-units required by the Code.

(b) The absence of potential detrimental effects of the proposed parking upon the surrounding area, especially through unnecessary demolition of sound structures, contribution to traffic congestion, or disruption of or conflict with transit services;

- *The Project site is a large surface parking lot. No demolition would be required to accommodate the proposed new building. The arrangement of a temporary driveway onto Mission Street (as outlined elsewhere herein) would help relieve congestion on Mission Street, especially in the future as development proceeds in the area and traffic volumes increase. The residential parking component would be enough to serve the proposed number of dwelling units but not enough to deter the "transit-first" policy of the City.*

(c) In the case of uses other than housing, limitation of the proposed parking to short-term occupancy by visitors rather than long-term occupancy by employees; and

- *All of the proposed non-residential parking in the Project is proposed to be "short-term".*

(d) Availability of the proposed parking 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 Residential parking would be "un-coupled" from the commercial parking in that it would be made available for use by the public if it exists in numbers in excess of the actual need by residents of the building. The remainder (commercial) parking is to be available to short-term parkers.

24. **Section 158 -- Major Parking Garages in C-3 Districts.** It is the purpose of this Section to establish a procedure by which major parking garages proposed for downtown San Francisco may be reviewed as to the appropriateness of their location and arrangement, recognizing the need for continuing development of a unified transportation system conveniently serving the downtown area. Such garages may be approved by the Commission as a Conditional Use under **Section 303** of the Code subject to eight criteria established therein. These criteria are to be considered as part of the companion Conditional Use application for the parking garage portion of the Project as well as the residential-serving parking in excess of accessory amounts.

25. **Section 204.5 -- Standards for "parking and loading as accessory uses"**. Pursuant thereto, accessory parking includes up to 150 percent of the required number of spaces (when three or more spaces are required). With 62 parking spaces required for the 246 proposed dwelling units, up to 93 spaces may be provided as "accessory parking". The project sponsor wishes to provide 123 spaces to serve the 246 proposed dwelling units (one space per two units). This number of spaces would require a Conditional Use authorization for parking in excess of accessory amounts (Case No. 2002.0628CEKVX!). (see discussion of **Section 157** above.). The standards of this Section will be addressed as part of the companion Conditional Use case (Case No. 2002.0628CEKVX!) requesting, in part, authorization of off-street parking in excess of accessory amounts.
26. **Section 223(m)** requires the authorization by the Commission of a Conditional Use for a storage garage open to the public for passenger automobiles, as regulated in **Sections 155 – 157** of the Code where such storage garage is not a public building requiring approval by the Board of Supervisors under other provisions of law and is completely enclosed. The commercial portion of the proposed Project's parking facility is such a garage.
27. **Section 270 -- Bulk requirements**. For the "S" District in which this site is located, buildings are to be divided into a "base", "lower tower" and "upper tower" for bulk measurement purposes. The base may extend to a streetwall height of 1.25 times the width of the widest abutting street or 50 feet, whichever is more. There are no length or diagonal dimension limitations applicable to the base. The bulk controls for the lower tower (the portion above the base) are maximum length of 160 feet, a maximum floor size of 20,000 square feet, and a maximum diagonal dimension of 190 feet. Upper tower bulk controls apply to buildings over 160 feet in height. The upper-tower bulk controls are a maximum length of 130 feet, a maximum average floor size of 12,000 square feet, a maximum floor size of 17,000 square feet, and a maximum diagonal dimension of 160 feet. At these dimensions, the portion of the building (above the base) could have approximately 364,000 *gsf* of floor area. At approximately 284,500 *gsf*, this portion of the actual building proposal would not exceed this maximum amount.

Mission Street, the widest abutting street of the Subject Property, is 82.5 feet in width. The base of the proposed building is approximately 58.5 feet in height and it covers the entire site (containing five floors of off-street parking plus ground-floor retail space). Above this base, the residential portion of the building (floors six through 21) comprises 16 floors of approximately 16,135 square feet each.. These floors are approximately 246 feet in length with a maximum diagonal dimension of approximately 252 feet. The twenty-second floor would have a gross floor area of 14,722 square feet and the twenty-third (top) floor would be 13,648 square feet in gross floor area. The building would rise to a height of approximately

233 feet. Consequently, the proposed building is the subject of a requested exception (under the **Section 309** review process) for building bulk. This exception would be for building length and diagonal dimension (but not for floor plate) in the "lower tower" portion of the proposed structure (the portion above the "base" and below 160 feet in height) and for similar (but slightly larger) exceptions of those building measurements in its "upper tower" portion (above 160 feet in height). (Please see discussion of **Section 309** below.)

29. Section 272 -- Bulk Limits: Special Exceptions in C-3 Districts.

(a) **General.** The bulk limits prescribed by **Section 270** were carefully considered in relation to objectives and policies for conservation and change in C-3 Districts. However, there may be some exceptional cases in which these limits may properly be permitted to be exceeded to a certain degree, provided, however, that there are adequate compensating factors. Exceptions to the bulk limits may be approved in the manner provided in **Section 309**, provided that at least one of the following criteria is met:

- (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 Comprehensive Plan;
- (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; and provided further that all of the following criteria are met:
 - (A) The added bulk does not contribute significantly to shading of publicly accessible open space,
 - (B) The added bulk does not increase ground level wind currents in violation of the provisions of **Section 148** of the Code;
- (3) The added bulk does not significantly affect light and air to adjacent buildings;
- (4) If appropriate to the massing of the building, the appearance of bulk in the building, structure or development is reduced to the extent feasible by means of at least one and preferably a combination of the following factors, so as to produce the impression of an aggregate of parts rather than a single building mass:
 - (A) Major variations in the planes of wall surfaces, in either depth or direction, that significantly alter the mass;

- (B) Significant differences in the heights of various portions of the building, structure or development that divide the mass into distinct elements;
 - (C) Differences in materials, colors or scales of the facades that produce separate major elements;
 - (D) 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
 - (E) 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;
- (5) The building, structure or development is made compatible with the character and development of the surrounding area by means of all of the following factors:
- (A) A silhouette harmonious with natural land-forms and building patterns, including the patterns produced by height limits,
 - (B) Either maintenance of an overall height similar to that of surrounding development or a sensitive transition, where appropriate, to development of a dissimilar character,
 - (C) Use of materials, colors and scales either similar to or harmonizing with those of nearby development, and
 - (D) Preservation or enhancement of the pedestrian environment by maintenance of pleasant scale and visual interest.

Exceptions to bulk limits may not result in a building of greater total gross floor area than would be permitted if the bulk limits were met. As discussed above under "Section 270", the requested building bulk exception would not result in such a greater *gsf*.

30. **Section 295 – Shadowing.** This Section concerns the review of structures exceeding 40 feet in height insofar as their shadowing of lands under the jurisdiction of the Recreation and Parks Department. It requires that such buildings have no significant or adverse shadow effects on such affected lands. On September 9, 2003, the Planning Department determined that the proposed building (as redesigned to respond to shadow issues) would have no shadow impact on protected properties (Case No. 2002.0628CEKVX!). This finding is reflected in the Negative Declaration of Environmental Impact (Case No. 2002.0628CEKVX!) adopted and issued for the project.

31. Pursuant to **Section 303**, the Commission may authorize a Conditional Use only after

holding a duly noticed public hearing and making findings that the proposed use will provide a development that is necessary or desirable for and compatible with the neighborhood or the community, that such use will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity and that such use will comply with the applicable provisions of the Code, and will not adversely affect the General Plan. The proposed project is the subject of a request for Conditional Use authorization for the public-parking-garage portion of the proposal and for residential-serving off-street parking in excess of accessory amounts.

32. **Section 309 – Permit Review in C-3 Districts.** This Section of the Code requires a hearing before the Commission when a proposed project in a C-3 District exceeds 75 feet in height, proposes the addition of 50,000 square feet in area, or is a substantial alteration. The Commission may approve a project, grant exceptions from certain requirements of the Code and/or impose conditions on approval. A project is required to meet all applicable Code requirements or request exceptions as allowed under Section 309(a)(1)-(9). The Project is located in a C-3-G District. It would comply with all of the applicable Code requirements except two. The two exceptions listed in Section 309 being sought as part of the Project are for reduction of ground-level wind currents in C-3 Districts as set forth in Section 309(a)(2) and for building bulk as set forth in Section 309(a)(9).

33. **Section 309(d) -- Exception from the standards for building bulk set forth in Sections 270 and 272.** The Project requires an exception to the standards for building bulk. For the "S" District in which this site is located, buildings are to be divided into a "base", "lower tower" and "upper tower" for bulk measurement purposes. The base may extend to a streetwall height of 1.25 times the width of the widest abutting street or 50 feet, whichever is more. There are no length or diagonal dimension limitations applicable to the base. The bulk controls for the lower tower (the portion above the base) are maximum length of 160 feet, a maximum floor size of 20,000 square feet, and a maximum diagonal dimension of 190 feet. Upper tower bulk controls apply to buildings over 160 feet in height. The upper-tower bulk controls are a maximum length of 130 feet, a maximum average floor size of 12,000 square feet, a maximum floor size of 17,000 square feet, and a maximum diagonal dimension of 160 feet.

- *Mission Street, the widest abutting street of the Subject Property, is 82.5 feet in width. The base of the proposed building is approximately 58.5 feet in height and it covers the entire site (containing five floors of off-street parking plus ground-floor retail space). Above this base, the residential portion of the building (floors six through 21) comprises 16 floors of approximately 16,135 square feet each. These floors are approximately 246 feet in length with a maximum diagonal dimension of approximately 252 feet. The twenty-second floor would have a gross floor area of 14,722 square feet and the twenty-third (top) floor would be 13,648 square feet in gross floor area. The building would*

rise to a height of approximately 233 feet. Consequently, the proposed building is the subject of a requested exception (under the Section 309 review process) for building bulk.

34. **Section 272** allows, in exceptional cases, the bulk limits of the Code to be exceeded to a certain degree, provided, however, that there are adequate compensating factors. Exceptions to the bulk limits may be approved in the manner provided in **Section 309**, provided that at least one of the criteria set forth in **Section 272** is met.

- *Consistent with Criterion (5) under Finding 29. above, the Project satisfies the exception criteria. The Project setting is one of large lots. Adjoining it to the east is the GSA (Federal) building that is under construction at present. That building would be a large slab tower set in a large pedestrian plaza. To the west is the Trinity Properties' 1,410-unit residential redevelopment project that is in the planning phase now. That proposal is for five slab towers arranged on a podium with large amounts of pedestrian-oriented open space. All of these buildings are in scale with the Project proposal. Therefore, there is an emerging character of development on the "super-block" containing the Project. The Project proposal is consistent with this character and it would help to enhance it.*

35. **Section 314, et seq. -- Childcare Requirements for Office and Hotel Development Projects.** Section 314.3 provides that childcare requirements apply to "office and hotel development projects proposing the net addition of 50,000 or more gross square feet of office or hotel space."

- *In that the Project is a residential, parking and retail building, Section 314.3 does not apply.*

36. **Section 315 -- Housing Requirements for Residential Development Projects.** Sections 315.1—315.9 set forth the requirements and procedures for the Residential Inclusionary Affordable Housing Program (hereinafter "Program"). The Program requires that a nominal twelve percent of the dwelling units on site must be affordable either as rentals or as ownership units, for a fifty-year period beginning at issuance of the first Certificate of Occupancy. If the Below Market Residential (hereinafter "BMR") units are to be provided on site, they are required to reflect the proposed mix of unit sizes in the project and to be equal in construction quality and finish materials to the market-rate units. Alternately, pursuant to **Section 315**, the project sponsor may elect to provide "BMR" units off site or pay an in lieu fee which two options must be equivalent to 17 percent of the number of dwelling units in the Project.

- *In order to comply with Section 315 requirements, the project sponsor has elected to provide a mixture of on-site affordable housing units and an in-lieu*

payment to the City's Housing Development Fund.

37. Compliance with other codes. In addition to these requirements of the Planning Code, the Administrative Code contains the following applicable sections.

- The Project is subject to the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code) and the project sponsor must comply with the requirements of this Program. Prior to the issuance of any building permit to construct or a First Addendum to the Site Permit, the project sponsor must have a First Source Hiring Construction Program approved by the First Source Hiring Administrator, and evidenced in writing.
- Chapter 38 of the Administrative Code establishes the Transit Impact Development Fee to provide capital funding for MUNI. The project is not subject to this Fee in that it does not involve office development.
- The Project is subject to School fees under the Building Code.

38. Compliance with the Objectives and Policies of the General Plan The Commission hereby finds that the Project will comply with or affirmatively promote the following Objectives and Policies of the General Plan (*Project specific findings are in italics*):

The **Downtown Area Plan** contains the following relevant objectives and policies:

Space for Housing

OBJECTIVE 7: EXPAND THE SUPPLY OF HOUSING IN AND ADJACENT TO DOWNTOWN.

Policy 1: Promote the inclusion of housing in downtown commercial developments.

- *The Project would provide a large number of dwelling units in an emerging "C-3" downtown residential neighborhood.*

Urban Form

OBJECTIVE 14: CREATE AND MAINTAIN A COMFORTABLE PEDESTRIAN ENVIRONMENT.

Policy 1: Promote building forms that will maximize the sun access to open spaces and other

public areas.

- *The Project would not create any significant new shadows and is consistent with the General Plan. While some new shadows are unavoidable with high-rise buildings, high-density projects are encouraged by the Code in the C-3 Districts. The proposed tower design is a slab set in an environment of other slabs spaced apart with large open areas in between them and will, therefore, cast only minimal new shadows. Furthermore, the Project meets the standards set forth in Code Section 146(c), in that the new shadows would not be substantial and could not be reduced without unduly restricting the development potential of the Project site. The Project will not cast any shadows on properties under the jurisdiction of the Recreation and Park Department, and is therefore in conformance with Code Section 295.*

Policy 2: Promote building forms that will minimize the creation of surface winds near the base of buildings.

- *As outlined herein, the Project would not significantly affect wind conditions.*

OBJECTIVE 16: CREATE AND MAINTAIN ATTRACTIVE, INTERESTING URBAN STREETSCAPES.

Policy 1: Conserve the traditional street-to-building relationship that characterizes downtown San Francisco.

Policy 4: Use designs and materials and include activities at the ground floor to create pedestrian interest.

- *The Project would contribute to the emerging character of the "super block" on which it finds itself. The area around the Subject Property is proposed for residential intensification as part of the Mid-Market Plan of the San Francisco Redevelopment Agency. The visual characteristics of the buildings in the vicinity of the Project Site are varied, reflecting changing development patterns as well as a variety of land-use patterns and architectural styles over the past one hundred years. The immediate area is characterized predominantly by parking lots, the Federal courthouse, the Federal Government's new GSA building as well as nighttime entertainment uses and affordable housing units. In contrast, the proposed building would be a slab tower of reinforced concrete and large, Chicago-style windows. This new tower would provide a tie-in to the area's emerging character of slab buildings set apart with large amounts of open space between them. Due to the variety of building heights and scales in the general area, the Project would blend into long-range views of the site and into the densely-built urban fabric of the area. New high-rises similar in height and form to the Project building are either under construction or proposed in the immediate vicinity of the Subject Property.*

Moving About -- Moving to and from Downtown

OBJECTIVE 18: ENSURE THAT THE NUMBER OF AUTO TRIPS TO AND FROM DOWNTOWN WILL NOT BE DETRIMENTAL TO THE GROWTH OR AMENITY OF DOWNTOWN.

Policy 2: The Project will further provide incentives for the use of transit, carpools, and vanpools, to reduce the need for new or expanded automobile parking facilities.

- *The Project site, at present, is used as surface (all-day) parking lots. The Project proposal includes fewer than one-to-one parking places for the 246 dwelling units proposed as well as a short-term-only garage to serve the needs of the surrounding businesses and nighttime entertainment uses. These arrangements would discourage commuter parking and would encourage the use of transit.*

Moving Around Downtown

OBJECTIVE 20: PROVIDE FOR THE EFFICIENT, CONVENIENT AND COMFORTABLE MOVEMENT OF PEOPLE AND GOODS, TRANSIT VEHICLES AND AUTOMOBILES WITHIN THE DOWNTOWN.

OBJECTIVE 21: IMPROVE FACILITIES FOR FREIGHT DELIVERIES AND BUSINESS SERVICES.

Policy 2: Discourage access to off-street freight loading and service vehicle facilities from transit preferential streets, or pedestrian oriented streets and alleys.

- *Mission Street in the vicinity of the Subject Property is a Transit Preferential Street. The off-street loading to be provided as part of the Project would be accessed from Stevenson Street thereby avoiding conflicts with Mission Street traffic. In addition, the Project proposal calls for a future diversion of the Mission Street vehicle access to an alley to be shared with the adjoining "Trinity Plaza" project.*

OBJECTIVE 22: IMPROVE THE DOWNTOWN PEDESTRIAN CIRCULATION SYSTEM, ESPECIALLY WITHIN THE CORE, TO PROVIDE FOR EFFICIENT, COMFORTABLE, AND SAFE MOVEMENT.

Policy 1: Provide sufficient pedestrian movement space.

Policy 5: Improve the ambience of the pedestrian environment.

- *The Project Site allows for sufficient pedestrian movement. The Project involves the construction of a new building including dwelling units, retail and off-street parking. The new activity resulting from these changes would improve the ambience of the pedestrian environment by improving the Mission Street frontage and by minimizing vehicle movements across the sidewalk.*

Seismic Safety

OBJECTIVE 23: REDUCE HAZARDS TO LIFE SAFETY AND MINIMIZE PROPERTY DAMAGE AND ECONOMIC DISLOCATION RESULTING FROM FUTURE EARTHQUAKES.

Policy 2: Initiate orderly abatement of hazards from existing buildings and structures, while preserving the architectural and design character of important buildings.

- *The Project would reduce hazards to life safety and minimize property damage and economic dislocation resulting from future earthquakes through building design and construction in compliance with current structural and seismic codes.*

The **Residence Element** contains the following relevant objectives and policies:

OBJECTIVE 1: TO PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT GROWTH.

Policy 4: Locate infill housing on appropriate sites in established neighborhoods.

- *The Project site is within an emerging residential intensification area as dictated by the Redevelopment Agency's Mid-Market Plan. This area is ripe for an appropriate as a location for new housing. The Project would include on-site affordable units pursuant to the inclusionary housing provisions of Code Section 315, et seq.*

OBJECTIVE 2: TO INCREASE THE SUPPLY OF HOUSING WITHOUT OVER CROWDING OR ADVERSELY AFFECTING THE PREVAILING CHARACTER OF EXISTING NEIGHBORHOODS.

Policy 2: 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 permanently affordable to lower income households.

- *The surface parking lots which constitute the current use of the Subject Property represent an underutilization of this C-3 site. The proposed building would place needed housing near the central business district and would include affordable units pursuant to Code Section 315, et seq.*

OBJECTIVE 4: TO REDUCE THE RISK OF BODILY HARM AND LOSS OF HOUSING IN AN EARTHQUAKE.

- *The proposed building would be built to current new-construction standards for seismic safety as contained in the Building Code.*

OBJECTIVE 7: TO INCREASE LAND AND IMPROVE BUILDING RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING.

Policy 2: Include affordable units in larger housing projects.

- *The proposed building would place needed housing near the central business district and would include affordable units pursuant to Code Section 315, et seq.*

OBJECTIVE 12: TO PROVIDE A QUALITY LIVING ENVIRONMENT.

Policy 1: Assure housing is provided with adequate public improvements, services and amenities.

Policy 2: Allow appropriate neighborhood-serving commercial activities in residential areas.

Policy 4: Promote construction of well designed housing that conserves existing neighborhood character.

- *The Project is well designed and would be an attractive addition to the emerging Mid-Market neighborhood. It would include a small amount of retail space and it is in the middle of a nighttime entertainment district. Public services, improvements and amenities (including all varieties of public transit) abound in the vicinity.*

OBJECTIVE 13: TO PROVIDE MAXIMUM HOUSING CHOICE.

Policy 1: Prevent housing discrimination based on age, race, religion, sex, sexual preference, marital status, ancestry, national origin, color, disability, health (AIDS/ARC), source

or amount of income, citizenship or employment status as a family day care provider.

Policy 2: Promote adaptability and maximum accessibility of residential dwellings for disabled occupants.

- *The Project would be handicapped accessible per the City's new-construction building standards. The Project would comply with all applicable City laws in regard to its employment and marketing practices.*

The **Urban Design Element** contains the following relevant policies and objectives:

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

Policy 2: Recognize, protect and reinforce the existing street pattern, especially as it is related to topography.

- *The Project would add to the image and orientation of this downtown neighborhood. The Project site is located within the downtown core on the northwest side of Mission Street, between Seventh and Eighth Streets. There are no significant public views in this area that would be affected by the Project. "Public views" refers to views from public places such as parks and open spaces, views from private open spaces that are open to the public, and views from streets and sidewalks where topography or other local physical features create a significant view corridor*
- *The Project Site is in an area that has been designated for high-density residential development. The area surrounding the site is in transition from low-rise commercial uses to higher-density mixed-use commercial, entertainment and residential uses. In light of the existing and proposed large buildings in the vicinity, the Project would not obstruct any significant public views.*

Policy 3: Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

- *The Project recognizes that buildings, when seen together, produce a total effect that characterizes the City and its districts. The height, massing, color, and shape of the proposed building would ensure its compatibility with the other buildings comprising the San Francisco skyline. In the vicinity of the Subject Property, there is an emerging pattern of large "slab" buildings set amid large open areas.*

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

- Policy 1: Promote harmony in the visual relationships and transitions between new and older buildings.
- Policy 2: Avoid extreme contrasts in color, shape and other characteristics which will cause new buildings to stand out in excess of their public importance.
- Policy 5: Relate the height of buildings to important attributes of the city pattern and to the height and character of existing development.
- Policy 6: Relate the bulk of buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction.

- *The proposed building would promote harmony in the visual relationship and transitions between new and older buildings in the neighborhood. The clean lines of the building would blend with the many new building, both built and proposed, in the area as well as the older traditional buildings in the neighborhood. More importantly, the proposed building materials would relate to buildings throughout the area. Thus the proposed building would incorporate the design elements of nearby existing buildings and would avoid extreme contrasts in color, shape and other characteristics that would make it stand out in excess of its civic importance.*

City Pattern

- Policy 5: Relate the height of buildings to important attributes of the city pattern and to the height and character of existing development.
- Policy 6: Relate the bulk of buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction.

- *The Project would be consistent with the surrounding streetscape and would be visually compatible with the surrounding buildings. It is in the middle of an emerging area of tall, slab buildings set amid large amounts of open space. Immediately to the northeast is the new GSA building which is under construction. The subject building and the GSA building will surround a large public plaza. The newly-refurbished Federal courthouse across 7th Street will also front on this plaza. These buildings will help to frame a major new public open space; a focal point of this new neighborhood.*

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

Policy 12: Install, promote and maintain landscaping in public and private areas.

Policy 13: Improve pedestrian areas by providing human scale and interest.

- *The Project proposal features public and private landscaping as well as street improvements designed to enhance the pedestrian experience on Mission Street.*

The Transportation Element contains the following relevant policies and objectives:

OBJECTIVE 2: USE THE TRANSPORTATION SYSTEM AS A MEANS FOR GUIDING DEVELOPMENT AND IMPROVING THE ENVIRONMENT.

Policy 2.1: Use rapid transit and other transportation improvements in the City and region as the catalyst for desirable development, and coordinate new facilities with public and private development.

- *The Project site is rich in transit opportunities. Accordingly, the authorization contained herein is for new residential units with one off-street parking space for each two dwelling units. Additionally, all the non-residential-serving parking to be provided is to be limited to short-term parking (no commuter parking) for the recurring needs of business and entertainment uses in the vicinity. The Project will feature two "car-share" spaces in its garage and a reservation of another two such spaces should demand increase over time.*

OBJECTIVE 11: MAINTAIN PUBLIC TRANSIT AS THE PRIMARY MODE OF TRANSPORTATION IN SAN FRANCISCO AND AS A MEANS THROUGH WHICH TO GUIDE FUTURE DEVELOPMENT AND IMPROVE REGIONAL MOBILITY AND AIR QUALITY.

Policy 11.3: Encourage development that efficiently coordinates land use with transit service, requiring that developers address transit concerns as well as mitigate traffic problems.

- *Recognizing the many transit opportunities available at and near the Project site, the commercial parking to be provided is to be all "short-term" per the specifications of the San Francisco Redevelopment Agency's Mid-Market Plan. Residential-serving parking is hereby limited to one space per each two dwelling units. "Car-share" is to be included in the project.*

OBJECTIVE 24: IMPROVE THE AMBIANCE OF THE PEDESTRIAN ENVIRONMENT.

Policy 24.4: Preserve pedestrian-oriented building frontages.

- *The Project proposes pedestrian-friendly streetscape improvements. It would enhance the pedestrian experience in the area.*

OBJECTIVE 28: PROVIDE SECURE AND CONVENIENT PARKING FACILITIES FOR BICYCLES.

Policy 28.1: Provide secure bicycle parking in new governmental, commercial, and residential developments.

- *Per standards in the Planning Code, the Project would include off-street bicycle parking.*

OBJECTIVE 30: ENSURE THAT THE PROVISION OF NEW OR ENLARGED PARKING FACILITIES DOES NOT ADVERSELY AFFECT THE LIVABILITY AND DESIRABILITY OF THE CITY AND ITS VARIOUS NEIGHBORHOODS.

Policy 30.1: Assure that new or enlarged parking facilities meet need, locational and design criteria.

- *The commercial parking to be provided in conjunction with the Project is designed to provide a reservoir of short-term parking to serve the needs of the businesses and entertainment uses in the vicinity (and not to provide commuter parking). This arrangement recognizes the City's "Transit First" policy and it is consistent with the proposals for parking contained in the San Francisco Redevelopment Agency's Mid-Market Plan. Toward this end, the residential-serving parking is hereby limited to one space for each two dwelling units.*

OBJECTIVE 34: RELATE THE AMOUNT OF PARKING IN RESIDENTIAL AREAS AND NEIGHBORHOOD COMMERCIAL DISTRICTS TO THE CAPACITY OF THE CITY'S STREET SYSTEM AND LAND USE PATTERNS.

Policy 34.1: Regulate off-street parking in new housing so as to guarantee needed spaces without requiring excesses and to encourage low auto ownership in neighborhoods that are well served by transit and are convenient to neighborhood shopping.

- *In this downtown neighborhood, the herein-authorized Project will be limited to the equivalent of one off-street parking space for each two dwelling units and to short-term*

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parking only for the remainder of the spaces (the commercial portion) in the garage. The low ration of provision of residential parking is in recognition of the multiplicity of transit options in the area and the convenience of nearby shopping and services.

DECISION

The Commission, after carefully balancing the competing public and private interests, both environmental and otherwise, hereby **APPROVES** Application No. 2003.0628CEKVX!, and determines that the Project complies with the requirements of the relevant Sections of the Code, and grants the requested exceptions as set forth above from the standards for reduction of ground-level wind currents in C-3 Districts pursuant to **Section 148** and from the building bulk standards pursuant to **Sections 270** and **272**, subject to the conditions contained in "Exhibit A" appended hereto and incorporated herein by reference thereto as though fully set forth, and in general conformance with the plan drawings stamped as "Exhibit B".

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. 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 94012.

I hereby certify that the foregoing Motion was adopted by the Planning Commission on December 4, 2003.

Linda Avery
Commission Secretary

AYES: Commissioners Antonini, Hughes, S. Lee and W. Lee

NOES: Commissioners Bradford Bell and Feldstein

ABSENT: Commissioner Boyd

ADOPTED: December 4, 2003

EXHIBIT A

CONDITIONS OF APPROVAL

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 approval is pursuant to Code Section 309 Determinations of Compliance and granting of an exception to otherwise-applicable Code standards for building bulk, for the construction of 489,652 gross square feet of residential, parking and retail space in general conformance with the plans dated March 5, 2003, and stamped "Exhibit B".

1. COMPLIANCE WITH OTHER REQUIREMENTS

- (A) This decision conveys no right to construct. The Project Sponsor must obtain a building permit and satisfy all the conditions thereof, including mitigation measures addressing environmental impacts. The conditions set forth below are additional conditions required in connection with the Project. If these conditions overlap with any other requirement imposed on the Project, the more restrictive or protective condition or requirement, as determined by the Zoning Administrator, shall apply.

2. GENERAL CONDITIONS

(A) Mitigation Measures

Mitigation Measures identified in the Project's Final Negative Declaration (Case No. 2003.0628CEKVX!) shall be conditions of approval and are accepted by the Project Sponsor or its successor in interest, as follows:

Mitigation Measure 1: Construction Air Quality

The Project Sponsor shall require the contractor(s) to spray the site with water during demolition, excavation, and construction activities; spray unpaved construction areas with water at least twice per day; cover stockpiles of soil, sand, and other material; cover trucks hauling debris, soils, sand or other such material; and sweep surrounding streets during demolition, excavation, and construction at least once per day to reduce particulate emissions. Ordinance 175-91, passed by the Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, the Project Sponsor would require that the contractor(s) obtain reclaimed water from the Clean Water Program for this purpose. The Project Sponsors would require the project contractor(s) to maintain and operate construction equipment so as to

minimize exhaust emissions of particulates and other pollutants, by such means as a prohibition on idling motors when equipment is not in use or when trucks are waiting in queues, and implementation of specific maintenance programs to reduce emissions for equipment that would be in frequent use for much of the construction period.

Mitigation Measure 2: Hazardous Materials

According to a site management plan prepared by Baseline Environmental¹ and reviewed and approved by the San Francisco Department of Public Health,² the following measures should be implemented to reduce exposure to hazardous materials.

Construction Health and Safety Provisions. Analytical data from previous investigations at the project site should be provided to all contractors at the site, so that the information can be incorporated into their worker health and safety and hazard communications plans. Although health risk assessment data (see Health Effects of Hazardous Materials in Soil, above) indicate that construction workers would not be significantly affected by lead concentrations in project site soils, health and safety provisions have been recommended to minimize exposure of workers and the nearby public to lead in soil. Prior to installation of the concrete foundation, all construction activities that would disturb the surface or shallow subsurface soils should be conducted in accordance with a site-specific health and safety plan (HSP) prepared by a certified industrial hygienist. The HSP should include measures to minimize inhalation and accidental ingestion of affected soils, dust control measures, and action levels for air monitoring. Particulate air monitoring should be conducted in work areas and at the site perimeter during all construction activities disturbing site soils. Should the air monitoring indicate conditions where lead may be encountered in excess of identified action levels, construction work should be halted until dust control measures reduce potential risks to construction workers and the public to acceptable levels.

- Watering all active construction areas at least twice daily.
- Covering all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet freeboard.
- Cleaning of all heavy equipment and truck tires prior to leaving the site.
- Paving, applying water three times daily, or applying non-toxic soil stabilizers on all unpaved and staging areas at construction sites.
- Sweeping daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
- Sweeping street daily (with water sweeps) if visible soil material is carried onto adjacent public streets.
- Optional control measures that are encouraged by BAAQMD may also apply at construction sites that are located near sensitive receptors (e.g., day care centers, churches, community centers) which, for any other reason, may warrant additional emission reductions.

- The backfill for three 15-gallon trees shall be clean fill and clean fill shall be separated from contaminated soil.
- Should contamination remain on the site, a deed notification with SMP and a cap management plan shall be recorded.
- Upon the completion of the SMP a final report shall be submitted.
- Two weeks prior to the commencement of work a site specific health and safety plan (HSP) shall be submitted.

Soil Management and Disposal Provisions. All soil stockpiles containing shallow fill materials at the project site should be covered with visquene or similar physical barrier to prevent wind dispersal of potentially lead-affected soils, either until reuse on-site or off-site disposal. All soils not reused on-site that will require off-site disposal should be characterized. At a minimum, four soil samples should be collected from each 1,000 cubic yards of soil proposed to be disposed (or as required by the disposal facility). Soil samples should be analyzed for total and soluble lead by a State-certified laboratory. Analytical results should be used to determine appropriate disposal of excess soils in accordance with State and Federal laws and regulations. Disposal facilities may also require additional sampling or analyses for profiling purposes.

Post Construction Provisions. Following construction of the project, contact with lead-affected soils would be limited to infrequent maintenance of underground utilities by custodial staff and utility workers. Future residents and the general public would not be expected to come into contact with lead-affected soils under any circumstances. As the concentrations of lead in soils would not pose a health risk to workers (see Health Effects of Hazardous Materials in Soil, above), no post-construction provisions would be necessary to protect human health.

Mitigation Measure 3: Archaeological Resources

Based on a reasonable presumption 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 testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). 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 Testing Program. The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA.

At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. If the ERO 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) A 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.

Archeological Monitoring Program. 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 archeological consultant 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 risk these activities pose to potential 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 archeological 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 project 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 activities and 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 make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO.

Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.

Archeological Data Recovery Program. The archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. 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 and 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. This shall include 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, custodianship, curation, 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 significance 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 final report.

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 in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.

3. **CONDITIONS TO BE MET PRIOR TO THE ISSUANCE OF A BUILDING (OR SITE) PERMIT OR FINAL ADDENDUM TO A BUILDING (OR SITE) PERMIT**

A) Design

- (1) Highly reflective spandral glass, mirror glass, or deeply tinted glass shall not be permitted. Only clear glass shall be used at pedestrian levels.
- (2) The Project Sponsor and the Project architect shall continue to work on design development with the Department.
- (3) Space shall be included for antennae in the building's design to avoid unattractive appendages.
- (4) The building design shall provide adequate space designated for trash compactors, trash loading, and recycling. These areas shall be indicated on the building plans.
- (5) Final architectural and decorative detailing, materials, glazing, color and texture of exterior finishes shall be submitted for review by, and shall be satisfactory to the Director of the Department. The Project architect shall submit dimensional design drawings for building details with specifications and samples of materials to insure a high design quality is maintained.
- (6) Except as otherwise provided in this motion, the Project shall be completed in general accordance with plans dated August 3, 2001, labeled "Exhibit B," and reviewed by the Commission on September 6, 2001.

(B) Pedestrian Streetscape Improvements: The Project shall include pedestrian streetscape improvements generally as described in this Motion and in conformance with Planning Code Section 138.1. A final pedestrian streetscape improvement plan including landscaping and paving materials and patterns, shall be submitted for review by, and shall be satisfactory to the Director of the Department, in consultation with the Director of the Department of Public Works.

(C) Inclusionary Housing: The Project Sponsor shall comply with the Requirements and procedures for the Residential Inclusionary Affordable Housing Program (hereinafter "Program") as set forth in Sections 315.1—315.9 of the Code. The Program requires that a nominal twelve percent of the dwelling units on site must be affordable either as rentals or as ownership units, for a fifty-year period beginning at issuance of the first Certificate of Occupancy. If the Below Market Residential (hereinafter "BMR") units are to be provided on site, they are required to reflect the proposed mix of unit

*50 year
restriction*

sizes in the project and to be equal in construction quality and finish materials to the market-rate units. Alternately, pursuant to **Section 315**, the project sponsor may elect to provide "BMR" units off site or pay an in lieu fee which two options must be equivalent to 17 percent of the number of dwelling units in the Project.

- (D) **Public Artwork:** The Project shall include the work(s) of art valued at an amount equal to one percent of the hard construction costs for the Project as determined by the Director of the Department of Building Inspection. The Project Sponsor shall provide to the Director necessary information to make the determination of construction cost hereunder.

The Project Sponsor and the Project artist shall consult with the Planning Department during design development regarding the height, size, type and location of the art. The final art concept and location shall be submitted for review by, and shall be satisfactory to the Director of the (Planning) Department in consultation with the Commission. The Project Sponsor and the Director shall report to the Commission on the progress of the development and design of the art concept no later than six months after the date of this approval.

- (E) **First Source Hiring Program:** The Project Sponsor shall have a First Source Hiring Construction Program approved by the First Source Hiring Administrator, and evidenced in writing.

- (F) **Recordation:** Prior to the issuance of any building permit 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 the 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.

- (G) **Transferable Development Rights (TDR):** The Project shall comply with Code **Section 128(h)**, which states that when the transfer of TDR is necessary for the approval of a Site Permit for a project on a Development Lot, the Zoning Administrator shall impose as a condition of approval of the site permit the requirement that the Superintendent of the Bureau of Building Inspection shall not issue the first addendum to the site permit unless the Zoning Administrator has issued a written certification that the owner of the Development Lot owns the required amount of TDR. Alternately, the Project Sponsor may attempt to procure the necessary additional FAR through the method established in Code Section 124(f).

- (H) Off-street parking provided in conjunction with the residential portion of the Project shall not exceed one space for each two dwelling units (123 total spaces). The remainder of the spaces (381) shall be operated in a "short-term" manner consistent with the provisions of Code Section 155(g) wherein it states "(i)n order to discourage long-term commuter parking, any off-street parking spaces provided for a structure or use other than residential or hotel in a C-3 District, whether classified as an accessory or Conditional Use, which are otherwise available for use for long-term parking by downtown workers must maintain a rate or fee structure for their use such that the rate charge for four hours of parking duration is no more than four times the rate charge for the first hour, and the rate charge for eight or more hours of parking duration is no less than 10 times the rate charge for the first hour. Additionally, no discounted parking rate shall be permitted for weekly, monthly or similar time-specific periods."
- (I) In accordance with the terms of the Memorandum of Understanding entered into by the Applicant and "City Car Share" of San Francisco, agreeing that two "car share" spaces would be reserved in the commercial part of the proposed garage with two more spaces being reserved to be devoted to future expansion of the car-share use (if and when such expansion proves to be warranted).

4. CONDITIONS TO BE MET PRIOR TO THE ISSUANCE OF A TEMPORARY OR PERMANENT CERTIFICATION OF OCCUPANCY

- (A) Public Artwork: The Project Sponsor shall install the work(s) of art generally as described in this Motion and make it available to the public. The Project Sponsor shall place a plaque or cornerstone identifying the Project architect, the artwork creator and the Project completion date in a publicly conspicuous location on the Project site.
- (B) Pedestrian Streetscape Improvements: The Project Sponsor shall complete the required pedestrian streetscape improvements. The Project Sponsor shall be responsible for the upkeep and maintenance of such improvements if they exceed City standards.
- (C) Garbage and Recycling: The Project shall provide containers to collect and store recyclable solid waste and the Project Sponsor shall contract for recycling pickup. Trash compactors shall not occupy or impede the use of required freight loading spaces.
- (D) First Source Hiring Program: The Project Sponsor shall have a First Source Hiring Occupancy Program approved by the First Source Hiring Administrator, and evidenced in writing.

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(E) Street Trees. Pursuant to the standards set forth in **Code Section 143**, and in order to mitigate the six hours per year of new wind hazard exceedance at a single location opposite the Subject Property along the south side of Mission Street pursuant to the standards of **Code Section 149**, the Applicant shall plant and maintain a minimum of one tree of 15-gallon size for each 20 feet of frontage along the Mission Street frontage of the Subject Property (as well as along the Stevenson Street frontage thereof) with any remainder of ten feet or more of frontage requiring an additional tree.

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SAN FRANCISCO
PLANNING COMMISSION
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12/4/2003

ADOPTING FINDINGS RELATING TO THE AUTHORIZATION OF A CONDITIONAL USE PURSUANT TO APPLICATION NO. 2002.0628CEKVX FOR A COMMERCIAL PUBLIC PARKING GARAGE WITH UP TO 381 PARKING SPACES IN A C-3 DISTRICT AND FOR RESIDENTIAL-SERVING OFF-STREET PARKING IN EXCESS OF ACCESSORY AMOUNTS, IN CONJUNCTION WITH THE CONSTRUCTION OF A 23-STORY APARTMENT BUILDING WITH UP TO 246 DWELLING UNITS, IN A C-3-G (DOWNTOWN GENERAL COMMERCIAL) DISTRICT AND 150-S AND 240-S HEIGHT AND BULK DISTRICTS.

Preamble

On November 13, 2003, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing on Conditional Use Application No. 2002.0628CEKVX! at which time the Commission reviewed and discussed the findings prepared for its review by the staff of the Planning Department of the City and County of San Francisco (hereinafter "Department").

It was determined by the San Francisco Planning Department (hereinafter "Department"), in accordance 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 the proposed Project could have no significant impact on the environment and that an environmental impact report would be not required. A Final Negative Declaration (hereinafter "FND") of Environmental Impact (Case No. 2002.0628CEKVX!) was adopted and issued for the project on September 22, 2003. This Commission has reviewed and considered the information contained in this Negative Declaration of Environmental Impact and concurs with the findings made therein. Such concurrence is reflected in the adoption by the Commission, on December 4, 2003, of CEQA findings as described in the FND as Motion No. 16691.

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

The Commission has heard and considered the testimony presented to it 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 authorizes the Conditional Use requested in Application No.

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2002.0628CEKVX! 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, this Commission finds, concludes and determines as follows:

1. The statements in the preamble are accurate and also constitute findings of this Commission.
2. On, March 5, 2003, Alexis Wong, President, AGI, LLC, owner, (hereinafter "Applicant") filed Application No. 2002.0628CEKVX! (hereinafter "Application") requesting authorization of a Conditional Use to construct a parking garage with space for 504 cars in conjunction with the construction of a 23-story apartment building containing up to 246 dwelling units. Within this garage, the Applicant proposes to provide 185 spaces to serve the 246 proposed dwelling units (three spaces for each four units) and the remainder (319 spaces) as short-term public parking. This project is proposed to be constructed on three lots currently used as long-term (all-day) surface parking lots (hereinafter "Project"), at 1160 Mission Street, with additional frontage on Stevenson Street, northwest side between Seventh and Eighth Streets, Lots 37, 38 and 56 in Assessor's Block 3702 (hereinafter "Subject Property"), in a C-3-G (Downtown General Commercial) District, and in 150-S and 240-S Height and Bulk Districts.
3. The Project site is in the Mid-Market area southeasterly of the Civic Center. Adjacent to the northeast is the site of the new GSA Building being built by the Federal government. It will be a "slab" building approximately 280 feet in height and fronted by a large public plaza at the corner of Seventh and Mission Streets. Immediately to the southwest is the site (approximately three acres, a through property from Market to Mission Streets) of the Trinity Properties' proposed 1,410-unit residential redevelopment project (with 1,350 proposed off-street parking spaces) which is proposed for phased construction over the next ten years. At present, this site houses the Trinity Plaza Apartments, 377 residential rental units with approximately 450 off-street parking spaces. The new development would feature five slab buildings (similar in form to the subject Project) from 12 to 24 stories in height. To the north lie two recently-constructed office buildings of 12 and 14 stories. Also to the north, across Stevenson Street, is the site of a proposed new hotel of approximately ten stories and 100 guest rooms. The area also has a number of mixed-use buildings, hotels and theatres. The Civic Center BART station is one half block to the north. The project site is well served by transit of all varieties.
4. The Project site is within the proposed Mid-Market Redevelopment Plan area. This area is proposed for designation as a redevelopment area by the San Francisco Redevelopment Agency. A Draft Mid-Market Redevelopment Plan has been prepared and an Environmental

Impact Report ("EIR") has been completed for this project. The subject proposal is generally consistent with this draft Plan and EIR.

5. The Subject Property is a nearly-rectangular site with 124 feet of frontage on Mission Street, 125.114 feet of frontage along Stevenson Street and a depth of 350.135 feet. It contains 43,640 square feet. This property includes a vacated portion of the former Jessie Street right-of-way. It is currently used as a surface parking lot catering to long-term (all-day) parkers. Building Permit Application No. 2002-12-20-3957-S / R-1 for the construction of the proposed new building is on hold at the Planning Department awaiting the outcome of the Planning Commission's action on the review under Planning Code (hereinafter "Code") **Section 309** (Case No. 2002.0628CEKVX!), the requested Conditional Use authorization (Case No. 2002.0628CEKVX!) for the public parking garage and the provision of residential-serving off-street parking in excess of accessory amounts, and the requested Variance (Case No. 2002.0628CEKVX!) of the Code Section 140 dwelling-unit-exposure standards associated with the Project.
6. The Project site comprises Lots 37, 38 and 56 in Assessor's Block 3702. It is in a C-3-G (Downtown Commercial, General) District and 150-S and 240-S Height and Bulk Districts. The property is also within the San Francisco Redevelopment Agency's proposed Mid-Market Redevelopment Area.
7. In addition to its 246 dwelling units and 504-space garage, the Project would have a small amount of ground-floor retail space (approximately 5,356 square feet) fronting on Mission Street. The garage would have five above-grade levels (no underground levels) and would cover the entire site. The Applicant proposes that 185 of the off-street parking spaces (three spaces for each four dwelling units) be to serve the residential portion of the building. The remainder (319 spaces) is proposed to be short-term parking available to users of businesses in the area. The Director's recommendation is for 123 spaces (one space per two dwelling units) be assigned to the residential portion of the Project and that the remainder (381 spaces) be made available for commercial short-term use. The Applicant has entered into a Memorandum of Understanding ("MOU") with "City Car Share". This MOU agrees that two "car share" spaces would be reserved in the commercial part of the proposed garage with two more spaces being reserved to be devoted to future expansion of the car-share use (if and when such expansion proves to be warranted). The proposed parking structure would be a sort of podium above which the apartment tower would rise. The remainder of the podium surface would be developed with outdoor usable open space (including a swimming pool) for the occupants of the residential units.
8. **Section 151** contains the schedule of required off-street parking spaces. In the C-3 districts, no use other than dwelling units is required to provide off-street parking. In relation to dwelling units in a the C-3-G District, this Section requires one off-street parking space for each four newly-created dwelling units. Consequently, the Project would be required to provide 62 such spaces to serve the 246 dwelling units proposed. The Code permits up to

The proposed Project complies with the criteria of Section 303(c) of the Code in that:

- A. That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.

The development of a short-term parking reservoir in the vicinity is a goal of the Mid-Market Plan that the San Francisco Redevelopment Agency is preparing for the area including the Subject Property. Some 2,000 such spaces have been identified as needed in this area. These spaces would be made available to the users of the surrounding businesses and nighttime entertainment uses. The ready availability of transit of all varieties dictates that commuter (long-term) parking should not be provided nearby. As such, the Project proposal would help to implement the Plan goals as so described. Also, in light of the readily available transit resources in the area, three residential-serving off-street parking spaces for each four dwelling units would provide for the parking needs of residents but would permit some of the residential travel needs to be diverted to means other than the automobile. The remainder of the spaces (319, in this case) be devoted to short-term use only.

- B. That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential developments in the vicinity, with respect to aspects including but not limited to the following:

- (1) The nature of the proposed site, including its size and shape, and the proposed size shape and arrangement of structures;

The Project would not exceed the dwelling-unit density permitted in the subject C-3 District which district permits a density of up to one dwelling unit for each 125 square feet of lot area (or 349 dwelling units on the 43,600-square-foot Subject Property). The Project Sponsor proposes to develop up to 246 dwelling units. All of these units are one- to three-bedroom units, many large enough to house families. The garage proposed would cover the entire site for five levels. This type of "podium" would blend well with the massive Federal building being constructed immediately to the northeast, which building has a similar element alongside the Subject Property. Atop this podium would be elevated outdoor open space to serve the residents of the proposed 246 dwelling units.

Additionally, the Project's proposes a small retail space on the Mission Street frontage of the Subject Property in keeping with the existing commercial nature of that street. This new commercial use would be limited

to the ground floor providing an interesting pedestrian streetscape without impacting the residential nature of the Project.

- (2) 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 Subject Property is well-served by public transit of all varieties. For this reason, and pursuant to the City's "Transit First" policy, the Director has recommended that there be one off-street parking space provided in conjunction with each two dwelling units (123 spaces for 246 units). A traffic study performed as part of the EIR for the Project, determined that Project-generated transit trips would not have an adverse impact on transit. It also determined that demand for off-street parking would exceed the number of spaces proposed to be supplied by the Project. The EIR goes on to state that "extra residential parking demand generated by the proposed (P)roject is not anticipated to create a substantial parking impact." Should there be a need for additional spaces, the parking deficiency could be met at other parking facilities in the project vicinity or by on-street parking. Accordingly, as a compromise, the Commission hereby authorizes three residential-serving off-street parking spaces for each four dwelling units (185 such spaces)

In order not to draw undue commuter automobiles to this part of the City (and thereby interfering with the efficient operation of public transit), the commercial spaces to be provided in the proposed garage would be limited to short-term use only.

The Project proposes two off-street loading spaces in compliance with the standards of Code Section 152.1.

- (3) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The Project does not propose any uses likely to generate offensive emissions, such as noise, glare, dust, or odor. The Project's predominant use is residential with supporting services.

- (4) Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service area, lighting and signs;

The Project would be appropriately landscaped and open space (especially,

a large outdoor podium area (with a swimming pool) would be provided for the use of the residents of the proposed dwelling units. Appropriate off-street loading would be provided. The entrance to the residential-serving parking would be off Stevenson Street, a minor street that carries no transit lines. The proposal calls for a Mission Street commercial parking entrance that would be replaced by a lateral entrance to a shared driveway (should such an arrangement be finalized, in due time) proposed as part of the adjoining "Trinity Properties" residential project. This would permit a small amount of additional retail space to replace the presently-proposed driveway onto Mission Street (and it would enhance pedestrian, traffic and transit flow by reducing the number of entrances / exits to and from Mission Street. Street trees would be installed in compliance with the standards set forth in Code Section 143.

- C. That such use or feature as proposed will comply with the applicable provisions of the Code and will not adversely affect the General Plan as elaborated herein below.

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

OBJECTIVE 2: USE THE TRANSPORTATION SYSTEM AS A MEANS FOR GUIDING DEVELOPMENT AND IMPROVING THE ENVIRONMENT.

- Policy 2.1: Use rapid transit and other transportation improvements in the City and region as the catalyst for desirable development, and coordinate new facilities with public and private development.

The Subject Property is an excellent site for a dense housing development as it has easily-accessible transit of all varieties in the immediate vicinity. This justifies the provision, in conjunction with the residential component of the Project, of three off-street parking space for each four dwelling units.

OBJECTIVE 11: MAINTAIN PUBLIC TRANSIT AS THE PRIMARY MODE OF TRANSPORTATION IN SAN FRANCISCO AND AS A MEANS THROUGH WHICH TO GUIDE FUTURE DEVELOPMENT AND IMPROVE REGIONAL MOBILITY AND AIR QUALITY.

- Policy 11.3: Encourage development that efficiently coordinates land use with transit service, requiring that developers address transit concerns as well as mitigate traffic problems.

As stated herein, the Subject Property is very well served by public transit of all varieties. The commercial parking component of the proposed Project would be limited to short-term parking to serve the needs of the surrounding commercial

establishments as well as the emerging nighttime entertainment uses in the vicinity. The Project would not provide long-term (all-day) parking. Such trips should be diverted to transit. The high-density nature of the surrounding area dictates that off-street parking should be provided for residential use in reduced amounts. Therefore, it is appropriate that there be three such spaces for each four dwelling units in the Project.

OBJECTIVE 24: IMPROVE THE AMBIANCE OF THE PEDESTRIAN ENVIRONMENT.

Policy 24.4: Preserve pedestrian-oriented building frontages.

The Project, as originally proposed, would have a driveway across the Mission Street sidewalk. In the future, this driveway is proposed for diversion to a to-be-built driveway on the adjoining Trinity Properties' site (with the site of the original driveway to be converted to retail space fronting on Mission Street). This eventuality would help to preserve the pedestrian orientation of this portion of Mission Street.

OBJECTIVE 28: PROVIDE SECURE AND CONVENIENT PARKING FACILITIES FOR BICYCLES.

Policy 28.1: Provide secure bicycle parking in new governmental, commercial, and residential developments.

The proposed new garage would have racks for the parking of 25 bicycles and designated spaces for the parking of 20 motorcycles.

OBJECTIVE 30: ENSURE THAT THE PROVISION OF NEW OR ENLARGED PARKING FACILITIES DOES NOT ADVERSELY AFFECT THE LIVABILITY AND DESIRABILITY OF THE CITY AND ITS VARIOUS NEIGHBORHOODS.

Policy 30.1: Assure that new or enlarged parking facilities meet need, locational and design criteria.

The proposed parking for the commercial component of the Project is designed to minimize traffic conflicts and provide adequate parking for customers and clients of nearby businesses as well as entertainment uses. There is a single driveway proposed for access to and from Mission Street. This driveway is intended to be a temporary solution to the access needs of the commercial parking facility until such time as a shared driveway can be constructed on the adjoining Trinity Properties site. The intention is that, at that future time, the commercial parking in the Project would be accessed off that driveway (with the temporary Mission Street driveway being closed and replaced by retail space).

The proposed Mid-Market Redevelopment Plan calls for the provision of reservoirs of short-term parking in the vicinity of the Subject Property for the purpose of serving the recurring needs of the businesses and entertainment uses in the area. The

proposed commercial parking proposal has the support of the Mid-Market PAC as well as the staff of the San Francisco Redevelopment Agency.

OBJECTIVE 34: RELATE THE AMOUNT OF PARKING IN RESIDENTIAL AREAS AND NEIGHBORHOOD COMMERCIAL DISTRICTS TO THE CAPACITY OF THE CITY'S STREET SYSTEM AND LAND USE PATTERNS.

Policy 34.1: Regulate off-street parking in new housing so as to guarantee needed spaces without requiring excesses and to encourage low auto ownership in neighborhoods that are well served by transit and are convenient to neighborhood shopping.

Proposed parking for the residential component of the Project would be in a ratio of three off-street spaces for each four dwelling units. However, with the likelihood of reduced rates of car ownership due to the high-density, nature of the proposed building and of the surrounding transit-rich area, parking, as proposed, would be sufficient to serve the expected need. The developer has entered into a Memorandum of Understanding (hereinafter "MOU") with City Car Share to provide two "car share" parking spaces and to reserve two more such spaces for future growth of that use.

The **Downtown Area Plan** contains the following relevant objectives and policies:

Moving About -- Moving to and from Downtown

OBJECTIVE 18: ENSURE THAT THE NUMBER OF AUTO TRIPS TO AND FROM DOWNTOWN WILL NOT BE DETRIMENTAL TO THE GROWTH OR AMENITY OF DOWNTOWN.

Policy 2: The Project will further provide incentives for the use of transit, carpools, and vanpools, to reduce the need for new or expanded automobile parking facilities.

The commercial parking to be provided as part of the Project is to be all short-term. Redevelopment Agency. The residential-serving parking, at three spaces per four dwelling units, is an incentive the use of transit thereby reducing the need for its provision as a reservoir of parking for neighborhood uses as been supported by the Mid-Market Plan Area PAC as well as the staff of the San Francisco parking facilities. The Project site is in an area that is well-served by public transit.

Moving Around Downtown

OBJECTIVE 20: PROVIDE FOR THE EFFICIENT, CONVENIENT AND COMFORTABLE MOVEMENT OF PEOPLE AND GOODS, TRANSIT VEHICLES AND AUTOMOBILES WITHIN THE DOWNTOWN.

The Project Site is located on a transit preferential street and a pedestrian oriented street or alley. The minimal amount of loading and delivery activities for the Project

would not cause any conflict between loading activities and transit or pedestrian movements. As stated herein, All commercial parking would be short-term and future plans call for closing the Mission Street driveway (if feasible) further enhancing the flow of traffic as well as pedestrians and transit vehicles.

OBJECTIVE 21: IMPROVE FACILITIES FOR FREIGHT DELIVERIES AND BUSINESS SERVICES.

Policy 2: Discourage access to off-street freight loading and service vehicle facilities from transit preferential streets, or pedestrian oriented streets and alleys.

The Project Site is located on a transit preferential street (Mission Street). As such, the freight loading for the Project (primarily the move-in and move-out needs of the up to 246 dwelling units therein) will take place off Stevenson Street. The minimal amount of loading and delivery activities for the Project would not cause any conflict between loading activities and transit or pedestrian movements.

OBJECTIVE 22: IMPROVE THE DOWNTOWN PEDESTRIAN CIRCULATION SYSTEM, ESPECIALLY WITHIN THE CORE, TO PROVIDE FOR EFFICIENT, COMFORTABLE, AND SAFE MOVEMENT.

Policy 1: Provide sufficient pedestrian movement space.

Policy 5: Improve the ambience of the pedestrian environment.

The Project Site allows for sufficient pedestrian movement. The Project involves the construction of a new building including off-street parking and 246 dwelling units. The new activity resulting from these changes would not have a negative effect on the ambience of the pedestrian environment.

Section 101.1(b)(1-8) establishes Eight Priority Planning Policies and requires review of permits for consistency with said policies. They are included in the preamble to the Master Plan and are the basis upon which inconsistencies in the General Plan are resolved:

- (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 proposed project would not remove or otherwise negatively impact any existing neighborhood-serving retail uses. The project would enhance neighborhood-serving retail uses because it would provide approximately 6,000 square feet of ground-floor retail use fronting on Mission Street; more retail space than currently exists at the site. The short-term parking proposed as part of the project would enhance other retail and neighborhood-serving commercial and entertainment uses in the vicinity. These uses would create employment opportunities. The project would add new residents, visitors and employees to the neighborhood, which may strengthen nearby neighborhood retail uses by

broadening the consumer base and the demand for such retail services.

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

The proposed project design is articulated in such a way as to fit in well with the evolving neighborhood character of large slab buildings set in large open areas. The Project would add economic diversity by providing some retail space.

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

The project would enhance the City's supply of housing by adding up to 246 new dwelling units in an emerging mixed-use area, with either 12 percent (if on site – 30 units) or 17 percent (if off site – 43 units), or a mixture thereof) would be affordable for either rental or sale per terms of the City's Inclusionary Affordable Housing Program. Alternately, the Applicant may select to pay an "in lieu" fee.

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

Traffic generated by the project would not impede MUNI transit service or local streets or neighborhood parking. The Project site is well served by transit. The proposed residential parking would be accessed from Stevenson Street. The commercial parking would be accessed from Mission Street, through a single driveway, with the proviso that the project sponsor work with the project sponsors of the adjoining Trinity Properties project to effect a sharing of the proposed driveway on that property. Ostensibly, at that future time, the Mission-Street driveway to the subject project would be closed and replaced with retail space. In this manner, the goal of reduced or eliminated driveway entrances on the downtown portion of Mission Street would be enhanced. The project would provide parking greater than Code-complying off-street parking spaces. By including more parking than is required, and limiting that parking to short-term, the Project would help implement the Mid-Market plan goals, one of which is to provide short-term parking in an organized manner in the Plan area (against which businesses in the area could draw rather than providing parking on their own sites).

- (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 would not remove any industrial or service uses, as no such uses are currently operating on the site. The project would generate employment opportunities available to a diverse socio-economic range of city residents in its construction phase and, later, in its retail and parking components.

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

The project will be constructed according to current local building codes to insure a high level of seismic safety.

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

The subject site is a parking lot containing no structures. No landmarks or historic buildings would be affected by the project.

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

The project would have no impact on public parks, open space, or vistas. It was analyzed for its potential for shadow impacts on the City Hall Plaza and was found not to create any.

In summary, the proposed Project is consistent with and would promote the general and specific purposes of the Code provided under **Section 101.1(b)** in that, as designed, the Project would provide needed market rate and affordable housing and it would contribute to the character and stability of the neighborhood.

16. The Commission, after carefully balancing the competing public and private interests, hereby finds that authorization of the requested Conditional Uses would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearing, and all other written materials submitted by all parties, the Commission hereby APPROVES Conditional Use Application No. 2002.0628CEKVX! (for both a downtown commercial parking garage and for residential-serving off-street parking in excess of accessory amounts) subject to the following conditions attached hereto as Exhibit A which is incorporated herein by reference as though fully set forth.

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. 16693. 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 94012.

PLANNING COMMISSION
December 4, 2003

Case No. 2002.0628CEKVX!
1160 Mission Street
Assessor's Block 3702
Lots 37, 38 and 56
Motion No. 16693
Page 16

I hereby certify that the foregoing Motion was adopted by the Planning Commission on December 4, 2003.

Linda Avery
Commission Secretary

AYES: Commissioners Antonini, Hughes, S. Lee and W. Lee
NAYES: Commissioners Bradford Bell and Feldstein
ABSENT: Commissioner Boyd
ADOPTED: December 4, 2003

EXHIBIT A

CONDITIONS OF APPROVAL

- (1) The authorization herein is of a Conditional Use for a new mixed-use building containing up to 246 dwelling units and up to 504 off-street parking spaces representing residential-serving parking in excess of accessory amounts (Section 204.5 of the Code) and a public parking garage for passenger vehicles in a C-3 District (Code Section 223(m)). 185 of these parking spaces are to serve the residential component of the building (being a ratio of three parking spaces for each four dwelling units), and the remaining 319 spaces are to be used in a short-term configuration per standards of Code Section 155(g). As such, in order to discourage long-term commuter parking, any off-street parking spaces provided for a structure or use other than residential or hotel in a C-3 District, whether classified as an accessory or Conditional Use, which are otherwise available for use for long-term parking by downtown workers must maintain a rate or fee structure for their use such that the rate charge for four hours of parking duration is no more than four times the rate charge for the first hour, and the rate charge for eight or more hours of parking duration is no less than 10 times the rate charge for the first hour. Additionally, no discounted parking rate shall be permitted for weekly, monthly or similar time-specific periods.

Final plans shall be reviewed and approved by the Staff of the Department prior to the issuance of the building permit.

- (2) Construction of the herein-authorized Project shall commence within three years of the date of this action and shall be, thenceforth pursued diligently to completion or the said authorization shall become null and void.

Environmental

- (3) The mitigation measures identified in the Final Negative Declaration (Case No. 2002.0628CEKVXI) adopted and issued (as amended) for the Project shall be required of the Project.

Recordation

- (4) The Applicant shall cause this "Exhibit A" to be recorded against the title of the Subject Property as a Notice of Special Restrictions under the City Planning Code.

Design

- (5) The Project architect shall continue to work with the Planning Department to further develop and refine the design with special attention paid to the eventual replacement of the Mission Street driveway to the Project's parking garage (as outlined in the text of the Motion), commercial

spaces and garage entrances cornice lines, windows, trim, and treatment of exposed exterior walls. The final design shall be reviewed and approved by the Planning Department prior to approval of any Building Permit Applications.

- (6) Decisions on final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval.

Landscaping

- (7) A final landscaping plan, which plan shall include the installation of street trees around of the Project site, shall be developed and approved by the staff of the Planning Department prior to the issuance of any Building Permit(s) for the Project.

Performance

- (8) The Applicant shall appoint a person or persons to act as a neighborhood liaison. The function of said liaison shall be to consult with residents of the Project and neighbors in the surrounding neighborhood to resolve problems or complaints arising from operation of the Project. The Applicant shall report the name and telephone number of said community liaison to the Zoning Administrator for reference.
- (9) Should implementation of this Project result in complaints from interested property owners, residents or commercial lessees, which complaints are not resolved by the Applicant, (and/or the appointed community liaison for the Project), and are subsequently reported to the Zoning Administrator and found to be in violation of the Code and/or the specific conditions of approval for the Project as set forth in this Exhibit A, pursuant to **Section 174** of the Code, the Zoning Administrator shall take appropriate violation abatement action and the Commission, after holding a public hearing on the matter in accordance with the hearing notification and conduct procedures as set forth in **Section 174**, pursuant to **Section 306.3** and **306.4** of the Code, may revoke the subject Conditional Use authorization.

SAN FRANCISCO
PLANNING COMMISSION
MOTION NO. 16996

1160 Mission
SE
4/28/2005

ADOPTING FINDINGS RELATING TO THE AUTHORIZATION OF A CONDITIONAL USE PURSUANT TO APPLICATION NO. 2005.0096C FOR ASSIGNMENT OF ADDITIONAL SQUARE FOOTAGE OF FLOOR AREA ABOVE THE APPLICABLE BASE FLOOR AREA RATIO OF 6.0 TO 1 (PLANNING CODE SECTION 124(f)) EQUAL TO THAT OF THE UP TO 30 AFFORDABLE DWELLING UNITS REQUIRED AS PART OF AN APPROVED NEW MIXED-USE BUILDING CONTAINING UP TO 246 DWELLING UNITS, SHORT-TERM PARKING AND GROUND-FLOOR RETAIL USE (hereinafter "Project") IN A C-3-G (DOWNTOWN GENERAL COMMERCIAL) DISTRICT AND 150-S AND 240-S HEIGHT AND BULK DISTRICTS.

Preamble

On April 28, 2005, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing on Conditional Use Application No. 2005.0096C at which time the Commission reviewed and discussed the findings prepared for its review by the staff of the Planning Department of the City and County of San Francisco (hereinafter "Department").

It was determined by the Department, in accordance 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 the proposed construction of an up to 246-unit residential building and an associated parking garage could have no significant impact on the environment and that an environmental impact report would be not required. A Final Mitigated Negative Declaration (hereinafter "FMND") of Environmental Impact (Case No. 2002.0628CEKVX!) was adopted and issued for the project on September 22, 2003. This Commission has reviewed and considered the information contained in this FMND of Environmental Impact and concurs with the findings made therein. Such concurrence is reflected in the adoption by the Commission, on December 4, 2003, of CEQA findings as described in the FMND as Motion No. 16691.

The subject Project (Case No. 2005.0096C) represents no physical change to the original project that was the subject of said FMND and no change to the findings or conclusion contained in the FMND. The determinations made in this Motion No. 16996 do not significantly change said original project or the information contained in the FMND. The Project as approved is consistent with the project as described in the FMND and would not result in any significant impacts not identified in the FMND nor cause significant effects identified in the FMND to be substantially more severe.

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

The Commission has heard and considered the testimony presented to it 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 authorizes the Conditional Use requested in Application No. 2005.0096C 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, this Commission finds, concludes and determines as follows:

1. The statements in the preamble are accurate and also constitute findings of this Commission.
2. On, March 5, 2003, Alexis Wong, President, AGI , LLC, owner, (hereinafter "Applicant") filed Application No. 2005.0096C (hereinafter "Application") requesting authorization of a Conditional Use, pursuant to Planning Code (hereinafter "Code") **Section 124(f)**, to assign additional building square footage, exceeding the applicable Floor Area Ratio (hereinafter "FAR") of 6.0 to 1, equal to that of the up to 30 required affordable dwelling units in an approved up to 246-unit residential building, thereby reducing the amount of building floor area that the developer would be required to purchase in the form of Transferable Development Rights (hereinafter "TDR") (hereinafter "Project"), at 1160 Mission Street, with additional frontage on Stevenson Street, northwest side between Seventh and Eighth Streets, Lots 37, 38 and 56 in Assessor's Block 3702 (hereinafter "Subject Property"), in a C-3-G (Downtown General Commercial) District, and in 150-S and 240-S Height and Bulk Districts.
3. The Project site is in the Mid-Market area southeasterly of the Civic Center. Adjacent to the northeast is the site of the new GSA Building being built by the Federal government. It will be a "slab" building approximately 280 feet in height and fronted by a large public plaza at the corner of Seventh and Mission Streets. Immediately to the southwest is the site (approximately three acres, a through property from Market to Mission Streets) of the Trinity Properties' proposed 1,410- to 2,200-unit residential redevelopment project (with approximately 1,350 proposed off-street parking spaces) which is proposed for phased construction over the next ten years. At present, this site houses the Trinity Plaza Apartments, 377 residential rental units with approximately 450 off-street parking spaces. Also to the north, across Stevenson Street, is the site of a proposed new hotel of approximately ten stories and 100 guest rooms. The area also has a number of mixed-use buildings, hotels and theatres. The Civic Center BART station is one half block to the north. The project site is well served by transit of all varieties.
4. The Project site is within the proposed Mid-Market Redevelopment Plan area of the San Francisco Redevelopment Agency (hereinafter "SFRA"). This area was recently initiated by the Commission as a Special Use District (hereinafter "SUD") in which building square footage devoted to affordable housing would be exempt from FAR calculations, as of right,

rather than requiring Conditional Use authorization under the present Code. A Mid-Market Redevelopment Plan has been prepared and an Environmental Impact Report ("EIR") has been completed for this project. The subject proposal is generally consistent with this Plan and EIR as well as with the provisions said SUD, and has the endorsement of the Mid-Market PAC.

5. The Subject Property is a nearly-rectangular site with 124 feet of frontage on Mission Street, 125.114 feet of frontage along Stevenson Street and a depth of 350.135 feet. It contains 43,640 square feet. This property includes a vacated portion of the former Jessie Street right-of-way. It is currently used as a surface parking lot catering to long-term (all-day) parkers.
6. The Commission, on December 4, 2003, The Commission adopted Motion No. 16692 approving with conditions Application No. 2002.0628CEKVX! for the aforementioned up to 246-unit residential and parking building (Code **Section 309**) and Application No. 2002.0628CEKVX! for a requested Conditional Use authorization for a public parking garage and the provision of residential-serving off-street parking in excess of accessory amounts. The Zoning Administrator granted the Variance requested in Application No. 2002.0628CEKVX! of the Code **Section 140** dwelling-unit-exposure standards associated with that project. Pursuant to the conditions appended to said Motion No. 16692, the Applicant has elected to include up to 30 inclusionary affordable dwelling units within the proposed new up to 246-unit residential building. The floor area associated with these up to 30 affordable dwelling units (approximately 29,159 square feet) is the subject of the Conditional Use Application No. 2005.0096C.
7. Building Permit Application No. 2002-12-20-3957-S / R-1 for the construction of the proposed new building is on hold at the Planning Department awaiting the outcome of the Planning Commission's action on the current case (Application No. 2005.0096C).
8. **Section 124(f)** of the Code permits additional square footage by Conditional Use authorization, above the base FAR limits in C-3-G and C-3-S districts, for construction of dwellings on the site of the building affordable for 20 years to households whose incomes are within 150% of the city's median income. Code **Section 315** requires that a certain percentage of all units constructed on a project site be affordable for fifty years to qualifying households earning 100% of the city's median income for ownership projects, and 60% of the city's median income for rental projects. In C-3-G and C-3-S districts, units required under **Section 315** technically qualify for the floor area exemption provided under **Section 124(f)**, because they meet the minimum affordability requirement of 150% of the city's median income. Thus, floor space devoted to Code **Section 315**-required inclusionary affordable housing qualifies as the space to which Code **Section 124(f)** refers when it gives the Commission the option to assign additional FAR to C-3-G and C-3-S District projects in exchange for residential "affordability" as defined therein.
9. Pursuant to **Section 303**, the Commission may authorize a Conditional Use only after holding a duly noticed public hearing and making findings that the proposed use will provide a development that is necessary or desirable for and compatible with the neighborhood or the community, that such use will not be detrimental to the health, safety, convenience or

general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity and that such use will comply with the applicable provisions of the Code, and will not adversely affect the General Plan.

The proposed Project complies with the criteria of Section 303(c) of the Code in that:

A. That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.

The Project would represent an assignment of an additional FAR of approximately 0.69 to 1 over the Code-specified 6.0 to 1 for the subject site. The total proposed development represents an FAR of approximately 7.60 to 1. The development of affordable housing is a goal of the Mid-Market Plan that the San Francisco Redevelopment Agency is preparing for the area including the Subject Property. Pursuant to that Plan, the area within the proposed Mid-Market SUD (which area includes the Subject Property) would exempt building square-footage devoted to affordable housing from FAR calculations therein. Such an assignment of additional floor area above that provided for in the applicable base FAR would encourage housing production and would permit, in this case, more residential space to be built than would be provided for otherwise. In addition, the recently-initiated Mid-Market Special Use District ["SUD"] (which includes the subject property) seeks to encourage the production of housing, and especially affordable housing in this part of the City. This SUD would provide for space devoted to affordable housing being exempt from FAR calculations. Approval of the subject Conditional Use application would have the effect both of encouraging the production of affordable housing and of exempting such floor area from FAR calculations as sought by the recently-initiated SUD.

B. That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential developments in the vicinity, with respect to aspects including but not limited to the following:

- (1) The nature of the proposed site, including its size and shape, and the proposed size shape and arrangement of structures;
The Project would not exceed the dwelling-unit density permitted in the subject C-3 District which district permits a density of up to one dwelling unit for each 125 square feet of lot area (or 349 dwelling units on the 43,600-square-foot Subject Property). The Project Sponsor proposes to develop up to 246 dwelling units. With the exception of six studios, all of these units are one- to three-bedroom units, many large enough to house families. Its form blends well with the emerging character of development in the nearby area. The Project would have no effect on this form in that the changes proposed are limited to the assignment of certain floor area to an FAR bonus with no change requested to the previously-approved structure.
- (2) 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 Subject Property is well served by public transit of all varieties. No changes to the structure or potential traffic or parking patterns would accrue as a result of the Project. For this reason, the Project would have no effect on this criterion.

- (3) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The Project does not propose any uses that to generate offensive emissions, such as noise, glare, dust, or odor. It would have no effect on the physical nature of the already-approved structure on the Subject Property.

- (4) Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service area, lighting and signs;

The Project would be appropriately landscaped and open space (especially, a large outdoor podium area (with a swimming pool) would be provided for the use of the residents of the proposed dwelling units. Appropriate off-street loading and parking would be provided. These factors would not be affected by the Project in that it is merely a re-assignment of a small portion of the approved floor area as described herein. Therefore, the Project would have no effect on this criterion.

- C. That such use or feature as proposed will comply with the applicable provisions of the Code and will not adversely affect the General Plan as elaborated herein below.

The **Residence Element** contains the following relevant objectives and policies:

OBJECTIVE 1: TO PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT GROWTH.

Policy 4: Locate infill housing on appropriate sites in established neighborhoods.

- *The Project site is within an emerging residential intensification area as dictated by the SFRA's Mid-Market Plan. This area is ripe for and appropriate as a location for new housing. The Project would include up to 30 on-site affordable dwelling units pursuant to the inclusionary housing provisions of Code Section 315, et seq.*

OBJECTIVE 2: TO INCREASE THE SUPPLY OF HOUSING WITHOUT OVER CROWDING OR ADVERSELY AFFECTING THE PREVAILING CHARACTER OF EXISTING NEIGHBORHOODS.

Policy 2: 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 permanently affordable to lower income households.

- *The surface parking lots which constitute the current use of the Subject Property represent an underutilization of this C-3 site. The proposed building would place needed housing, both "affordable" and "market-rate", near the central business district. The Project would make it more feasible to provide the large number of dwelling units proposed in this emerging residential area.*

OBJECTIVE 7: TO INCREASE LAND AND IMPROVE BUILDING RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING.

Policy 2: Include affordable units in larger housing projects.

- *The proposed Project would help to implement the proposed FAR exemption for building square-footage devoted to affordable housing as set forth in the recent legislation initiating the Mid-Market SUD. Such a provision encourages the production of permanently-affordable housing and, ultimately, a potential for more total housing overall. It would place needed housing near the central business district some of which would be affordable pursuant to the provisions of Code Section 315, et seq.*

OBJECTIVE 12: TO PROVIDE A QUALITY LIVING ENVIRONMENT.

Policy 1: Assure housing is provided with adequate public improvements, services and amenities.

Policy 2: Allow appropriate neighborhood-serving commercial activities in residential areas.

Policy 4: Promote construction of well-designed housing that conserves existing neighborhood character.

- *The Project is well designed and would be an attractive addition to the emerging Mid-Market neighborhood. It would include a small amount of retail space as well as a reservoir of short-term parking to serve nearby uses thereby enhancing the nearby nighttime entertainment district. Public services, improvements and amenities (including all varieties of public transit) abound in the vicinity.*

OBJECTIVE 13: TO PROVIDE MAXIMUM HOUSING CHOICE.

Policy 1: Prevent housing discrimination based on age, race, religion, sex, sexual preference, marital status, ancestry, national origin, color, disability, health (AIDS/ARC), source or amount of income, citizenship or employment status as a family day care provider.

Policy 2: Promote adaptability and maximum accessibility of residential dwellings for disabled occupants.

- *The Project would be handicapped accessible per the City's new-construction building standards. The Project would comply with all applicable City laws in regard to its employment and marketing practices.*

Section 101.1(b)(1-8) establishes Eight Priority Planning Policies and requires review of permits for consistency with said policies. They are included in the preamble to the Master Plan and are the basis upon which inconsistencies in the General Plan are resolved:

- (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 proposed project would not remove or otherwise negatively impact any existing neighborhood-serving retail uses. The project would enhance neighborhood-serving retail uses because it would provide approximately 6,000 square feet of ground-floor retail use fronting on Mission Street; 100 percent more retail space than currently exists at the site. The short-term parking proposed as part of the project would enhance other retail and neighborhood-serving commercial and entertainment uses in the vicinity. These uses would create employment opportunities. The project would add new residents, visitors and employees to the neighborhood, which may strengthen nearby neighborhood retail uses by broadening the consumer base and the demand for such retail services.

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

The proposed project design is articulated in such a way as to fit in well with the evolving neighborhood character of large slab buildings set in large open areas. The Project would add economic diversity by providing some retail space.

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

The project would enhance the City's supply of housing by adding up to 246 new dwelling units in an emerging mixed-use area, with either 12 percent of them (up to 30 units) affordable per provisions of Code Section 315, et seq.

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

Traffic generated by the project would not impede MUNI transit service or local streets or neighborhood parking. The Project site is well served by transit.

- (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 would not remove any industrial or service uses, as no such uses are currently operating on the site. The project would generate employment opportunities available to a diverse socio-economic range of city residents in its construction phase and, later, in its retail and parking components.

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

The project will be constructed according to current local building codes to insure a high level of seismic safety.

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

The subject site is a parking lot containing no structures. No landmarks or historic buildings would be affected by the project.

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

The project would have no impact on public parks, open space, or vistas. It was analyzed for its potential for shadow impacts on the City Hall Plaza and was found not to create any.

In summary, the proposed Project is consistent with and would promote the general and specific purposes of the Code provided under **Section 101.1(b)** in that, as designed, the Project would provide needed market rate and affordable housing and it would contribute to the character and stability of the neighborhood.

9. The Commission, after carefully balancing the competing public and private interests, hereby finds that authorization of the requested Conditional Uses would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearing, and all other written materials submitted by all parties, the Commission hereby APPROVES Conditional Use Application No. 2005.0096C subject to the following conditions attached hereto as Exhibit A which is incorporated herein by reference as though fully set forth.

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. 16693. 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 94012.

I hereby certify that the foregoing Motion was adopted by the Planning Commission on April 28, 2005.

Linda Avery
Commission Secretary

AYES: Commissioners Alexander, Antonini, Hughes, S. Lee, W. Lee, and Olague

NAYES: None

ABSENT: Commissioner Bradford Bell

ADOPTED: April 28, 2005

EXHIBIT A**CONDITIONS OF APPROVAL****General**

- (1) The authorization herein is of a Conditional Use, pursuant to Planning Code **Section 124(f)**, for assignment of additional square footage of floor area above the applicable floor area ratio (FAR) of 6.0 to 1 equal to that of the up to 30 affordable dwelling units required as part of the approved new up to 246-unit residential building (Case No. 2002.0628CEKVX!) generally as described in Application No. 2005.0096C and in the text of Planning Commission Motion No. 16996. Said additional floor area is approximately 29,159 square feet and equal to the floor area devoted to the up to 30 affordable dwelling units included as part of the above-mentioned approved residential project. Said floor area represents an FAR of approximately 0.69 to 1. Final plans shall be reviewed and approved by the Staff of the Department prior to the issuance of the building permit.
- (2) All Conditions of Approval required by the previous approval (Case No. 2002.0628EKVX!) given by the Planning Commission in Motion No. 16693 shall still apply to this project approval.
- (3) A site permit or building permit for the herein-authorized Project shall be obtained within three years of the date of this action and construction, once commenced, shall be thenceforth pursued diligently to completion or the said authorization shall become null and void.

Environmental

- (4) The mitigation measures identified in the Final Mitigated Negative Declaration (Case No. 2002.0628CEKVX!) adopted and issued (as amended) for the Project shall be required of the Project.

Recordation

- (5) The Applicant shall cause this "Exhibit A" to be recorded against the title of the Subject Property as a Notice of Special Restrictions under the City Planning Code.

Performance

- (6) The Applicant shall appoint a person or persons to act as a neighborhood liaison. The function of said liaison shall be to consult with residents of the Project and neighbors in the surrounding neighborhood to resolve problems or complaints arising from operation of the Project. The Applicant shall report the name and telephone number of said community liaison to the Zoning Administrator for reference.

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

RECORDING REQUESTED BY:
Nell H. Sekhri

And When Recorded Mail To:

Nell H. Sekhri
Gibson, Dunn & Crutcher LLP
One Montgomery Street
San Francisco, California 94101

San Francisco Assessor-Recorder
Phil Ting, Assessor-Recorder
DOC- 2006-1232677-00

Check Number 2333
Monday, AUG 21, 2006 14:50:09
Tel Pd \$76.00 Nbr-0003055589
REEL J208 IMAGE 0595
ogi/AB/1-24

103

I, 1160 Mission Associates, LLC, the owner(s) of that certain real property situated in the City and County of San Francisco, State of California, more particularly described on the attached sheet marked Exhibit A.

BEING ASSESSOR'S BLOCK: 3702 LOTS: 037, 038 and 056

COMMONLY KNOWN AS: 1160 Mission Street,

hereby give notice that there are special restrictions on the use of said property under Part II, Chapter II of the San Francisco Municipal Code (Planning Code).

Said restrictions consist of conditions, labeled Exhibit A, attached to Planning Commission Motions No. 16692, 16693 and 16996 (Cases No. 2002.0628CEKVXI, 2002.0628CEKVXI and 2005.0096C respectively), and conditions of granting of Variance Case No. 2002.0628CEKVXI; record of the approval by the Planning Commission and the Zoning Administrator of the City and County of San Francisco.

Said Motions No. 16692, 16693 and 16996 adopted findings relating to the findings of consistency with Section 309 of the Planning Code and the authorization of two Conditional Uses under Planning Code Section 303 (Case No 2002.0628CEKVXI) for the construction of a new mixed-use building containing approximately 242 dwelling units, four floors of parking and ground-floor retail space, in general conformity with plans on file with the Applications and labeled Exhibit B.

The restrictions and conditions of which notice is hereby given are:

CONDITIONS OF APPROVAL

**Motion No. 16692-2002.0628CEKVX
(Adopted by Planning Commission on December 4, 2003)**

1. COMPLIANCE WITH OTHER REQUIREMENTS

- (A) This decision conveys no right to construct. The Project Sponsor must obtain a building permit and satisfy all the conditions thereof, including mitigation measures addressing environmental impacts. The conditions set forth below are additional conditions required in connection with the Project. If these conditions overlap with any other requirement imposed on the Project, the more restrictive or protective condition or requirement, as determined by the Zoning Administrator, shall apply. (The requirement that the more restrictive or



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protective condition or requirement shall supersede less stringent or protective conditions only applies to the conditions of approval adopted pursuant to Motion No. 16692-2002.0628CEKVX).

2. GENERAL CONDITIONS

(A) Mitigation Measures

Mitigation Measures identified in the Project's Final Negative Declaration (Case No. 2003.0628CEKVX) shall be conditions of approval and are accepted by the Project Sponsor or its successor in interest, as follows:

Mitigation Measure 1: Construction Air Quality

The Project Sponsor shall require the contractor(s) to spray the site with water during demolition, excavation, and construction activities; spray unpaved construction areas with water at least twice per day; cover stockpiles of soil, sand, and other material; cover trucks hauling debris, soils, sand or other such material; and sweep surrounding streets during demolition, excavation, and construction at least once per day to reduce particulate emissions. Ordinance 175-91, passed by the Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, the Project Sponsor would require that the contractor(s) obtain reclaimed water from the Clean Water Program for this purpose. The Project Sponsors would require the project contractor(s) to maintain and operate construction equipment so as to minimize exhaust emissions of particulates and other pollutants, by such means as a prohibition on idling motors when equipment is not in use or when trucks are waiting in queues, and implementation of specific maintenance programs to reduce emissions for equipment that would be in frequent use for much of the construction period.

Mitigation Measure 2: Hazardous Materials

According to a site management plan prepared by Baseline Environmental¹ and reviewed and approved by the San Francisco Department of Public Health,² the following measures should be implemented to reduce exposure to hazardous materials.

Construction Health and Safety Provisions. Analytical data from previous investigations at the project site should be provided to all contractors at the site, so that the information can be incorporated into their worker health and safety and hazard communications plans. Although health risk assessment data (see Health Effects of Hazardous Materials in Soil, above) indicate that construction workers would not be significantly affected by lead concentrations in project site soils, health and safety provisions have been recommended to minimize exposure of workers and the nearby public to lead in soil. Prior to installation of the concrete foundation, all construction activities that would disturb the surface or shallow subsurface soils should be conducted in accordance with a site-specific health and safety plan (HSP) prepared by a certified industrial hygienist. The HSP should include measures to minimize inhalation and accidental ingestion of affected soils, dust control measures, and action levels for air monitoring. Particulate air monitoring should be conducted in work areas and at the site perimeter during all construction activities disturbing site soils. Should the air monitoring indicate conditions where lead may be encountered in excess of identified action levels, construction work should be halted until dust control measures reduce potential risks to construction workers and the public to acceptable levels.

- Watering all active construction areas at least twice daily.
- Covering all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet freeboard.



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- Cleaning of all heavy equipment and truck tires prior to leaving the site.
- Paving, applying water three times daily, or applying non-toxic soil stabilizers on all unpaved and staging areas at construction sites.
- Sweeping daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites.
- Sweeping street daily (with water sweeps) if visible soil material is carried onto adjacent public streets.
- Optional control measures that are encouraged by BAAQMD may also apply at construction sites that are located near sensitive receptors (e.g., day care centers, churches, community centers) which, for any other reason, may warrant additional emission reductions.
- The backfill for three 15-gallon trees shall be clean fill and clean fill shall be separated from contaminated soil.
- Should contamination remain on the site, a deed notification with SMP and a cap management plan shall be recorded.
- Upon the completion of the SMP a final report shall be submitted.
- Two weeks prior to the commencement of work a site-specific health and safety plan (HSP) shall be submitted.

Soil Management and Disposal Provisions. All soil stockpiles containing shallow fill materials at the project site should be covered with visquane or similar physical barrier to prevent wind dispersal of potentially lead-affected soils, either until reuse on-site or off-site disposal. All soils not reused on-site that will require off-site disposal should be characterized. At a minimum, four soil samples should be collected from each 1,000 cubic yards of soil proposed to be disposed (or as required by the disposal facility). Soil samples should be analyzed for total and soluble lead by a State-certified laboratory. Analytical results should be used to determine appropriate disposal of excess soils in accordance with State and Federal laws and regulations. Disposal facilities may also require additional sampling or analyses for profiling purposes.

Post Construction Provisions. Following construction of the project, contact with lead-affected soils would be limited to infrequent maintenance of underground utilities by custodial staff and utility workers. Future residents and the general public would not be expected to come into contact with lead-affected soils under any circumstances. As the concentrations of lead in soils would not pose a health risk to workers (see Health Effects of Hazardous Materials in Soil, above), no post-construction provisions would be necessary to protect human health.

Mitigation Measure 3: Archaeological Resources

Based on a reasonable presumption 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 testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). 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



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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 Testing Program. The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA.

At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. If the ERO 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) A 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.

Archeological Monitoring Program. 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 archeological consultant 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 risk these activities pose to potential 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 archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until



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- the ERO has, in consultation with project 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 activities and 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 make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO.

Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.

Archeological Data Recovery Program. The archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. 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.



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- **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 and 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. This shall include 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, custodianship, curation, 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 significance 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 final report.

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 in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.

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

A) Design

- (1) Highly reflective spandrel glass, mirror glass, or deeply tinted glass shall not be permitted. Only clear glass shall be used at pedestrian levels.
- (2) The Project Sponsor and the Project architect shall continue to work on design development with the Department.
- (3) Space shall be included for antennae in the building's design to avoid unattractive appendages.
- (4) The building design shall provide adequate space designated for trash compactors, trash loading, and recycling. These areas shall be indicated on the building plans.
- (5) Final architectural and decorative detailing, materials, glazing, color and texture of exterior finishes shall be submitted for review



NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

by, and shall be satisfactory to the Director of the Department. The Project architect shall submit dimensional design drawings for building details with specifications and samples of materials to insure a high design quality is maintained.

- (6) Except as otherwise provided in this motion, the Project shall be completed in general accordance with plans dated August 3, 2001, labeled "Exhibit B," and reviewed by the Commission on September 6, 2001. [These plans are also affected by the subsequent motions and approvals described in these NSR's]

- (B) Pedestrian Streetscape Improvements: The Project shall include pedestrian streetscape improvements generally as described in this Motion and in conformance with Planning Code Section 138.1. A final pedestrian streetscape improvement plan including landscaping and paving materials and patterns, shall be submitted for review by, and shall be satisfactory to the

Director of the Department, in consultation with the Director of the Department of Public Works.

- (C) Inclusionary Housing: The Project Sponsor shall comply with the Requirements and procedures for the Residential Inclusionary Affordable Housing Program (hereinafter "Program") as set forth in Sections 315.1—315.9 of the Code. The Program requires that a nominal twelve percent of the dwelling units on-site must be affordable either as rentals or as ownership units, for a fifty-year period beginning at issuance of the first Certificate of Occupancy. If the Below Market Residential (hereinafter "BMR") units are to be provided on site, they are required to reflect the proposed mix of unit sizes in the project and to be equal in construction quality and finish materials to the market-rate units. Alternately, pursuant to Section 315, the project sponsor may elect to provide "BMR" units off site or pay an in lieu fee which two options must be equivalent to 17 percent of the number of dwelling units in the Project.

- (D) Public Artwork: The Project shall include the work(s) of art valued at an amount equal to one percent of the hard construction costs for the Project as determined by the Director of the Department of Building Inspection. The Project Sponsor shall provide to the Director necessary information to make the determination of construction cost hereunder.

The Project Sponsor and the Project artist shall consult with the Planning Department during design development regarding the height, size, type and location of the art. The final art concept and location shall be submitted for review by, and shall be satisfactory to the Director of the (Planning) Department in consultation with the Commission. The Project Sponsor and the Director shall report to the Commission on the progress of the development and design of the art concept no later than six months after the date of this approval.

- (E) First Source Hiring Program: The Project Sponsor shall have a First Source Hiring Construction Program approved by the First Source Hiring Administrator, and evidenced in writing.

- (F) Recordation: Prior to the issuance of any building permit 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



NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

authorized by and is subject to the conditions of this Motion. [This condition has been satisfied by the recordation of these NSRs] From time to time after the recordation of this 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.

- (G) **Transferable Development Rights (TDR):** The Project shall comply with Code Section 128(h), which states that when the transfer of TDR is necessary for the approval of a Site Permit for a project on a Development Lot, the Zoning Administrator shall impose as a condition of approval of the site permit the requirement that the Superintendent of the Bureau of Building Inspection shall not issue the first addendum to the site permit unless the Zoning Administrator has issued a written certification that the owner of the Development Lot owns the required amount of TDR. Alternately, the Project Sponsor may attempt to procure the necessary additional FAR through the method established in Code Section 124(f).
- (H) Off-street parking provided in conjunction with the residential portion of the Project shall not exceed one space for each two dwelling units (123 total spaces). The remainder of the spaces (381) shall be operated in a "short-term" manner consistent with the provisions of Code Section 155(g) wherein it states "(i) in order to discourage long-term commuter parking, any off-street parking spaces provided for a structure or use other than residential or hotel in a C-3 District, whether classified as an accessory or Conditional Use, which are otherwise available for use for long-term parking by downtown workers must maintain a rate or fee structure for their use such that the rate charge for four hours of parking duration is no more than four times the rate charge for the first hour, and the rate charge for eight or more hours of parking duration is no less than 10 times the rate charge for the first hour. Additionally, no discounted parking rate shall be permitted for weekly, monthly or similar time-specific periods." [This provision has been superseded and replaced by Motion No. 16693-2002.0628C, Condition (1), set forth below]
- (I) In accordance with the terms of the Memorandum of Understanding entered into by the Applicant and "City Car Share" of San Francisco, agreeing that two "carshare" spaces would be reserved in the commercial part of the proposed garage with two more spaces being reserved to be devoted to future expansion of the car-share use (if and when such expansion proves to be warranted).

4. CONDITIONS TO BE MET PRIOR TO THE ISSUANCE OF A TEMPORARY OR PERMANENT CERTIFICATION OF OCCUPANCY

- (A) **Public Artwork:** The Project Sponsor shall install the work(s) of art generally as described in this Motion and make it available to the public. The Project Sponsor shall place a plaque or cornerstone identifying the Project architect, the artwork creator and the Project completion date in a publicly conspicuous location on the Project site.
- (B) **Pedestrian Streetscape Improvements:** The Project Sponsor shall complete the required pedestrian streetscape improvements. The Project Sponsor shall be responsible for the upkeep and maintenance of such improvements if they exceed City standards.
- (C) **Garbage and Recycling:** The Project shall provide containers to collect and store recyclable solid waste and the Project Sponsor shall contract for



NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

recycling pickup. Trash compactors shall not occupy or impede the use of required freight loading spaces.

- (D) First Source Hiring Program: The Project Sponsor shall have a First Source Hiring Occupancy Program approved by the First Source Hiring Administrator, and evidenced in writing.
- (E) Street Tree. Pursuant to the standards set forth in Code Section 143, and in order to mitigate the six hours per year of new wind hazard exceedance at a single location opposite the Subject Property along the south side of Mission Street pursuant to the standards of Code Section 149, the Applicant shall plant and maintain a minimum of one tree of 15-gallon size for each 20 feet of frontage along the Mission Street frontage of the Subject Property (as well as along the Stevenson Street frontage thereof) with any remainder of ten feet or more of frontage requiring an additional tree.

Motion No. 16693-2002.0628CEKVX

(Adopted by Planning Commission on December 4, 2003)

- (1) The authorization herein is of a Conditional Use for a new mixed-use building containing up to 246 dwelling units and up to 504 off-street parking spaces representing residential-serving parking in excess of accessory amounts (Section 204.5 of the Code) and a public parking garage for passenger vehicles in a C-3 District (Code Section 223(m)). 185 of these parking spaces are to serve the residential component of the building (being a ratio of three parking spaces for each four dwelling units), and the remaining 319 spaces are to be used in a short-term configuration per standards of Code Section 155(g). As such, in order to discourage long-term commuter parking, any off-street parking spaces provided for a structure or use other than residential or hotel in a C-3 District, whether classified as an accessory or Conditional Use, which are otherwise available for use for long-term parking by downtown workers must maintain a rate or fee structure for their use such that the rate charge for four hours of parking duration is no more than four times the rate charge for the first hour, and the rate charge for eight or more hours of parking duration is no less than 10 times the rate charge for the first hour. Additionally, no discounted parking rate shall be permitted for weekly, monthly or similar time-specific periods.

Final plans shall be reviewed and approved by the Staff of the Department prior to the issuance of the building permit.

- (2) Construction of the herein-authorized Project shall commence within three years of the date of this action and shall be, thenceforth pursued diligently to completion or the said authorization shall become null and void. [this provision has been superseded and replaced by Motion No. 16696-2005.0096C, Condition (3), set forth below]

Environmental

- (3) The mitigation measures identified in the Final Negative Declaration (Case No. 2002.0628CEKVX1) adopted and issued (as amended) for the Project shall be required of the Project.

Recordation

- (4) The Applicant shall cause this "Exhibit A" to be recorded against the title of the Subject Property as a Notice of Special Restrictions under the City Planning Code. [This condition has been satisfied by the recordation of these NSR's]



NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

Design

- (5) The Project architect shall continue to work with the Planning Department to further develop and refine the design with special attention paid to the eventual replacement of the Mission Street driveway to the Project's parking garage (as outlined in the text of the Motion), commercial spaces and garage entrances cornice lines, windows, trim, and treatment of exposed exterior walls. The final design shall be reviewed and approved by the Planning Department prior to approval of any Building Permit Applications. [Condition Satisfied per Letter of Determination dated August 1, 2005 from Lawrence B. Badlner, Zoning Administrator]
- (6) Decisions on final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval.

Landscaping

- (7) A final landscaping plan, which plan shall include the installation of street trees around of the Project site, shall be developed and approved by the staff of the Planning Department prior to the issuance of any Building Permit(s) for the Project.

Performance

- (8) The Applicant shall appoint a person or persons to act as a neighborhood liaison. The function of said liaison shall be to consult with residents of the Project and neighbors in the surrounding neighborhood to resolve problems or complaints arising from operation of the Project. The Applicant shall report the name and telephone number of said community liaison to the Zoning Administrator for reference.
- (9) Should implementation of this Project result in complaints from interested property owners, residents or commercial lessees, which complaints are not resolved by the Applicant, (and/or the appointed community liaison for the Project), and are subsequently reported to the Zoning Administrator and found to be in violation of the Code and/or the specific conditions of approval for the Project as set forth in this Exhibit A, pursuant to Section 174 of the Code, the Zoning Administrator shall take appropriate violation abatement action and the Commission, after holding a public hearing on the matter in accordance with the hearing notification and conduct procedures as set forth in Section 174, pursuant to Section 308.3 and 308.4 of the Code, may revoke the subject Conditional Use authorization

Motion No. 16996-2005.0096C

(Adopted by Planning Commission on April 28, 2005)

1. The authorization herein is of a Conditional Use, pursuant to Planning Code Section 124(f), for assignment of additional square footage of floor area above the applicable floor area ratio (FAR) of 8.0 to 1 equal to that of the up to 30 affordable dwelling units required as part of the approved new up to 246-unit residential building (Case No. 2002.0628CEKVXI) generally as described in Application No. 2005.0096C and in the text of Planning Commission Motion No. 16996. Said additional floor area is approximately 29,159 square feet and equal to the floor area devoted to the up to 30 affordable dwelling units included as part of the above-mentioned approved residential project. Said floor area represents an FAR of approximately 0.69 to 1. Final plans shall be reviewed and approved by the Staff of the Department prior to the issuance of the building permit.
2. All Conditions of Approval required by the previous approval (Case No. 2002.0628EKVXI) given by the Planning Commission in Motion No. 16693 shall still apply to this project approval. [Prior conditions apply except to the extent superseded, modified or replaced by subsequent Motions]



NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

3. A site permit or building permit for the herein-authorized Project shall be obtained within three years of the date of this action and construction, once commenced, shall be thenceforth pursued diligently to completion or the said authorization shall become null and void. [Date of action is April 2, 2005]

Environmental

4. The mitigation measures identified in the Final Mitigated Negative Declaration (Case No. 2002.0628CEKVXI) adopted and issued (as amended) for the Project shall be required of the Project.

Recordation

5. The Applicant shall cause this "Exhibit A" to be recorded against the title of the Subject Property as a Notice of Special Restrictions under the City Planning Code. [Satisfied by the recording of these NSRs]

Performance

6. The Applicant shall appoint a person or persons to act as a neighborhood liaison. The function of said liaison shall be to consult with residents of the Project and neighbors in the surrounding neighborhood to resolve problems or complaints arising from operation of the Project. The Applicant shall report the name and telephone number of said community liaison to the Zoning Administrator for reference.

Additional Conditions Imposed by Board of Supervisors Motion MO4-15 (Adopted January 27, 2004)

In addition to the foregoing, in the appeal hearing on Conditional Use Permit Case No. 2005.0096C, the Board of Supervisors imposed the following three conditions on the project:

1. The number of required bicycle parking stalls shall be increased from Twenty (20) to Forty (40).
2. The commercial parking garage entrance shall be operated using all reasonable measures to prevent vehicles from blocking the Mission Street sidewalk or bus lane in front of the Project, including such preventative measures as to increase the length of the queuing area entering the Garage.
3. The commercial parking garage and the residential-serving off-street parking approved by the Conditional Use Application shall be contained in Four (4) floors instead of Five (5) floors without change to the height or bulk of the Garage Podium and Residential Tower.

**Variance Decision- Case No. 2002.0628CEKVX
(Approved by Zoning Administrator on December 4, 2003)**

1. No further vertical or horizontal expansion of the subject building shall be allowed unless such expansion is specifically authorized by the Zoning Administrator after the property owner or authorized agent has sought and justified a new variance request pursuant to the public hearing and all other applicable procedures of the City Planning Code. However, the Zoning Administrator, after finding that such expansion complies with applicable Codes, is compatible with existing neighborhood character and scale, and does not cause significant loss of light, air, view or privacy to adjacent buildings, may determine that a new variance is not required.



NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

2. The granting of this Variance is contingent upon findings of Compliance with Section 309 by the Planning Commission. All Conditions of Approval must be met.
3. The owners of the subject property shall record on the land records of the City and County of San Francisco the conditions attached to this variance decision as a Notice of Special Restrictions in a form approved by the Zoning Administrator. [Satisfied by the recording of these NSRs]
4. The proposed project must meet these conditions and all applicable City Codes. In case of conflict, the more restrictive controls shall apply.
5. Minor modifications as determined by the Zoning Administrator may be permitted if it is demonstrated that such modifications are necessary in order to comply with Department of Building Inspection requirements.

"Below Market Rate" (BMR)

In furtherance of the restrictions required by Motion No. 16692, adopted by the San Francisco Planning Commission on December 4, 2003, approving a 243-unit residential building on the above-referenced property pursuant to Planning Code ("Code") Section 309 (Case No. 2002..628CEKVX!), the following restrictions establish a record of the distribution of "Below Market Rate" ("BMR") dwelling units. Pursuant to Planning Code Section 315, this project is required to provide 29 "BMR" units. These units are seventeen (17) one-bedroom apartments, eleven (11) two bedroom apartments, and one (1) three-bedroom apartment distributed as shown on Maps No. 1 through 6 inclusive, appended hereto and incorporated herein. As further delineated, the Apartment Numbers and Unit Types are as follows:

One-bedroom Units

Unit Type 2: Apartments No. 611, 711, 811, and 911;

Unit Type 3: Apartments No. 609, 709 and 809;

Unit Type 5: Apartment No. 703;

Unit Type 6: Apartments No. 612, 705, 712, 805, 812, 905, 912, 1005 and 1105;

Two-Bedroom Units

Unit Type 1: Apartments No. 613, 713, 813 and 913;

Unit Type 4: Apartments No. 701 and 801;

Unit Type 7: Apartments No. 614, 714, 814, 914 and 1014;

Three-Bedroom Unit

Unit Type 12: Apartment No. 603



NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

The use of said property contrary to these special restrictions shall constitute a violation of the Planning Code, and no release, modification or elimination of these restrictions shall be valid unless notice thereof is recorded on the Land Records by the Zoning Administrator of the City and County of San Francisco; except that in the event that the zoning standards above are modified so as to be less restrictive and the uses herein restricted are thereby permitted and in conformity with the provisions of the Planning Code, this document would no longer be in effect and would be null and void.

Dated: August 17, 2006 at San Francisco, California

Owner

By: SEE ATTACHED
Name:

Form Approved by Department of City Planning

By: Leonard James Miller
Name: 16 August 2006

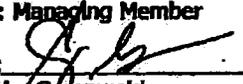


1160 MISSION ASSOCIATES, LLC
a Delaware limited liability company

By: **AGI-TMG Mission, LLC,**
a Delaware limited liability company,
Its: Administrative Member

By: **TMG 1160, LLC**
a Delaware limited liability company
Its: Managing Member

By: **TMG Partners,**
a California corporation
Its: Managing Member

By: 
Cathy Greenwold
Its: Executive Vice President



DESCRIPTION

CITY AND COUNTY OF SAN FRANCISCO

PARCEL 1:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY LINE OF 7TH STREET AND THE SOUTHEASTERLY LINE OF STEVENSON STREET; RUNNING THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE OF 7TH STREET 155.135 FEET TO THE NORTHWESTERLY LINE OF JESSIE STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF JESSIE STREET 280.135 FEET TO AN ANGLE POINT THEREON; THENCE AT A RIGHT ANGLE NORTHWESTERLY 5 FEET TO THE NORTHWESTERLY LINE OF JESSIE STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF JESSIE STREET 219.970 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 150.135 FEET TO THE SOUTHEASTERLY LINE OF STEVENSON STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF STEVENSON STREET 500 FEET AND 1-3/8 INCHES TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED IN THE GRANT DEED RECORDED MARCH 31, 1999, REEL H353, IMAGE 391, SERIES NO. 99-0541425, OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY LINE OF 7TH STREET WITH THE SOUTHEASTERLY LINE OF STEVENSON STREET; THENCE SOUTHEASTERLY ALONG SAID LINE OF 7TH STREET, 155.135 FEET TO THE NORTHWESTERLY LINE OF JESSIE STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF JESSIE STREET, 280.135 FEET TO AN ANGLE POINT THEREIN; THENCE AT A RIGHT ANGLE NORTHWESTERLY ALONG SAID LINE OF JESSIE STREET, 5 FEET TO AN ANGLE POINT THEREIN; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF JESSIE STREET, 94.865 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 150.135 FEET TO THE SOUTHEASTERLY LINE OF STEVENSON STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF STEVENSON STREET, 375 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 406.

ASSESSOR'S LOT 056, BLOCK 3702

PARCEL 2:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF MISSION STREET DISTANT THEREON 388 FEET NORTHEASTERLY FROM THE INTERSECTION OF THE NORTHWESTERLY LINE OF MISSION STREET WITH THE NORTHEASTERLY LINE OF 8TH STREET; RUNNING THENCE NORTHEASTERLY ALONG SAID LINE OF MISSION STREET 62 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 165 FEET TO THE SOUTHEASTERLY LINE OF JESSIE STREET; THENCE SOUTHWESTERLY ALONG SAID LINE OF JESSIE STREET 62 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 165 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 406.

ASSESSOR'S LOT 037, BLOCK 3702

PARCEL 3:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF MISSION STREET DISTANT THEREON 326 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF 8TH STREET; RUNNING THENCE NORTHEASTERLY ALONG SAID LINE OF MISSION STREET 62 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 165 FEET TO THE SOUTHEASTERLY LINE OF JESSIE STREET; THENCE AT A



DESCRIPTION

RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF JESSIE STREET 62 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 165 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 406.

ASSESSOR'S LOT 038, BLOCK 3702

PARCEL 4:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF JESSIE STREET DISTANT THEREON 375 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 7TH STREET; THENCE SOUTHWESTERLY ALONG SAID LINE OF JESSIE STREET 124.247 FEET TO A POINT PERPENDICULARLY DISTANT 326 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF 8TH STREET, SAID POINT BEING THE WESTERLY CORNER OF PARCEL TWO AS DESCRIBED IN THE GRANT DEED RECORDED FEBRUARY 28, 1989, REEL E816, IMAGE 1295, SERIES NO. E328115, OFFICIAL RECORDS; THENCE ALONG A DEFLECTION ANGLE TO THE RIGHT OF 88°34'52" 35.01 FEET TO THE SOUTHERLY CORNER OF PARCEL ONE AS DESCRIBED IN SAID GRANT DEED, SAID SOUTHERLY CORNER BEING ON THE NORTHWESTERLY LINE OF JESSIE STREET; THENCE NORTHEASTERLY ALONG SAID NORTHWESTERLY LINE OF JESSIE STREET 125.114 FEET TO A LINE DRAWN AT RIGHT ANGLES FROM THE POINT OF BEGINNING; THENCE AT A RIGHT ANGLE SOUTHEASTERLY ALONG SAID DRAWN LINE 35 FEET TO THE POINT OF BEGINNING.

BEING ALL OF JESSIE STREET BETWEEN A LINE 375 FEET SOUTHWESTERLY OF AND PARALLEL WITH THE SOUTHWESTERLY LINE OF 7TH STREET, AND A LINE DRAWN FROM THE WESTERLY CORNER OF PARCEL TWO AS DESCRIBED IN THE GRANT DEED RECORDED FEBRUARY 28, 1989, REEL E816, IMAGE 1295, SERIES NO. E328115, OFFICIAL RECORDS, AND THE SOUTHERLY CORNER OF PARCEL ONE AS DESCRIBED IN SAID GRANT DEED.

ASSESSOR'S LOT - NONE

PARCEL 5:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF MISSION STREET DISTANT THEREON 375 FEET SOUTHWESTERLY FROM THE INTERSECTION OF THE SOUTHWESTERLY LINE OF 7TH STREET WITH THE NORTHWESTERLY LINE OF MISSION STREET, SAID POINT ALSO BEING THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED AS PARCEL TWO IN THE DEED TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO RECORDED MARCH 31, 1999, REEL H353, IMAGE 391, SERIES NO. 99-0541425, OFFICIAL RECORDS; THENCE SOUTHWESTERLY ALONG SAID LINE OF MISSION STREET FOR A DISTANCE OF 0.247 FEET TO A POINT THAT IS 450 FEET NORTHEASTERLY FROM THE INTERSECTION OF THE NORTHWESTERLY LINE OF MISSION STREET AND THE NORTHEASTERLY LINE OF 8TH STREET, SAID POINT ALSO BEING THE MOST EASTERLY CORNER OF THE LAND DESCRIBED AS PARCEL TWO IN THE DEED TO FOX-WARFIELD LLC RECORDED SEPTEMBER 21, 2000, REEL H727, IMAGE 437, SERIES NO. 2000-0840672, OFFICIAL RECORDS; THENCE AT A RIGHT ANGLE NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF SAID FOX-WARFIELD PARCEL, 165 FEET TO THE SOUTHEASTERLY LINE OF JESSIE STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF JESSIE STREET 0.247 FEET TO THE MOST WESTERLY CORNER OF SAID REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO PARCEL; THENCE AT A RIGHT ANGLE SOUTHEASTERLY ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL 165 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK 406.

ASSESSOR'S LOT - NONE



CALIFORNIA

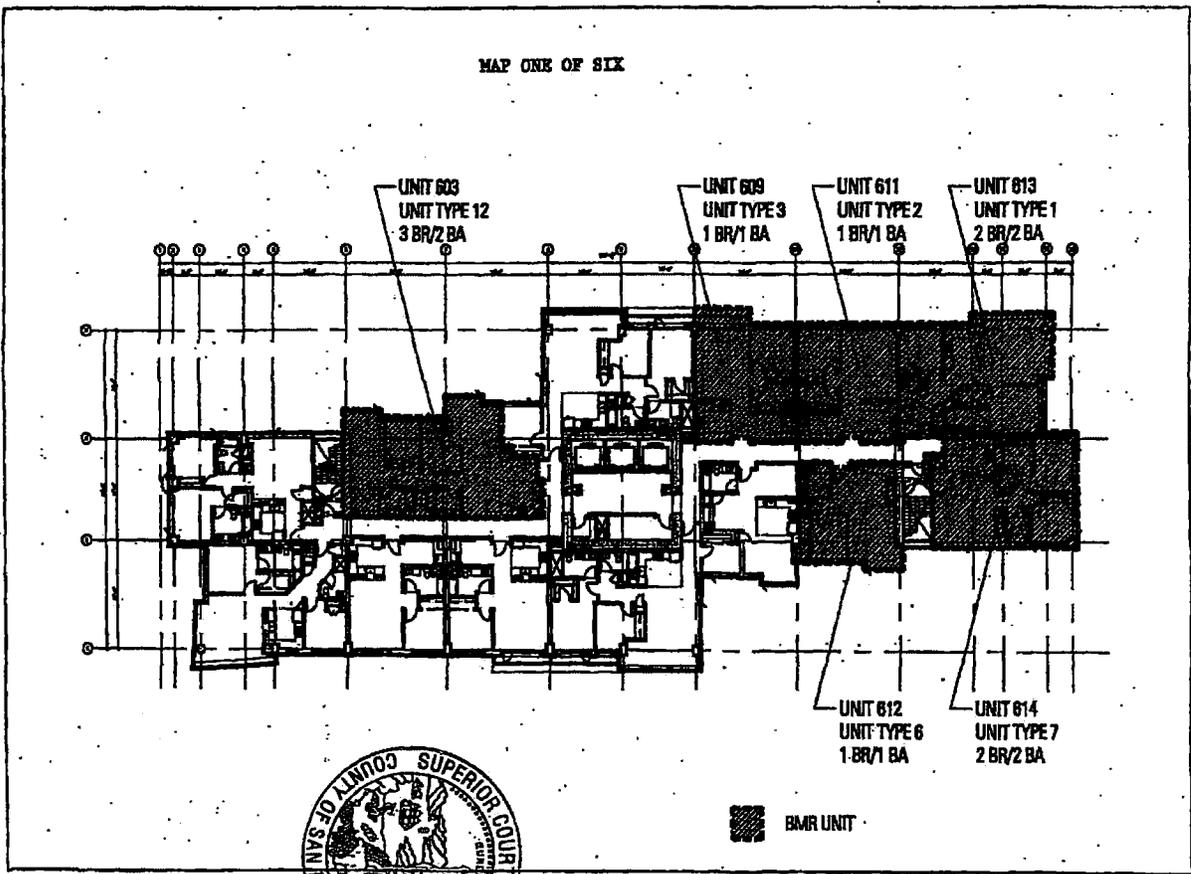
NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

MAPS OF BMR UNITS

**[Maps 1 – 6]
[to be attached]**



MAP ONE OF SIX



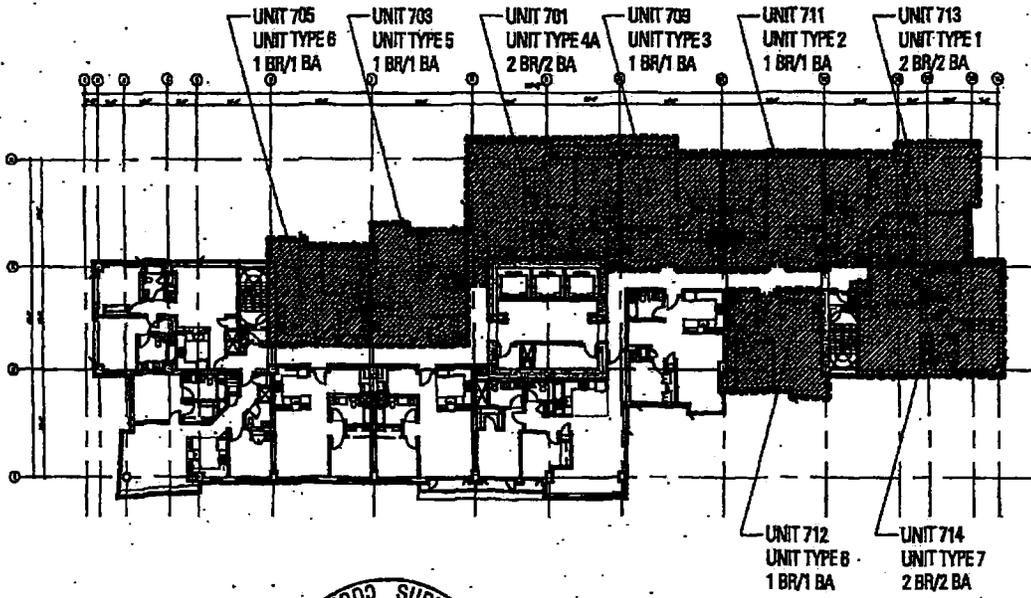
ARCHITECTURE INTERNATIONAL
ARCHITECTURE ■ PLANNING ■ INTERIOR DESIGN

Soma Grand (1160 Mission)

SCALE: 1/8"=1'-0"
Sheet Reference: A2.11
Issue Date: 02/04/06
Prepared by: DC/ellie
Project Name: Soma Grand
Project No.: 0207.00

LEVEL 06

MAP TWO OF SIX



BMR UNIT



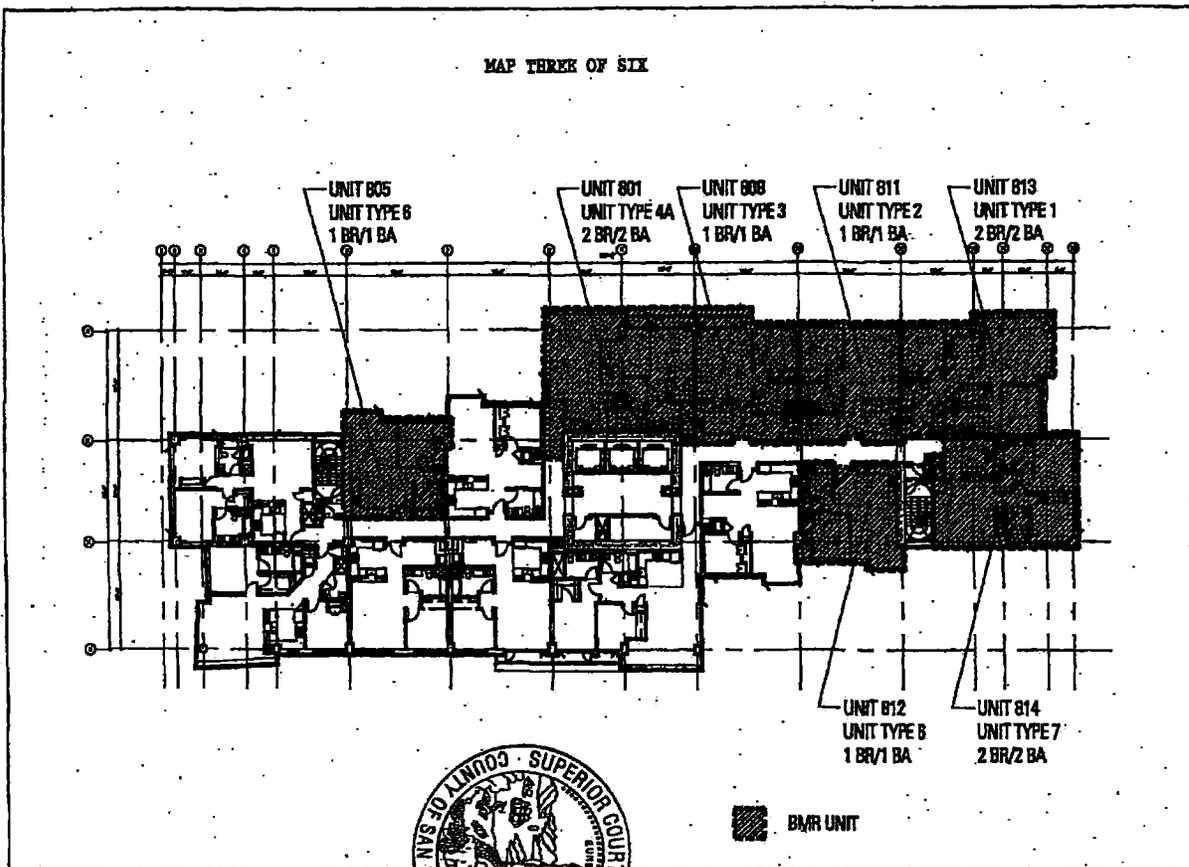
ARCHITECTURE INTERNATIONAL
ARCHITECTURE ■ PLANNING ■ INTERIOR DESIGN

Soma Grand (1180 Mission)

SCALE: 1/8"=1'-0"
Sheet Reference: A2.11
Issued Date: 05/05/06
Prepared By: SD/Allen
Project Name: Soma Grand
Project No.: 0501.00

LEVEL 07

MAP THREE OF SIX



Soma Grand (1160 Mission)

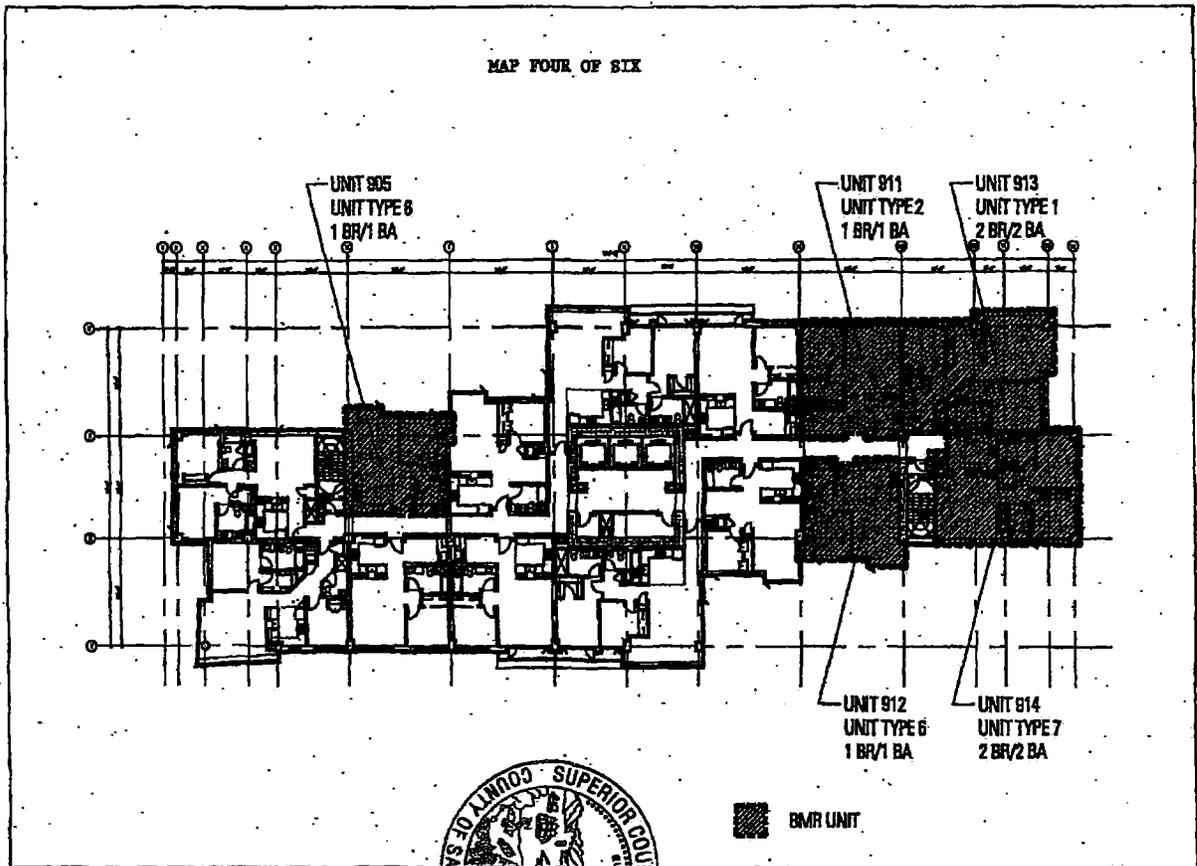
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Sheet Reference: AC.11
Issue Date: 05/06/06
Prepared By: DDallas
Project Name: Soma Grand
Project No.: 6501.00

LEVEL 08



ARCHITECTURE INTERNATIONAL
ARCHITECTURE ■ PLANNING ■ INTERIOR DESIGN

MAP FOUR OF SIX



■ BMR UNIT



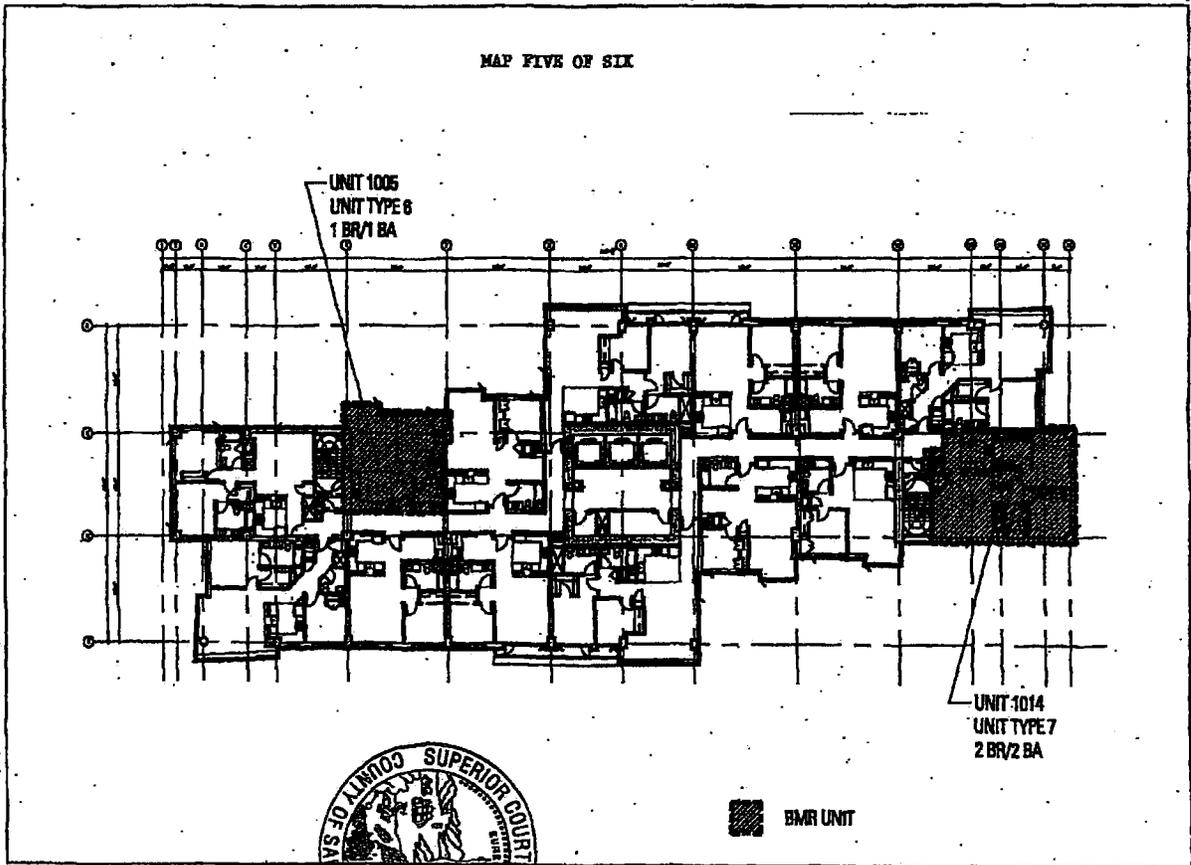
ARCHITECTURE INTERNATIONAL
ARCHITECTURE ■ PLANNING ■ INTERIOR DESIGN

Soma Grand (1160 Mission)

SCALE: 1/8"=1'-0"
Sheet Reference: A2.11
Issue Date: 06/08/06
Prepared by: DC/BJM
Project Name: Soma Grand
Project No.: 0501.00

LEVEL 09

MAP FIVE OF SIX



ARCHITECTURE INTERNATIONAL
ARCHITECTURE ■ PLANNING ■ INTERIOR DESIGN

Soma Grand (1160 Mission)

SCALE: 1/8"=1'-0"

Sheet Reference: A2-11

Issue Date: 02/04/08

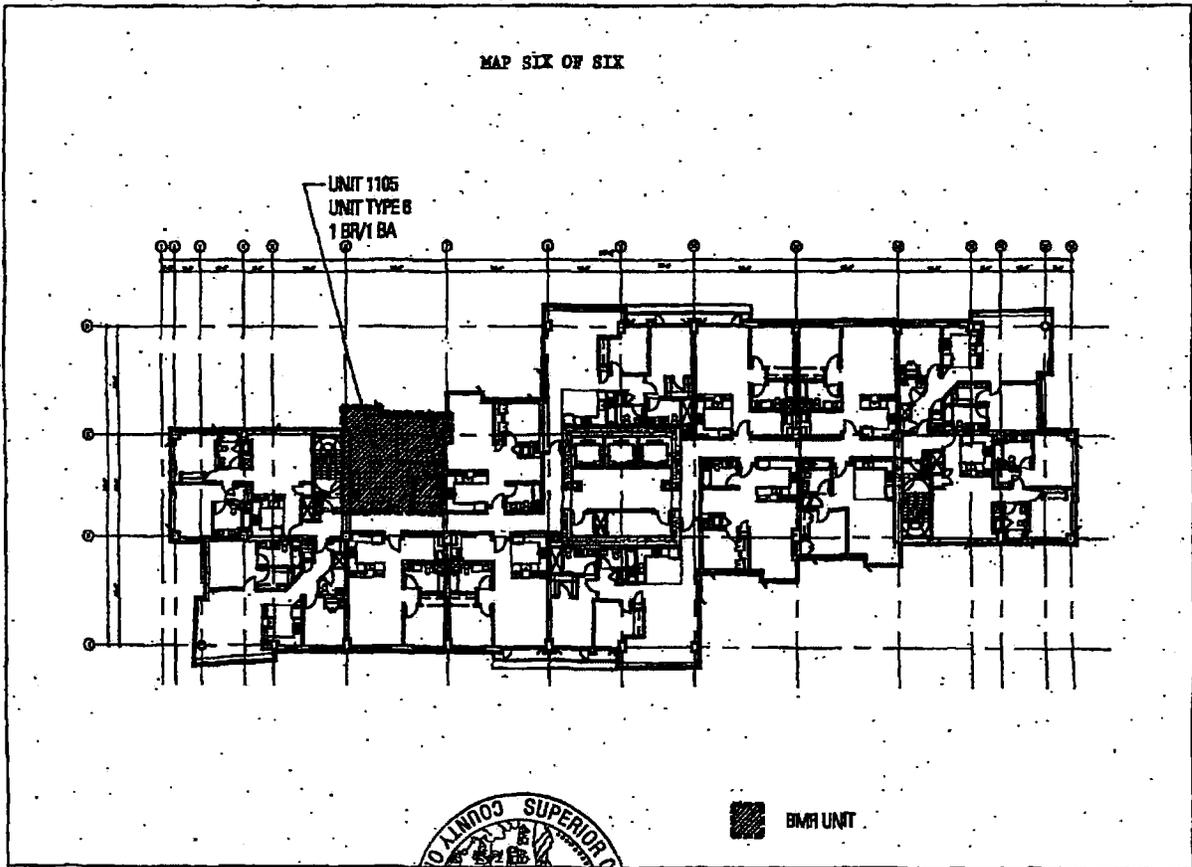
Prepared by: D. Williams

Project Name: Soma Grand

Project No.: 0207-08

LEVEL 10

MAP SIX OF SIX



ARCHITECTURE INTERNATIONAL
ARCHITECTURE • PLANNING • INTERIOR DESIGN

Soma Grand (1160 Mission)

SCALE: 1/8" = 1'-0"
Sheet Reference: A2.11
Issue Date: 05/04/00
Prepared by: D. Williams
Project Name: Soma Grand
Project No.: 0281.00

LEVEL 11

1 [Authorizing the Acquisition and Conveyance of a Below Market Rate Unit under Foreclosure -
2 1160 Mission Street, Unit 812]

3 **Resolution approving and authorizing the acquisition of a below market rate**
4 **condominium located at 1160 Mission Street, Unit 812, San Francisco ("the Property")**
5 **for up to \$300,000 to hold the Property for resale under the City's Below Market Rate**
6 **Inclusionary Housing Program ("Program"); adopting findings that the conveyance is**
7 **consistent with the General Plan, and the eight priority policies of Planning Code,**
8 **Section 101.1; and authorizing and directing the execution of any documents**
9 **necessary to implement this Resolution, as defined herein.**

10
11 WHEREAS, Pursuant to San Francisco Planning Code, Section 415, the City's Below
12 Market Rate Inclusionary Housing Program ("Program") creates housing more affordable to
13 low and middle income residents by requiring housing developers to set aside a certain
14 percentage of units in new buildings to be rented or sold at a below market rate ("BMR"); and

15 WHEREAS, The Mayor's Office of Housing and Community Development ("MOHCD")
16 administers the Program by facilitating the purchase of BMR units by low to middle income
17 buyers at an affordable price if they meet the Program requirements and agree to abide by the
18 restrictions and conditions of the Program; and

19 WHEREAS, The Property was designated as a BMR unit by the San Francisco
20 Planning Commission on December 4, 2003, in Planning Commission Motion No. 16692, and
21 a "Notice of Special Restrictions under the Planning Code" ("NSR") was recorded against title
22 of the Property on August 21, 2006, which is on file with the Clerk of the Board in File No.

23 _____; and

24 WHEREAS, Gregory Garver ("Owner") purchased the Property directly from the Soma
25 Grand developer in December 2008 at a BMR price through the Program and received a

Not defined as a project under CEQA Guidelines
Sections 15378 and 15060(c)(2) because it does
not result in a physical change in
the environment.
Mayor Farrell
BOARD OF SUPERVISORS

Jeanie Poling 5/18/18

1 down payment assistance loan in the principal amount of \$33,255, with share of appreciation
2 of \$10,587, from MOHCD (“DALP Loan”), which is on file with the Clerk of the Board in File
3 No. _____; and

4 WHEREAS, Owner has used the Property as a rental income property in violation of
5 the NSR, the Program requirements, and the San Francisco Planning Code, and has
6 committed unlawful and unfair business practice, within the meaning of Business and
7 Professional Code, Sections 17200-17209; and

8 WHEREAS, On August 23, 2017, the City, filed a Complaint against Owner alleging
9 causes of action for violations of the San Francisco Planning Code and the NSR, violations of
10 the Unfair Competition Law (Business and Professions Code, Section 17200, et al.), and for
11 public nuisance; and

12 WHEREAS, A Notice of Trustee’s Sale was recorded by the first mortgage lender,
13 Selene Finance (the “Bank”), as Doc#2018-K574186-00 on January 31, 2018 in the Official
14 Records of San Francisco County to sell the Property at public auction, which is on file with
15 the Clerk of the Board in File No. _____, and the trustee sale is scheduled for
16 June 25, 2018; and

17 WHEREAS, The DALP Loan is in a junior lien position and the entire outstanding DALP
18 Loan could be eliminated if the Property is acquired by the Bank; and

19 WHEREAS, On April 12, 2018, the City Attorney’s Office obtained a Default
20 Judgment of \$210,000 against Owner for civil penalties, attorneys' fees, and costs
21 related to Owner’s violations of the Planning Code and unfair business practices, which
22 is on file with the Clerk of the Board in File No. _____; and

23 WHEREAS, Pursuant to the California Civil Code, the Property must be sold at a
24 public auction when there is a non-judicial foreclosure, and MOHCD cannot facilitate
25 the transfer of the Property to a qualified homebuyer at the public auction; and

1 WHEREAS, MOHCD estimates that the current maximum BMR price for the
2 Property is Three Hundred Thousand Dollars and No/100 (\$300,000.00), which is
3 based on MOHCD's formula of an affordable price for a low income household (the
4 "Current BMR Price"); and

5 WHEREAS, The Board declares that preserving the City's affordable housing
6 stock is a high priority during the current housing crisis for maintaining opportunities for
7 low and moderate income households to live in the City; and

8 WHEREAS, MOHCD desires to acquire the Property at the Trustee sale, up to
9 the Current BMR Price, to preserve the Property as affordable housing under the
10 Program and convey the Property to a new qualified household approved by MOHCD;
11 and

12 WHEREAS, The Board determines that an appraisal of the Property is not
13 required based on the NSR restricting the BMR price below the estimated market
14 value, and MOHCD's desire to only hold the Property for resale to a qualified
15 household; and

16 WHEREAS, The Planning Department, by letter dated _____, 2018, found
17 that the acquisition of the Property is not considered a project under the California
18 Environmental Quality Act ("CEQA", Pub. Resources Code, Section 21000 et seq.)
19 pursuant to CEQA Guidelines, Section 15060 and Chapter 31 of the City's
20 Administrative Code, and is consistent with the General Plan, and the eight priority
21 policies of Planning Code, Section 101.1, which letter is on file with the Clerk of the
22 Board of Supervisors in File No. _____, and incorporated herein by this reference;
23 now, therefore, be it

24 RESOLVED, That the Board of Supervisors hereby finds that the acquisition of
25 the Property is consistent with the City's General Plan, and with the eight priority

1 Policies under Planning Code, Section 101.1, for the same reasons set forth in the
2 letter of the Department of City Planning dated XXXXX, and hereby incorporates such
3 findings by reference as though fully set forth in this Resolution; and, be it

4 FURTHER RESOLVED, That in accordance with the recommendations of the
5 Director of Property and the Director of MOHCD, the Board of Supervisors hereby
6 approves the acquisition of the Property for up to Three Hundred Thousand Dollars
7 (\$300,000), under the jurisdiction of MOHCD, and authorizes the Director of Property
8 (or designee) and the Director of MOHCD (or designee) to execute any documents that
9 are necessary or advisable to complete the acquisition of the Property, and to
10 effectuate the purpose and intent of this Resolution; and, be it

11 FURTHER RESOLVED, That the Director of Property is hereby authorized, in the
12 name and on behalf of the City and County of San Francisco, to accept the deed to the
13 Property from the trustee upon a successful bid by MOHCD, to place the Property under the
14 jurisdiction of MOHCD, and to take any and all steps as the Director of Property deems
15 necessary or appropriate in order to consummate the conveyance of the Property, or to
16 otherwise effectuate the purpose and intent of this Resolution, such determination to be
17 conclusively evidenced by the execution and delivery by the Director of Property of any such
18 documents; and, be it

19 FURTHER RESOLVED, That the Director of Property (or designee) and the Director of
20 MOHCD (or designee) is hereby authorized to convey the Property to a qualified buyer
21 approved by MOHCD and pursuant to the requirements of the Program; and be it

22 FURTHER RESOLVED, That all actions authorized and directed by this
23 Resolution and heretofore taken are hereby ratified, approved and confirmed by this
24 Board of Supervisors; and be it

25

1 FURTHER RESOLVED, That within thirty (30) days of MOHCD acquiring the
2 Property at the trustee sale, MOHCD shall provide the final documents of such
3 acquisition to the Clerk of the Board for inclusion into the official file.

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\$300,000 available

Fund: _____

Project: _____

Approximate Amount: \$300,000

Ben Rosenfield

Controller

RECOMMENDED:

John Updike, Director of Property

Kate Hartley, Director, Mayor's Office of Housing and Community Development

OFFICE OF THE MAYOR
SAN FRANCISCO



MARK FARRELL
MAYOR

BOARD OF SUPERVISORS
SAN FRANCISCO

2018 MAY 15 PM 2:00

BY 

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM:  Mayor Farrell
RE: Authorizing the Acquisition and Conveyance of a Below Market Rate Unit
under Foreclosure – 1160 Mission Street, Unit 812
DATE: May 15, 2018

Attached for introduction to the Board of Supervisors is an resolution: (1) approving and authorizing the acquisition of a below market rate condominium located at 1160 Mission Street, Unit 812, San Francisco (“the Property”) for up to \$300,000 to hold the Property for resale under the City’s Below Market Rate Inclusionary Housing Program (“Program”); (2) adopting findings that the conveyance is consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and (3) authorizing and directing the execution of any documents necessary to implement this Resolution, as defined herein.

I respectfully request that this item be calendared in Government Audit & Oversight Committee on May 30, 2018.

Should you have any questions, please contact Andres Power (415) 554-5168.