

File No. 110048

Committee Item No. 17

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 2/17/11

Board of Supervisors Meeting

Date _____

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget Analyst Report
- Legislative Analyst Report
- Youth Commission Report
- Introduction Form (for hearings)
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Award Letter
- Application
- Public Correspondence

OTHER

(Use back side if additional space is needed)

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<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Linda Wong

Date 2/14/11

Completed by: _____

Date _____

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

1 [Settlement of Lawsuit - Timothy J. Chamberlain - \$65,000]

2
3 **Ordinance authorizing settlement of a lawsuit filed by Timothy J. Chamberlain against**
4 **the City and County of San Francisco, alleging slander of title and entitlement to**
5 **declaratory relief; filed June 9, 2009, in San Francisco Superior Court, Case No. CGC-**
6 **09-489245; entitled Chamberlain v. San Francisco Mayor's Office of Housing; City of**
7 **San Francisco; and Does 1-100; other material terms of said settlement are set forth in**
8 **the Settlement Agreement and Release of Claims contained in Board of Supervisors**
9 **File No. 110048.**

10
11 Be it ordained by the People of the City and County of San Francisco:

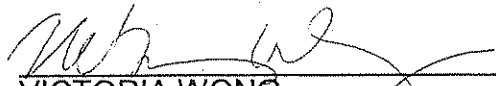
12 Section 1. The City Attorney is hereby authorized to settle the action entitled
13 Chamberlain v. San Francisco Mayor's Office of Housing; City of San Francisco; and Does 1-
14 100, San Francisco Superior Court, Case No. CGC-09-489245 by the payment by the City
15 and County of San Francisco to Plaintiff Timothy J. Chamberlain ("Plaintiff") of \$65,000 in
16 exchange for Plaintiff's agreement to sell his Below-Market-Rate condominium unit pursuant
17 to the restrictions and requirements of the City's Residential Affordable Inclusionary Housing
18 Program, in accordance with other material terms as set forth in the Settlement Agreement
19 and Release of Claims contained in Board of Supervisors File No. 110048, and on such other
20 terms as shall be negotiated and approved by the City Attorney's Office.

21 Section 2. The above-named action was filed in San Francisco Superior Court on June
22 9, 2009, and the following defendants were named in the lawsuit: San Francisco Mayor's
23 Office of Housing; City of San Francisco; and Does 1-100.

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APPROVED AS TO FORM AND
RECOMMENDED:

DENNIS J. HERRERA, City Attorney


By: 
VICTORIA WONG
Deputy City Attorney

RECOMMENDED:

MAYOR'S OFFICE OF HOUSING

By: 
DOUGLAS SHOEMAKER
Director

FUNDS AVAILABLE:


BEN ROSENFELD
Controller
Index Code: MYR17SFHOAL
Subobject: 02600

**Free Recording Requested
Pursuant to Government
Code Section 27383**

RECORDING REQUESTED BY:
City and County of San Francisco

WHEN RECORDED MAIL TO:
City and County of San Francisco
Address: Mayor's Office of Housing,
1 South Van Ness Ave., 5th Floor, San
Francisco, CA 94103
Attention: Myrna Melgar
APN: Lot 150, Block 599

SPACE ABOVE THIS LINE FOR RECORDER'S
USE

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement") is entered into on October 14, 2010 by and between Timothy J. Chamberlain ("Chamberlain") and the City and County of San Francisco ("the City"). Chamberlain and the City are hereinafter referred to collectively as "the Parties."

I. RECITALS

WHEREAS, on June 9, 2009, Chamberlain filed a Complaint in California Superior Court for the County of San Francisco, S.F. Superior Court No. CGC-09-489245 against the City and the San Francisco Mayor's Office of Housing alleging, among other things, that the City had improperly attempted to enforce a fifty-year restriction on the resale of Chamberlain's condominium, which is a Below Market Rate Unit in the City's Residential Affordable Inclusionary Housing Program, and seeking declaratory relief and damages for slander of title ("Lawsuit");

WHEREAS, on July 10, 2009, the City, on its own behalf and on behalf of the Mayor's Office of Housing, filed its Answer to the Complaint in which the City denied any and all liabilities to Chamberlain and denied that it had violated any laws;

WHEREAS, on April 28, 2010, the San Francisco Superior Court granted in part the City's motion for judgment on the pleadings, dismissing without leave to amend Chamberlain's second cause of action for slander of title;

WHEREAS, this lawsuit has been vigorously prosecuted and defended;

NOW, THEREFORE, in order to avoid the burden and expense of further litigation and for good and valuable consideration, the receipt of which is hereby acknowledged, including the representations, warranties and covenants contained in this Agreement, the Parties to this Agreement agree as follows:

II. DEFINITIONS

As used in this Agreement, the following terms shall have the meaning ascribed to them in this Section. All other terms shall be interpreted according to their plain and ordinary meaning.

"Agreement" means this Settlement Agreement and Release of Claims.

"Below Market Rate Unit" means an affordable dwelling unit or other approved residential unit within the City's Residential Affordable Inclusionary Housing Program that is sold at a price specified in the conditions of approval or other applicable use restrictions, which may be lower than the appraised fair market value of comparable units.

"Court" shall mean the California Superior Court for the County of San Francisco.

"Defendants" means and refers to the City and the San Francisco Mayor's Office of Housing.

"Lawsuit" means the action filed in California Superior Court for the County of San Francisco, S.F. Superior Court No. CGC-09-489245, captioned *Timothy J. Chamberlain v. San Francisco's Mayor's Office of Housing, City of San Francisco, and Does 1-100*.

"Operative Date" shall mean the date on which the Mayor approves the ordinance authorizing the settlement of the lawsuit. If the Mayor fails to approve or disapprove of the ordinance authorizing the settlement of the Lawsuit, then this Agreement will become operative at the expiration of the tenth day after such ordinance is delivered to the Mayor's Office for consideration. If, however, the Mayor disapproves the ordinance authorizing the settlement of the lawsuit, then this Agreement will not become operative unless, within 30 days after the Mayor's disapproval, not less than two-thirds of the Board of Supervisors shall vote in favor of such ordinance.

"The Property" shall mean the condominium unit located at 1701 Jackson Street, # 204, San Francisco, California, Assessor's Block 599, Lot 150, as more particularly described in Exhibit A.

III. TERMS AND CONDITIONS

A. Required Approval

This Agreement is contingent upon the City receiving all necessary administrative and legislative approvals, which the City shall promptly seek following execution of this Agreement by Chamberlain. The Agreement shall not be effective until all such approvals have been obtained and the Agreement is signed by a duly authorized representative of the City. In the event the San Francisco Board of Supervisors declines to approve this agreement, the Agreement shall be null and void, without prejudice to the position of any of the Parties.

B. No Admission of Liability

By entering into this Agreement, no party is admitting the sufficiency of any claim, allegation, assertion, contention or position raised in the Lawsuit or the sufficiency of any defense to any such claim, allegation, assertion, contention or position raised in the Lawsuit. The City's entry into this Agreement is not and may not be used by any

person or organization as an admission or as evidence that the City has engaged in any practice that violates any law or regulation.

The City's entry into this Agreement is premised on unique allegations in this Lawsuit, including but not limited to allegations that Chamberlain received written representations from a City employee that the resale and price restrictions on the Property were for a five-year term, and that he relied on such representations in deciding to purchase the Property.

C. Entire Agreement

This Agreement contains the entire agreement between the Parties. This Agreement expresses the complete and final understanding of the Parties with respect to the subject matter of this Agreement. The Parties hereto understand and agree that the terms of this Agreement supersede any prior discussions, understandings, or agreements between them related to the subject matter hereof. The Parties may agree to modify this Agreement. However, no modification will be binding on the Parties unless expressly provided for in this Agreement or made by a writing signed by all Parties, and, if necessary, approved by the San Francisco Board of Supervisors and the Mayor in their sole and absolute discretion.

D. Authority

Except as noted in Section III.A above, the signatories to this Agreement represent and warrant that they have the authority to execute this Agreement and to bind parties on whose behalf they execute this Agreement, that the Agreement does not require Court approval, and that it does not conflict with or contravene the terms of any agreement, judgment or order binding or enforceable against the Parties hereto.

E. Voluntary Agreement

The Parties each acknowledge that they are entering into this Agreement freely, knowingly, voluntarily and with a full understanding of its terms. The Parties acknowledge that they have consulted with counsel of their own choosing concerning this Agreement and that they were given reasonable time to review and consider the terms of this Agreement.

F. Construction

The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The terms of this Agreement are the product of joint negotiations and shall not be construed as having been authored by one party rather than another. Any ambiguity shall not be construed against any Party. Where required by context, the plural includes the singular and the singular includes the plural. The headings in this Agreement are solely for convenience and will not be considered in its interpretation.

G. Severability

If any provision or provisions of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and/or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

H. Counterparts

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which, when taken together, will constitute one and the same instrument.

I. Controlling Law

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

J. Additional Documents

To the extent any documents are required to be executed by any of the Parties to effectuate this Agreement, each party hereto agrees to execute and deliver such and further documents as may be required to carry out the terms of this Agreement.

K. Notice

Except as otherwise provided in this Agreement, all notifications, reports and communications to the Parties required under this Agreement shall be made in writing and shall be sufficient as hand-delivered, sent by first class mail, or communicated by facsimile or electronic mail transmission to the following persons:

For Chamberlain: Christopher Gonzalez Timken Johnson Hwang LLP 1931 San Miguel Drive Walnut Creek, CA 94596-5345 (925) 945-6211 Fax: (925) 945-7811 cgonzalez@timkenlawgroup.com	For The City: Victoria Wong Deputy City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102 (415) 554-4721 Fax: (415) 554-4747 Victoria.Wong@sfgov.org
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Any Party may change such persons and/or addresses by written notice to the other Parties, setting forth a new person and/or address for this purpose.

L. Inclusionary Housing Program Restrictions and Requirements

The Parties agree and acknowledge that the Property is subject to all of the restrictions and requirements of the City's Residential Affordable Inclusionary Housing Program ("Program") as set forth in the Notice of Special Restriction for the Property, officially recorded at Reel H693, Image 0289 in the official records of the City and County of San Francisco's Office of the Assessor-Recorder; as adopted by the San Francisco Planning Commission's Motion No. 14102, Exhibit A, Conditions of Approval; and as set forth in the Inclusionary Housing Program Monitoring and Procedures Manual adopted September 10, 1992 (collectively, the "Restrictions and Requirements"). Copies of these documents have been provided to Chamberlain through his counsel. The Parties agree that Chamberlain applied for and qualified as an income-eligible household to purchase the Property, pursuant to the Restrictions and Requirements. Furthermore, the Parties agree that the Restrictions and Requirements include, but are not limited to, the following terms:

- 1) The Property shall remain a Below Market Rate Unit subject to the Restrictions and Requirements for a period of fifty years from the date the first City lien pursuant to the Program is recorded against the Property ("Fifty-Year Period");

- 2) Prior to the expiration of the Fifty-Year Period, any owner of the Property must be approved and qualified as income-eligible by the Mayor's Office of Housing in accordance with the Program's Restrictions and Requirements;
- 3) Prior to the expiration of the Fifty-Year Period, an owner of the Property may not sell the Property for more than the restricted price as determined by the Restrictions and Requirements;
- 4) Prior to the expiration of the Fifty-Year Period, an owner of the Property may not opt-out of the Program (*i.e.*, choose to sell the Property at an unrestricted price) by repaying the BMR Note, as that term is defined in Section II.K. of the Inclusionary Housing Program Monitoring and Procedures Manual adopted September 10, 1992;
- 5) Upon any resale of the Property, assuming (i) that there has been no event of default that is continuing under the existing BMR Note, and (ii) that the resale of the Property complies with the applicable Inclusionary Housing Program Monitoring and Procedures Manual and the conditions of approval, the Mayor's Office of Housing shall accept a replacement BMR Note (a "Replacement BMR Note") made to the order of the City by the new purchaser of the Property, in form and substance acceptable to the Mayor's Office of Housing, as full satisfaction of the existing BMR Note; the deed of trust securing the existing BMR Note shall be reconveyed to the City; and the new purchaser of the Property shall deliver to the City the Replacement BMR Note and a new deed of trust encumbering the Property. The principal amount of the Replacement BMR Note shall equal the difference between the fair market value of the Property and the restricted affordable purchase price owed by the purchaser of the Property at the time of the resale.
- 6) Upon the expiration of the Fifty-Year Period, any deed of trust securing a BMR Note shall remain a valid, enforceable lien on the Property until the next resale of the Property, at which time the maker of such BMR Note shall pay to the City the full amount due under the BMR Note. At such time as a BMR Note is repaid pursuant to this subparagraph, the lien of the deed of trust securing such BMR Note shall be released and the Property shall no longer be subject to the Restrictions and Requirements.
- 7) Except as herein provided, the version of the Inclusionary Housing Program Monitoring and Procedures Manual applicable to an owner of the Property shall be the most recent version at the time the Property was purchased by that owner or, if the Property has been inherited by the current owner, at the time the Property was last purchased.

The Parties agree that these Restrictions and Requirements shall bind all successors-in-interest to Chamberlain and shall run with the land.

M. Payment by the City and Payoff of Outstanding Debts Secured by Property

Chamberlain hereby acknowledges and represents that he has an account in his name for a revolving line of credit with Wells Fargo Bank, N.A. ("Wells Fargo"), Account No. 0650-650-5677858-1998, which is secured by the Property ("Line of Credit"). Chamberlain hereby certifies that, other than the Line of Credit and his mortgage through American Home Mortgage Acceptance, Inc., he has no other outstanding debts or loans secured wholly or in part by the Property. In addition,

Chamberlain hereby promises not to place any further encumbrance on the Property without prior approval from the Mayor's Office of Housing.

Within thirty days of the Operative Date of this Agreement, the City shall open an escrow account with First American Title Company ("Escrow Agent"). Funds in the escrow account shall be designated to pay off in full Chamberlain's Line of Credit, any related fees, and any fees and expenses relating to the services of the escrow agent and recordation of documents. Within ten days after the escrow account is opened, Chamberlain shall notify Wells Fargo that he wishes to pay off and close the Line of Credit, and Chamberlain shall direct Wells Fargo to send a demand letter to pay off and close the Line of Credit to Escrow Agent. Upon Escrow Agent's receipt of the Wells Fargo demand letter, the City shall deposit funds into the escrow account in the amount of \$65,000. Upon receipt of said funds, and subject to any other terms and conditions set forth in the escrow instructions submitted by the City to Escrow Agent, which shall be substantially in the form of the draft escrow instructions attached to this Agreement as Exhibit B, Escrow Agent shall use the funds to pay off the Line of Credit in full. Upon repayment of the Line of Credit, Chamberlain shall furnish to the City evidence, in form and substance satisfactory to the City in its sole discretion, that the Line of Credit is terminated and that Wells Fargo no longer has any security interest in the Property related to the Line of Credit. The recorded reconveyance of Wells Fargo's security interest related to the Line of Credit shall be satisfactory evidence. Failure to furnish such evidence acceptable to the City shall constitute a breach of this Agreement.

Any fees imposed by Wells Fargo or Escrow Agent relating to the close of escrow, the payoff and closure of the Line of Credit, or the reconveyance of any security interest held by Wells Fargo ("Fees") shall be paid from the escrow account before or at the close of escrow. If the funds in the escrow account are insufficient to pay the Fees, Escrow Agent shall invoice Chamberlain for the balance of unpaid Fees.

N. Sale of Property

The City and Chamberlain agree that Chamberlain shall sell the Property as a Below Market Rate Unit to a qualified purchaser for no more than \$264,238 and that the Property must be listed by a certified realtor on the Multiple Listing Service. This figure represents the base maximum resale price of \$251,655 plus 5% for the commission to be paid to the realtor and/or real estate agent(s) representing the buyer and seller in the sale of the Property.

Within 60 days of the Operative Date of this Agreement, Chamberlain shall list the Property for sale as a Below Market Rate Unit in accordance with the Program's Restrictions and Requirements. Chamberlain shall use all reasonable and good faith efforts to market and sell the Property.

O. Attorneys' Fees and Costs

The Parties shall each bear their own attorneys' fees and costs.

P. Release

In return for the consideration provided for in this Agreement, effective as of the recordation of this Agreement, Chamberlain releases the City and its officers, boards, commissions, subdivisions, departments, directors, parents, subsidiaries, affiliates, successors, insurers, employees, attorneys, and agents ("Released Parties") from any and all claims, liabilities, obligations, demands, and actions, that were brought or could have been brought against the Released Parties in the lawsuit or arising from this Agreement.

Likewise, in return for the consideration provided for in this Agreement, effective as of the date of the close of escrow of Chamberlain's sale of the Property pursuant to Section N. above, the City, and its officers, boards, commissions, subdivisions, departments, directors, parents, subsidiaries, affiliates, successors, insurers, employees, attorneys, and agents, releases Chamberlain and his predecessors, successors, assigns, partners, partnerships, parent, subsidiaries, affiliated and related entities, all present and former officers, directors, principals, agents, employees, and servants and representatives who are or may ever become liable to the City, including, without limitation, his insurers, sureties and attorneys, from any and all claims, liabilities, obligations, demands, and actions that were brought or could have been brought against Chamberlain in the lawsuit or arising from this Agreement, specifically including, but not limited to his acquisition of the Line of Credit.

Chamberlain understands and agrees that his release of the City as set forth in this Section extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present or future, and that any and all rights under Section 1542 of the California Civil Code or any analogous state law are hereby expressly waived. Section 1542 of the California Civil Code, reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.


 (Initials of Chamberlain)

Q. Dismissal

No later than fifteen days after the close of escrow as described in Section M. above, Chamberlain will file a dismissal with prejudice covering all Defendants and causes of action in the lawsuit.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by themselves or their duly authorized representatives.

FOR PLAINTIFF:


Grace Fagalde

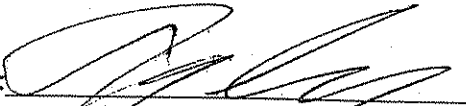
Approved as to Form:

By: *Timothy J. Chamberlain*
Timothy J. Chamberlain

TIMKEN JOHNSON HWANG LLP
By: *Christopher Gonzalez*
Christopher Gonzalez
Attorneys for Plaintiff

FOR DEFENDANTS:

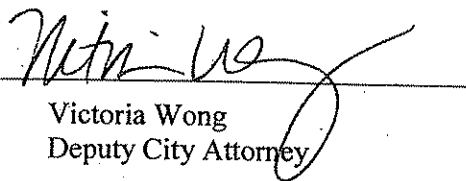
By: _____


Douglas Shoemaker
Director, San Francisco Mayor's
Office of Housing

Approved as to Form:

DENNIS J. HERRERA,
City Attorney

By: _____


Victoria Wong
Deputy City Attorney

San Francisco Superior Court Case No. CGC-09-489245

1701 Jackson Street, #204
San Francisco, CA 94109
Assessor's Block 599, Lot 150

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF Santa Clara)

On 10/13/10 before me, Grace Fagalde - Notary Public
DATE INSERT NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC

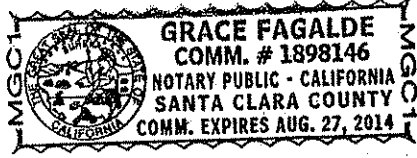
personally appeared, Timothy J. Chamberlain

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.

Grace Fagalde (SEAL)
NOTARY PUBLIC SIGNATURE



OPTIONAL INFORMATION

THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT.

TITLE OR TYPE OF DOCUMENT _____

DATE OF DOCUMENT _____ NUMBER OF PAGES _____

SIGNERS(S) OTHER THAN NAMED ABOVE _____

SIGNER'S NAME _____

SIGNER'S NAME _____

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RIGHT THUMBPRINT
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State of California)
) ss
County of San Francisco)

On **October 18, 2010**, before me, **Ricky Lam**, a notary public in and for said State, personally appeared **Douglas Shoemaker**, Director for the Mayor's Office of Housing, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 _____

(Seal)

