

File No. 151250 Committee Item No. 8
Board Item No. 2

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date January 21, 2016

Board of Supervisors Meeting Date February 9, 2016
Cmte Board

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Completed by: Erica Major Date January 15, 2016
Completed by: JM Date 1/25/2016

1 [Settlement of Lawsuits - 765 Market Street Residential Owners Association - City to Consider
2 Pedestrian and Traffic Improvements]

3 **Ordinance authorizing settlement of the lawsuits filed by 765 Market Street Residential**
4 **Owners Association, et al., against the City and County of San Francisco; the first**
5 **lawsuit was filed on August 16, 2013, in Sacramento Superior Court, Case No. 34-2013-**
6 **80001609 and then transferred to San Francisco Superior Court, Case No. CPF-14-**
7 **513433, and appealed to the First Appellate District for the Court of Appeal of the State**
8 **of California, Case No. A143980, entitled 765 Market Street Residential Owners**
9 **Association, et al. v. City and County of San Francisco, et al.; the second lawsuit was**
10 **filed on June 19, 2014, in San Francisco Superior Court, Case No. CPF-14-540094, and**
11 **appealed to the First Appellate District for the Court of Appeal of the State of California,**
12 **Case No. A143983, entitled 765 Market Street Residential Owners Association, et al. v.**
13 **City and County of San Francisco, et al.; material terms of said settlement include the**
14 **City's commitment to initiate consideration of installing of a crosswalk at Third Street**
15 **and Stevenson Street, revising signal timing and offsets on Third Street, and relocating**
16 **the pedestrian signal at Third Street; and the commitment of Real Party in Interest, 706**
17 **Mission Street Co., LLC, to donate \$100,000 to the City to offset costs to fund the**
18 **improvements if they are approved by the City.**

19
20 Be it ordained by the People of the City and County of San Francisco:

21 Section 1. Pursuant to Charter, Section 6.102(5), the Board of Supervisors hereby
22 authorizes the City Attorney to settle the actions entitled 765 Market Street Residential
23 Owners Association, et al. v. City and County of San Francisco, et al.; First Appellate District
24 for the Court of Appeal of the State of California, A143980 (San Francisco Superior Court,
25

1 Case No. CPF-14-513433), and 765 Market Street Residential Owners Association, et al. v.
2 City and County of San Francisco, et al., First Appellate District for the Court of Appeal of the
3 State of California, A143983 (San Francisco Superior Court, Case No. CPF-14-540094), by
4 the material terms as set forth in the Settlement Agreement contained in Board of Supervisors
5 File No. 151250. The material terms of the Settlement Agreement include the City's
6 agreement to consider installation of a crosswalk at Third Street and Stevenson Street,
7 revision of signal timing and offsets on Third Street, and relocation of the pedestrian signal at
8 Third Street and, if appropriate, to recommend approval by the Municipal Transportation
9 Agency. If approved, Real Party in Interest, 706 Mission Street Co., LLC, has committed to
10 donate \$100,000 to the City to offset costs of the improvements.

11 Section 2. The first action described above was filed in Sacramento Superior Court on
12 August 16, 2013, and the following parties were named in the lawsuit: Petitioners 765 Market
13 Street Residential Owners Association, Friends of Yerba Buena, Paul Sedway, Ron Wornick,
14 Matthew Schoenberg, Joe Fang, and Margaret Collins; Respondents City and County of San
15 Francisco, and Successor Agency to the Redevelopment Agency of the City and County of
16 San Francisco; and numerous Real Parties in Interest including 706 Mission Street Co., LLC,
17 Millennium Partners, and the Mexican Museum. The second action described above was filed
18 in San Francisco Superior Court on June 19, 2014, and the following parties were named in
19 the lawsuit: Petitioners 765 Market Street Residential Owners Association, Friends of Yerba
20 Buena, Paul Sedway, Ron Wornick, Matthew Schoenberg, Joe Fang, and Margaret Collins;
21 Respondents City and County of San Francisco; and numerous Real Parties in Interest
22 including Successor Agency to the Redevelopment Agency of the City and County of San
23 Francisco, 706 Mission Street Co., LLC, Millennium Partners, and the Mexican Museum.

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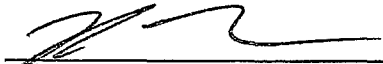
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APPROVED AS TO FORM AND
RECOMMENDED:

DENNIS J. HERRERA
City Attorney



ROBB W. KAPLA
Deputy City Attorney

RECOMMENDED:

SAN FRANCISCO DEPARTMENT OF
PUBLIC WORKS



MOHAMMED NURU
DIRECTOR

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SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS ("Agreement") is dated for reference purposes as of _____, 2015 by and between 765 MARKET STREET RESIDENTIAL OWNERS ASSOCIATION, a California nonprofit corporation ("Owners Association"), FRIENDS OF YERBA BUENA, a California nonprofit mutual benefit corporation ("Friends of Yerba Buena"), Paul Sedway, Ron Wornick, Matthew Schoenberg, Joe Fang, and Margaret Collins (collectively the "Petitioners"), as Petitioners in *The 765 Market Street Residential Owners Association et al. v City and County of San Francisco, et al.*, San Francisco County Case No. CPF-14-513433 and *The 765 Market Street Residential Owners Association et al. v City and County of San Francisco, et al.*, San Francisco County Case No. CGC-14-540094, and the OFFICE OF COMMUNITY INFRASTRUCTURE AND INVESTMENT OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic established pursuant to the California Community Redevelopment Law ("Successor Agency"), the CITY AND COUNTY OF SAN FRANCISCO ("City"), Real Party in Interest 706 MISSION STREET CO LLC, a Delaware limited liability company ("706 Mission"), Real Party in Interest THE MEXICAN MUSEUM ("The Mexican Museum") (Real Parties collectively with the City and Successor Agency, the "Respondents") and The Millennium Market Street Center Association, a California nonprofit mutual benefit corporation ("Center Association"). Together, the parties to this Agreement may be referred to as "Parties," or in the singular a "Party."

RECITALS

A. The City published a Draft Environmental Impact Report in June 2012 for a new 47-story, 550-foot-tall tower at 706 Mission Street, in San Francisco, California, which would be adjacent to and physically connected to the existing 10-story, 154-foot-tall Aronson Building (the "Project"). The new tower would provide residential housing and a new location for The Mexican Museum.

B. On March 21, 2013, the Planning Commission certified the Final Environmental Impact Report ("EIR") for the Project by Motion No. 18829.

C. Petitioners and others appealed the certification to the Board of Supervisors and a hearing was held on May 7, 2013. Petitioners alleged inadequacies in the EIR's analysis. The Board of Supervisors denied the appeal.

D. On May 15, 2013, the Historic Preservation Commission approved a Major Permit to Alter for the Project by Motion No. 0197. By the same Motion, it also adopted California Environmental Quality Act ("CEQA") Findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program. Petitioners appealed and on July 23, 2013, the Board of Supervisors denied Petitioners' appeal by Motion No. 13-096.

E. On May 23, 2013, the Planning Commission granted a Section 309 Determination of Compliance and Request for Exceptions by Motion No 18894, increased the Absolute Cumulative Limit for new shadow on Union Square by Resolution No. 18876 and allocated this increase to the Project by Motion No. 18877, and adopted CEQA Findings, a Statement of

Overriding Considerations, and a Mitigation Monitoring and Reporting Program by Motion No. 18875.

F. After Petitioners appealed these Planning Commission decisions to the Board of Appeals, the Board declined to take jurisdiction over certain issues and denied the appeal as to the rest following a hearing on these matters on July 31, 2013.

G. On July 23, 2013, and July 30, 2013, the Board of Supervisors adopted Ordinance 177-13, creating a Special Use District for the Project and adopting the Planning Commission's CEQA Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program.

H. On July 16, 2013, the Successor Agency approved the Purchase and Sale Agreement to convey the land on which the Project is proposed to be constructed to Real Party in Interest, 706 Mission, by Resolution No. 32-2013, and adopted CEQA Findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program by the same Resolution.

I. On July 22, 2013, the Oversight Board of the Successor Agency to the Redevelopment Agency approved the actions of the Successor Agency by Resolution No. 8-2013.

J. On July 19, 2013, the Successor Agency filed a Notice of Determination ("NOD") regarding Resolution No. 32-2013, and the Oversight Board filed its NOD regarding Resolution No. 8-2013 on July 24, 2013. On August 2, 2013 and August 13, 2013, the Planning Department filed NODs relating to the City's actions.

K. On August 16, 2013, Petitioners filed a Petition for Writ of Mandamus in Sacramento Superior Court, Case No. 34-2013-80001609, alleging that the City and Successor Agency's approval of the Project violated CEQA, the California Planning and Zoning Law, and the City Municipal Code. The writ petition, as later amended, was transferred to San Francisco County Superior Court as case number CPF-14-513433 (the "Original Petition").

L. The City continued to process the application and on May 20, 2014, approved a parcel map and a vesting tentative map. On June 19, 2014, Petitioners filed a second Petition for Writ of Mandamus alleging that the City's map approvals violated CEQA, the California Planning and Zoning Law, and the City Municipal Code for the same reasons alleged in the Original Petition. That petition was filed in San Francisco County as Case No. CGC-14-540094 (the "Map Petition").

M. Judgment was entered against the Petitioners and in favor of the Respondents in both the Original Petition and Map Petition. Petitioners appealed both judgments separately to the First District Court of Appeal. The appeal of the Original Petition is pending as Appellate Case No. A143980 and the appeal of the Map Petition is pending as Appellate Case No. A143983 (collectively, the "Appeals").

N. The Parties now deem it to be in their respective best interests and to their mutual advantage to settle the Appeals without any admission of liability or wrongdoing on the part of any Party.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, of the promises, covenants, agreements, representations and warranties set forth below, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. OBLIGATIONS OF THE CITY AND THE SUCCESSOR AGENCY

A. Stevenson and Third Street Intersection Improvements

Subject to receipt of funds described in Section 2.A below and the approval of the City's Municipal Transportation Agency (the "MTA") upon conditions reasonably acceptable to Petitioners and 706 Mission (including without limitation reasonable conditions regarding timing):

(i) Stevenson and Third Street Crosswalk

The City shall install a new 10-foot-wide striped crosswalk across Third Street south of the intersection with Stevenson Street, with accessible curb ramps at each end (the "Crosswalk"). The Successor Agency will cooperate with the City in implementing the Crosswalk.

(ii) Stevenson and Third Street Traffic Signal Modifications

Concurrently with the installation of the Crosswalk, in accordance with Improvement Measures I-TR-A of the EIR, the City shall (a) revise the signal timing and off-sets on Third Street to ensure that sufficient clearance time is provided so that vehicles do not spill back into the midblock intersection at Stevenson Street (the intersection currently is striped "KEEP CLEAR"); and (b) relocate the existing pedestrian signal at Third Street north of Stevenson Street closer to the intersection to reduce the propensity of pedestrians crossing Stevenson Street during the "Don't Walk" phase. The Successor Agency will cooperate with the City in implementing these traffic signal modifications.

The improvements identified in this Section 1.A shall be referred to herein as the "Intersection Improvements". The Intersection Improvements are conceptually illustrated on sheets 6-7 and 35-36 of Exhibit A, attached hereto. The Parties agree that the Intersection Improvements would enhance pedestrian comfort, convenience, and safety and would provide a public benefit to the residents of and visitors to the City.

B. Section 10B Officer

Subject to receipt of funds described in Section 2.B below, City Police Department personnel, pursuant to Section 10B of the City Administrative Code, shall provide

traffic enforcement services on Stevenson Street west of Third Street, (i) at the staffing levels recommended by the Yerba Buena Community Benefit District (the "CBD") based upon the 10B Officer Report (defined in Section 2.B below), starting upon commencement of construction of the Project and continuing until three (3) months following issuance of a Temporary Certificate of Occupancy (the "TCO") for the Project (the "Initial 10B Officer Period"), and (ii) on an on-call basis thereafter as necessary and to the extent funded pursuant to Section 2.B(ii) below. The Chief of Police shall determine where and when these City Police Department personnel will be stationed.

C. Stevenson Street Improvements

The Agreement for Purchase and Sale of Real Estate by and between the Successor Agency, 706 Mission, and The Mexican Museum dated July 16, 2013 (the "PSA") contemplated that 706 Mission would use commercially reasonable efforts to work with the Successor Agency and the City to pursue certain Stevenson Street Upgrades, as defined in Section 8.9 of the PSA and depicted on Exhibit V to the PSA. The parties to the PSA acknowledged that the Stevenson Street Upgrades were preliminary and subject to change or modification. The Successor Agency acknowledges and agrees that the Stevenson Street Improvements (defined in Section 2.D below) constitute an enhancement of, and replacement to, the Stevenson Street Upgrades contemplated by the PSA, and that 706 Mission's performance of its obligations pursuant to Sections 2.D and 4.E of this Agreement will satisfy 706 Mission's obligations pursuant to Section 8.9(a) of the PSA and Section 8.9(c) of the PSA with respect to the Stevenson Street Upgrades. The City acknowledges and agrees that the Stevenson Street Improvements provide public benefits equal to or greater than those provided by the Stevenson Street Upgrades and are consistent with the City approvals for the Project.

D. Public Interest

The City and the Successor Agency acknowledge and agree that this Settlement Agreement is in the public interest.

2. OBLIGATIONS OF 706 MISSION

A. Intersection Improvement Funding

Within five (5) business days after the Effective Date, 706 Mission shall donate to the City, for its use at its discretion in the discharge of its obligations set forth in Section 1.A above, the lump sum of One Hundred Thousand Dollars (\$100,000.00) (the "Intersection Improvement Funding").

B. Section 10B Officer Funding

(i) Within five (5) business days after the Effective Date, 706 Mission shall retain Nelson Nygard to prepare a report (the "10B Officer Report") containing recommendations regarding appropriate levels of City Police Department personnel staffing, pursuant to Section 10B of the City Administrative Code, to provide traffic enforcement services on Stevenson Street west of Third Street during the Initial 10B Officer Period. Within ten (10) days after the receipt of the final 10B Officer Report, 706 Mission shall fund to the CBD and

cause the CBD to pay to the City sufficient money to fund staffing at the level recommended by the 10B Officer Report during the Initial 10B Officer Period.

(ii) 706 Mission shall work with the CBD to identify funding sources for funding of City Police Department personnel, pursuant to Section 10B of the City Administrative Code, to provide on-call traffic enforcement services on Stevenson Street west of Third Street as necessary after the Initial 10B Officer Period. If such funding sources are not found by the date that is three (3) months following issuance of the TCO for the Project, then 706 Mission shall fund to the CBD and cause the CBD to pay to the City additional funding sufficient to continue such on-call services as needed for a period of five (5) years following the issuance of the TCO (the "Subsequent 10B Officer Period"). The amount of such funding shall be reasonably determined by the owner of the portion of the Jessie Square Garage that is open to the public (the "Public Garage Owner").

C. Jessie Square Garage Mission Street Exit

For the time period starting with the commencement of demolition of the existing Jessie Square Garage exit ramp onto Mission Street until the reopening of the reconstructed Jessie Square Garage exit ramp onto Mission Street, and during other periods when the ramp to the Mission Street is not in service, 706 Mission shall limit parking in the Jessie Square Garage to fifty percent (50%) of the current capacity of the Jessie Square Garage (the "Temporary Capacity Limitation"), which current capacity the Parties agree is four hundred and fifty (450) spaces. The City acknowledges that the Temporary Capacity Limitation is consistent with, and does not violate the terms of the City entitlements for the Project; and the Successor Agency acknowledges that the Temporary Capacity Limitation is consistent with, and does not violate the terms of, the PSA.

D. Stevenson Street Improvements

Commencing on the Effective Date, 706 Mission shall use its commercially reasonable efforts to work with the City and the Successor Agency, as well as affected owners and tenants of real property adjacent to Stevenson Street west of Third Street, to pursue certain improvements to Stevenson Street conceptually illustrated on sheets 19-20, 24-28, and 36-39 of Exhibit A attached hereto and incorporated herein by this reference, and to be further developed in accordance with this Section 2.D (the "Stevenson Street Improvements"), as follows:

(i) The Center Association shall retain the consultants needed to pursue the Stevenson Street Improvements, including a landscape architect and other consultants selected by the Center Association and reasonably necessary and appropriate to the pursuit of the Stevenson Street Improvements. The Center Association, with the assistance of the selected consultants, shall prepare improvement plans identifying the Stevenson Street Improvements.

(ii) As part of the Stevenson Street Improvements, 706 Mission will be responsible for pursuing the relocation of the current public art on Stevenson Street and removing the current landscaping. In order to develop a new landscaping and public art plan, a new committee will be formed (the "Stevenson Street Committee") to approve and accept a new design from a mutually acceptable landscape architect. The Stevenson Street Committee will consist of one

representative from the Owners Association, one representative of the Friends of Yerba Buena, one representative from the Four Seasons Hotel and Sean Jeffries on behalf of 706 Mission.

(iii) 706 Mission shall use commercially reasonable efforts to seek such permits, approvals, and agreements (including, without limitation, any rights-of-way and/or other third party consents or approvals) (collectively, "Approvals") as may reasonably be necessary to implement the Stevenson Street Improvements (the "Stevenson Street Approvals").

(iv) In the event that the Stevenson Street Approvals or Stevenson Street Alternate Approvals (as defined in Section 4.E below) are obtained in accordance with Section 4.E below, 706 Mission shall implement and thereafter maintain (or cause to be maintained by the Public Garage Owner) the Stevenson Street Improvements or the Stevenson Street Alternate Improvements, as applicable, at 706 Mission's sole cost as part of the development of the Project; provided that the Parties acknowledge that the Center Association will continue to fund the cleaning of Stevenson Street following the completion of the Stevenson Street Improvements at approximately the current budget level of Sixty Eight Thousand Five Hundred and Fifty Six Dollars (\$68,556.00) per year.

E. Prohibited Approvals

706 Mission shall not seek any new Project approvals or any amendments to any existing Project approvals that constitute a Prohibited Approval as defined in Section 3.A.

3. OBLIGATIONS OF PETITIONERS

A. Non-Opposition

Petitioners may participate in the City's process for consideration of the Stevenson Street Improvements, the Intersection Improvements, the Alternate Intersection Improvements (as defined in Section 4.B below) and the Alternate Stevenson Street Improvements (as defined in Section 4.E below). Notwithstanding the foregoing, Petitioners shall not themselves individually object, or as members of any organization or entity (including an unincorporated association) advocate that such organization or entity object, or financially support any other party in objecting, in any regulatory or legal proceeding (including without limitation any administrative hearing or proceeding, administrative appeal, judicial challenge, referendum, initiative, or moratorium that, if such moratorium were enacted, would have the effect of delaying or prohibiting construction of the Intersection Improvements, the Alternate Intersection Improvements, the Stevenson Street Improvements, the Alternate Stevenson Street Improvements, or the Project, or invalidating any existing or future approvals therefore) ("Opposition") regarding the City's approval of the Intersection Improvements, the Alternate Intersection Improvements, the Stevenson Street Improvements, the Alternate Stevenson Street Improvements, or any existing or new Project approvals or any amendments to any Project approvals that do not increase (a) the height of the Project above the height authorized by the existing City entitlements for the Project; or (b) the contribution of the Project to traffic on Stevenson Street above the amount specified in the EIR (the approvals referenced in clauses (a) and (b) of this paragraph, each a "Prohibited Approval"). For purposes of this Agreement, whether a new or amended Project approval increases the contribution of the Project to traffic on

Stevenson Street above the amount specified in the EIR shall be conclusively determined by a qualified traffic engineer mutually acceptable to the Parties using the same methodology as used in the EIR. For purposes of this Agreement, Opposition in any regulatory or legal proceeding that consists of any administrative appeal, judicial challenge, referendum, or initiative is referred to as "Specified Opposition," and Opposition that is not Specified Opposition is referred to as "General Opposition".

B. Stevenson Street Improvements

Petitioners acknowledge and agree that the Stevenson Street Improvements contemplated herein constitute an enhancement of, and replacement to, the Stevenson Street Upgrades contemplated by the PSA and that 706 Mission's performance of its obligations pursuant to Sections 2.D and 4.E of this Agreement will satisfy 706 Mission's obligations pursuant to Section 8.9(a) of the PSA and Section 8.9(c) of the PSA with respect to the Stevenson Street Upgrades.

4. OBLIGATIONS OF ALL PARTIES

A. Vacation of Judgments and Dismissal of Appeals

Within five (5) days after the Effective Date of this Agreement, Petitioners, 706 Mission, and The Mexican Museum shall execute and file with the First District Court of Appeal (i) joint motions in each Appeal under Code of Civil Procedure Section 128(a)(8) and Local Rule 4 of the First District Court of Appeal for stipulated vacation of the judgments in the Original Petition and the Map Petition and a request for dismissal of the Appeals (the "Motions"); and (ii) the Joint Rule 4 Declaration, each in substantially the form attached hereto as Exhibit B. City and Successor Agency agree that they will not oppose the Motions. In the event the Motions, or either of them, are denied, the parties to the Appeals shall nonetheless proceed with dismissal of the Appeals.

B. Remedies

(i) Any Petitioner that breaches its obligations pursuant to Section 3.A by General Opposition only shall not be considered in default under this Agreement unless and until Respondents, or any of them, provide notice of said breach to all Petitioners and the breaching Petitioner fails to cure said breach, including without limitation submitting to any administrative agency a written disavowal of any comments made in breach of Section 3.A, within fifteen (15) days after said notice. Any Petitioner that breaches its obligations pursuant to Section 3.A by any Specified Opposition shall be considered in default under this Agreement upon the occurrence of said breach, without any notice or opportunity to cure said breach.

(ii) The Owners' Association shall not be considered to be in default of this Agreement based on the conduct of any of its members that has not been duly authorized by majority vote of the Owners' Association Board of Directors.

(iii) The Parties agree that, due to the nature of this Agreement, the amount of actual monetary damages sustained by 706 Mission in the event of default under this Agreement

by Petitioners would be extremely difficult to determine. Therefore, the Parties agree to the following remedies:

(a) Each Petitioner will take all actions necessary to cause dismissal of any appeals or challenges filed by that Petitioner with any entity in violation of this Agreement; and

(b)

(1) If any Petitioner is in default of this Agreement as a result of conduct in breach of the non-opposition obligation in Section 3.A by General Opposition only, 706 Mission shall be excused from making any further payments due to said Petitioner pursuant to Section 2 hereof.

(2) If any Petitioner is in default of this Agreement as a result of conduct in breach of the non-opposition obligation in Section 3.A by any Specified Opposition, 706 Mission shall be excused from making any further payments to any Party pursuant to Section 2 hereof.

(3) If any Petitioner is in default of this Agreement as a result of conduct in breach of any obligation other than the non-opposition obligation in Section 3.A, 706 Mission shall not be excused from making any further payments due to any Party pursuant to Section 2 hereof; and

(c) 706 Mission may seek damages from any Petitioner who is in default of this Agreement. 706 Mission shall not seek damages from any Petitioner who is not in default of this Agreement.

(iv) The Parties agree that it would be extremely difficult to determine the amount of actual monetary damages that would be sustained by Petitioners in the event of a default by 706 Mission as a result of conduct in breach of its obligations under Section 2.D(iv) that consists of, after obtaining the Stevenson Street Approvals or Stevenson Street Alternate Approvals, as applicable, not implementing the Stevenson Street Improvements or Alternate Stevenson Street Improvements, as applicable, as part of the Project (each, a "Stevenson Street Default"). In the event of an alleged Stevenson Street Default, Petitioners shall provide written notice to 706 Mission of such alleged default and 706 Mission shall have thirty (30) days to cure such alleged default, or, in the event such alleged default is of a nature that it cannot reasonably be cured in thirty (30) days, 706 Mission shall have thirty (30) days to commence the cure and thereafter diligently pursue the cure to completion (the "Cure Period"). In the event that 706 Mission fails to cure such alleged default during the Cure Period, and a court of competent jurisdiction determines that 706 Mission has committed an uncured Stevenson Street Default, then 706 Mission shall pay to the Owners Association, as liquidated damages, and as the exclusive remedy for such default, the sum of Five Million Dollars (\$5,000,000.00).

(v) The Parties agree that, except as otherwise provided in this Section 4.B, any remedies stated above shall not be the Parties' exclusive remedies and the Parties shall be entitled to all other remedies at law or in equity and the exercise of any one or more of those remedies shall not constitute a waiver or election with respect to any other available remedy.

C. Intersection Improvements

(i) Petitioners, 706 Mission, and the Successor Agency shall cooperate to secure MTA approval of the Intersection Improvements. If the MTA does not approve the Intersection Improvements within one (1) year after the Effective Date of this Agreement, then within thirty (30) days thereafter, 706 Mission, the Owners Association, and the Friends of Yerba Buena (the "Intersection Conferring Parties") shall meet and confer to discuss whether to continue efforts to secure such approval and, if not, whether to pursue alternate improvements (the "Alternate Intersection Improvements") reasonably acceptable to the Intersection Conferring Parties. At the conclusion of the thirty (30) day period, the Intersection Conferring Parties shall provide written notice to the City (the "Intersection Improvement Notice"), executed on behalf of each of the Intersection Conferring Parties, requesting that the City either: (a) continue pursuit of the Intersection Improvements ("Intersection Option A"); (b) cease pursuit of the Intersection Improvements and commence pursuit of the Alternate Intersection Improvements, provided that such Alternate Intersection Improvements are reasonably acceptable to the City ("Intersection Option B"), or (c) cease pursuit of the Intersection Improvements and not pursue any alternate improvements ("Intersection Option C"). In the case of Intersection Options A or B, Petitioners, 706 Mission, and the Successor Agency shall cooperate to secure MTA approval of the Intersection Improvements or the Alternate Intersection Improvements, as applicable, until the earlier of MTA approval or two (2) years following the Effective Date.

(ii) In the event that the Intersection Conferring Parties either (a) select Intersection Option C above, or (b) select Intersection Option A or B above, but MTA has not approved the Intersection Improvements or Alternate Intersection Improvements, as applicable, within two (2) year after the Effective Date, then (y) the City shall immediately refund any unexpended portion of the Intersection Improvement Funding to 706 Mission, and (z) the Parties shall have no further obligations pursuant to Section 1.A or this Section 4.C.

D. Mutual Release

(i) As of the Effective Date, except for the obligations provided in this Agreement, Petitioners, 706 Mission, The Mexican Museum, and the Center Association each, on behalf of themselves and each of their respective successors, heirs, assigns, agents, employees, representatives, partners, officers, directors, shareholders, members, managers, joint venturers, subsidiaries, parents, receivers, trustees, beneficiaries, affiliates, attorneys, and persons and entities holding beneficial interests (collectively, the "Releasing Parties"), do hereby unconditionally release, remise, acquit, and forever discharge all other Parties and each of their respective successors, heirs, assigns, agents, employees, representatives, partners, officers, directors, shareholders, members, managers, joint venturers, subsidiaries, parents, receivers, trustees, beneficiaries, affiliates, and persons and entities holding beneficial interests (collectively, the "Released Parties"), from any and all claims, demands, injuries, actions, causes of action, either at law or in equity or of any kind, nature or description, whether presently known or unknown and whether presently existent or nonexistent, which such Releasing Party has had or now has or may in the future have against any Released Party arising out of, or based upon the subject matter of, or relating to, directly or indirectly, the Project, the Original Petition, the Map Petition, the Petition for Writ of Mandate known as Appellate Case No. A142811, the Appeals, or the negotiation of this Agreement.

Waiver of Civil Code Section 1542. The Releasing Parties agree that the release contained in this Agreement extends to all claims of any kind or nature, whether known or unknown, suspected or unsuspected, and in that regard each Releasing Party acknowledges that each has read, been advised by counsel concerning, and considered and understands the full nature, extent and import of the provisions of Section 1542 of the Civil Code of California, which reads as follows:

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

All Releasing Parties further declare that they each knowingly and willingly enter into this Agreement notwithstanding the provisions of Section 1542. Upon the advice of counsel, each Releasing Party, except for the obligations provided in this Agreement, waives and relinquishes, now and forever, any and all rights it has or may have under Section 1542 to the fullest extent allowed by law. Each Releasing Party agrees and represents that it fully understands the statutory language of Civil Code Section 1542 and with this understanding, nevertheless, elects to and does assume all risks for rights, claims, demands, obligations, causes of action or liabilities, known or unknown, heretofore and hereafter arising with the subject matter of this Agreement. Each Releasing Party hereby expressly, knowingly, and voluntarily, except for the obligations provided in this Agreement, waives and relinquishes any and all rights and benefits that each may have under California Civil Code Section 1542 with respect to the Project, the Original Petition, the Map Petition, the Petition for Writ of Mandate known as Appellate Case No. A142811, the Appeals, or the negotiation of this Agreement.

(ii) As of the Effective Date, except for the obligations provided in this Agreement, the City and Successor Agency each, on behalf of themselves and each of their respective officials, assigns, agents, employees, representatives, officers, attorneys, and persons and entities holding beneficial interests do hereby unconditionally release, remise, acquit, and forever discharge the Petitioners and each of their respective successors, heirs, assigns, attorneys, agents, employees, representatives, partners, officers, directors, shareholders, members, managers, joint venturers, subsidiaries, parents, receivers, trustees, beneficiaries, affiliates, and persons and entities holding beneficial interests, from any and all claims, demands, injuries, actions, causes of action, either at law or in equity or of any kind, nature or description, whether presently known or unknown and whether presently existent or nonexistent, which the City or Successor Agency has had or now has against any Petitioner arising out of or based upon the Original Petition, the Map Petition, the Petition for Writ of Mandate known as Appellate Case No. A142811, the Appeals, the administrative proceedings leading up to those petitions and appeals, or the negotiation of this Agreement.

E. Stevenson Street Improvements

(i) Petitioners, 706 Mission, and the Successor Agency shall cooperate to secure the Stevenson Street Approvals and, if applicable, the Stevenson Street Alternate

Approvals (as defined below). In the event that the Stevenson Street Approvals are not obtained within one (1) year after the Effective Date, then within thirty (30) days thereafter, 706 Mission, the Owners Association, the Friends of Yerba Buena, the City, and the Successor Agency (the "Stevenson Street Conferring Parties") shall meet and confer in good faith to identify additional improvements or services in connection with the development of the Project of equivalent cost to 706 Mission that will replicate the public benefit that cannot be achieved to the greatest extent possible (the "Alternate Stevenson Street Improvements"). At the conclusion of the thirty (30) day period, the Stevenson Street Conferring Parties shall agree in writing to either (a) cease pursuit of the Stevenson Street Improvements and commence pursuit of the Alternate Stevenson Street Improvements ("Stevenson Street Option A") or (b) cease pursuit of the Stevenson Street Improvements and not pursue any alternate improvements ("Stevenson Street Option B"). In the event that the Stevenson Street Conferring Parties agree to Stevenson Street Option A, 706 Mission shall use commercially reasonable efforts to seek such Approvals as may be necessary to implement the Alternate Stevenson Street Improvements (the "Stevenson Street Alternate Approvals") until the earlier of receipt of the Stevenson Street Alternate Approvals or two (2) years following the Effective Date.

(ii) In the event that the Stevenson Street Conferring Parties (a) agree to Stevenson Street Option B as provided above, or (b) agree to Stevenson Street Option A as provided above, but the Stevenson Street Alternate Approvals have not been obtained within two (2) years after the Effective Date, or (c) fail to agree to either Stevenson Street Option A or B as provided above, then (y) within ten (10) days after (i) the agreement on Stevenson Street Option B in the case of Stevenson Street Option B, or (ii) the date that is two (2) years after the Effective Date in the case of Stevenson Street Option A, or (iii) the conclusion of the thirty (30) day period without agreement on either Stevenson Street Option A or B, 706 Mission shall pay to the Owners Association the amount of Five Million Dollars (\$5,000,000.00) and (z) the Parties shall have no further obligations pursuant to Section 2.D of this Agreement or this Section 4.E.

5. GENERAL PROVISIONS

A. Effective Date

The date on which the last of the following occurs is the "Effective Date": execution by Petitioners, Real Parties, and the Center Association, and approval and execution by the Successor Agency and City of this Agreement. Petitioners' and 706 Missions' offer to enter into this Agreement by executing it will expire if the City and the Successor Agency have not approved and executed this Agreement by October 22, 2016.

B. No Admission of Liability

This Agreement, including the release contained herein, reflects the settlement of denied and contested claims. Nothing contained herein is, or shall be construed to be, an admission by any Party of liability, of any kind, to any other Party.

C. Waiver

Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed

by such Party. No delay or omission in the exercise of any right or remedy accruing to either Party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

D. Entire Agreement

This instrument contains the entire agreement between the Parties and all prior written or oral negotiations, discussions, understandings, and agreements are merged herein.

E. Headings

The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.

F. Applicable Law

This Agreement shall be construed according to the laws of the State of California.

G. Jurisdiction

The Parties consent to the jurisdiction of the courts of the State of California to resolve any dispute regarding this Agreement. In mutual recognition of the fact that this Agreement is to be performed in the City and County of San Francisco, California, the Parties agree that in the event any civil action is commenced regarding this Agreement, San Francisco County, California, is the proper venue for the commencement and trial of such action.

H. Attorneys' Fees

If any Party commences an action against another Party or a dispute arises under this Agreement, the prevailing Party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of the Successor Agency and the City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience.

I. Binding on Successors

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns.

J. Joint and Several Obligations

The obligations of Petitioners shall be joint and several.

K. No Third Party Beneficiaries

This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have or acquire any right or action based upon any provisions of this Agreement. There are no intended third party beneficiaries.

L. Informed Decision

Each Party represents and warrants to all other Parties that they have had the advice of counsel of their own choosing in the negotiations for, and the preparation of, this Agreement and have read and understand the contents of this Agreement and its legal effect. Each Party has conducted its own factual investigation, is not relying on any other Party, and assumes the risk that there are material unknown facts or that facts are other than as is presumed. The Parties further acknowledge that they are aware that they may hereafter discover material facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, and further acknowledge that there may be future events, circumstances, or occurrences materially different from those they know or believe likely to occur, but that it is their intention to enter into and be bound by this Agreement.

M. Agreement as Defense

In connection with any demand or cause of action related to a matter released herein, this Agreement may be pleaded as a defense by any Party hereto and shall operate to effect a dismissal of such demand or cause of action.

N. Cooperation/Further Assurances

The Parties shall promptly perform, execute and deliver or cause to be performed, executed and/or delivered any and all acts, deeds, and assurances, including the delivery of any documents, as any Party may reasonably require in order to carry out the intent and purpose of this Agreement.

O. Joint Preparation

This Settlement Agreement shall be deemed to have been jointly prepared by the Parties, and shall not be construed against any Party in the event of any claimed uncertainty or ambiguity.

P. Warranty of Authority

The Parties, and each of them, represent and warrant to the other Parties hereto that the individual signatories to this Agreement have authority to execute this Agreement and to release claims as outlined by this Agreement, on behalf of themselves and the entities on whose behalf they purport to act, and have obtained all necessary Board of Supervisors', Successor Agency Commission's, board of directors', members', partners' or other approvals. Owners Association and Friends of Yerba Buena further agree to provide 706 Mission, concurrently with execution of this Agreement, a copy of the executed resolutions of their respective Executive Committees approving this Agreement.

Q. No Prior Assignments

The Parties hereto represent and warrant that they have not heretofore assigned or transferred or purported to assign or transfer, to any other person, entity, association, corporation, or firm whatsoever, any claim, debt, liability, demand, obligation, expense, action or causes of action herein released.

R. Counterparts

This Agreement may be executed in one or more counterparts, and all the counterparts shall constitute but one and the same agreement, notwithstanding that all Parties hereto are not signatories to the same or original counterpart.

S. Notices

All notices required under this Agreement must be in writing, and may be given either personally or by overnight delivery by nationally recognized overnight courier service. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Parties hereto, designate any other person or address in substitution of the address to which such notice shall be given. Such notices shall be given to the Parties at their addresses set forth below:

PETITIONERS:

765 MARKET STREET RESIDENTIAL OWNERS ASSOCIATION
765 Market Street Residential Owners Association
ATTN: John Combs
765 Market Street, 6th Floor
San Francisco, CA 94103

FRIENDS OF YERBA BUENA
c/o Jill Dodd
Manatt, Phelps & Phillips, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111

Paul Sedway
Four Seasons Private Residences
765 Market Street, Apt. 26G
San Francisco, CA 94103

Ron Wornick
Four Seasons Private Residences
765 Market Street, Apt. 25A
San Francisco, CA 94103

Matthew Schoenberg
c/o Jill Dodd
Manatt, Phelps & Phillips, LLP

One Embarcadero Center, 30th Floor
San Francisco, CA 94111

Joe Fang
Four Seasons Private Residences
765 Market Street, Apt. PH1A
San Francisco, CA 94103

Margaret Liu Collins
Four Seasons Private Residences
765 Market Street, Apt. 31A
San Francisco, CA 94103

All notices sent to any Petitioner must also simultaneously be sent to:
c/o Jill Dodd
Manatt, Phelps & Phillips, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111

Peter Sandmann, Esq.
Tesler & Sandmann
38 Miller Avenue, No. 128
Mill Valley, CA 94941

Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Floor
San Francisco, CA 94105
706 MISSION

CITY:
San Francisco City Attorney's Office
Attention: Land Use
1 Dr. Carlton B. Goodlett Place, Room 234
San Francisco, CA 94102

SUCCESSOR AGENCY:
General Counsel
Successor Agency to the San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103

706 MISSION:
Mr. Sean Jeffries
Millennium Partners
735 Market Street, 3rd Floor
San Francisco, CA 94103

With a copy to:

Andrew Sabey
Cox, Castle & Nicholson LLP
50 California Street, 32nd Floor
San Francisco, CA 94111

CENTER ASSOCIATION:

Four Seasons Hotel San Francisco/The Millennium Market Street Center Association
c/o Bryan Ruch (Chief Financial Officer)
735 Market Street, 6th Floor
San Francisco, CA 94103

With a copy to:

The Millennium Market Street Center Association
c/o Sean Jeffries (President)
735 Market Street, Suite 302
San Francisco, CA 94103

THE MEXICAN MUSEUM:

Andrew M. Kluger
Chair of the Board of Directors
Ft. Mason Center, Building D
San Francisco, CA 94123

With a copy to:

Victor M. Marquez
General Counsel
The Marquez Law Group
20 California Street, 7th Floor
San Francisco, CA 94111

T. Severability

In the event any of the provisions of this Settlement Agreement are deemed to be invalid or unenforceable, those provisions shall be severable from the remainder of the Settlement Agreement and shall not cause the invalidity or unenforceability of the balance of the Settlement Agreement.

(Signatures on Next Page)

IN WITNESS THEREOF, the undersigned have executed this SETTLEMENT AGREEMENT
as of the dates hereafter appearing

PETITIONERS:

765 MARKET STREET RESIDENTIAL OWNERS ASSOCIATION,
a California nonprofit corporation

By _____

Its: _____

Date: _____

FRIENDS OF YERBA BUENA,
a California nonprofit mutual benefit corporation

By _____

Its: _____

Date: _____

Paul Sedway

Date: _____

Ron Wornick

Date: _____

Matthew Schoenberg

Date: _____

Joe Fang

Date: 12/1/15

Margaret Collins

Date: _____

IN WITNESS THEREOF, the undersigned have executed this SETTLEMENT AGREEMENT
as of the dates hereafter appearing

PETITIONERS:

765 MARKET STREET RESIDENTIAL OWNERS ASSOCIATION,
a California nonprofit corporation

By _____

Its: _____

Date: _____

FRIENDS OF YERBA BUENA,
a California nonprofit mutual benefit corporation

By _____

Its: _____

Date: _____

Paul Sedway
Date: _____

Ron Wornick
Date: _____

Matthew Schoenberg
Date: _____

Joe Fang
Date: _____

Margaret Collins
Margaret Collins
Date: 12/1/15

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as of the dates hereafter appearing

PETITIONERS:

765 MARKET STREET RESIDENTIAL OWNERS ASSOCIATION,
a California nonprofit corporation

By _____

Its: _____

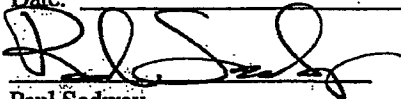
Date: _____

FRIENDS OF YERBA BUENA,
a California nonprofit mutual benefit corporation

By _____

Its: _____

Date: _____



Paul Sedway

Date: Dec. 1, 2015

Ron Wornick

Date: _____

Matthew Schoenberg

Date: _____

Joe Fang

Date: _____

Margaret Collins

Date: _____

IN WITNESS THEREOF, the undersigned have executed this SETTLEMENT AGREEMENT
as of the dates hereafter appearing

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765 MARKET STREET RESIDENTIAL OWNERS ASSOCIATION,
a California nonprofit corporation

By _____

Its: _____

Date: _____

FRIENDS OF YERBA BUENA,
a California nonprofit mutual benefit corporation


By _____

Its: _____

Date: _____

Paul Sedway

Date: _____



Ron Wornick

Date: Dec 1, 2015

Matthew Schoenberg

Date: _____

Joe Fang

Date: _____

Margaret Collins

Date: _____

IN WITNESS THEREOF, the undersigned have executed this SETTLEMENT AGREEMENT
as of the dates hereafter appearing

PETITIONERS:

765 MARKET STREET RESIDENTIAL OWNERS ASSOCIATION,
a California nonprofit corporation

By John A. Carl
Its: President
Date: 12/1/15

FRIENDS OF YERBA BUENA,
a California nonprofit mutual benefit corporation

By _____
Its: _____
Date: _____

Paul Sedway
Date: _____

Ron Wornick
Date: _____

Matthew Schoenberg
Date: _____

Joe Fang
Date: _____

Margaret Collins
Date: _____

IN WITNESS THEREOF, the undersigned have executed this SETTLEMENT AGREEMENT
as of the dates hereafter appearing

PETITIONERS:

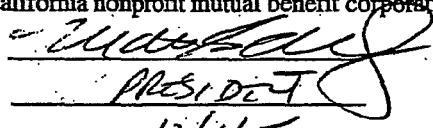
765 MARKET STREET RESIDENTIAL OWNERS ASSOCIATION,
a California nonprofit corporation

By _____

Its: _____

Date: _____

FRIENDS OF YERBA BUENA,
a California nonprofit mutual benefit corporation

By  _____

Its: President _____

Date: 12/1/15 _____

Paul Sedway

Date: _____

Ron Wornick

Date: _____

 _____
Matthew Schoenberg

Date: 12/1/15 _____

Joe Fang

Date: _____

Margaret Collins

Date: _____

APPROVED AS TO FORM:

By: _____

Peter Sandmann, Esq.
Tesler & Sandmann
38 Miller Avenue, No. 128
Mill Valley, CA 94941

Counsel for 765 MARKET STREET RESIDENTIAL OWNERS ASSOCIATION

By: _____

Thomas N. Lippe, Esq.
Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Floor
San Francisco, CA 94105

Counsel for Petitioners

SUCCESSOR AGENCY:

By: _____

Tiffany Bohee
Executive Director

Date: _____

APPROVED AS TO FORM:

General Counsel

CITY and COUNTY OF SAN FRANCISCO:

By: _____

Mohammed Nuru
Director of Public Works

Date: _____

APPROVED AS TO FORM:

By: _____
Peter Sandmann, Esq.
Tesler & Sandmann
38 Miller Avenue, No. 128
Mill Valley, CA 94941

Counsel for 765 MARKET STREET RESIDENTIAL OWNERS ASSOCIATION

By: Tom Lippe 12/1/15
Thomas N. Lippe, Esq.
Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Floor
San Francisco, CA 94105

Counsel for Petitioners

SUCCESSOR AGENCY:

By: _____
Tiffany Bohee
Executive Director

Date: _____

APPROVED AS TO FORM:

General Counsel

CITY and COUNTY OF SAN FRANCISCO:

By: _____
Mohammed Nuru
Director of Public Works

Date: _____

APPROVED AS TO FORM:

By: _____

Peter Sandmann, Esq.
Tesler & Sandmann
38 Miller Avenue, No. 128
Mill Valley, CA 94941

Counsel for 765 MARKET STREET RESIDENTIAL OWNERS ASSOCIATION

By: _____

Thomas N. Lippe, Esq.
Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Floor
San Francisco, CA 94105

Counsel for Petitioners

SUCCESSOR AGENCY:

By: _____

Tiffany Bohee
Executive Director

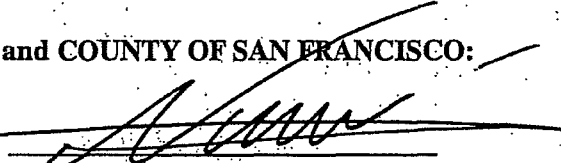
Date: _____

APPROVED AS TO FORM:

General Counsel

CITY and COUNTY OF SAN FRANCISCO:

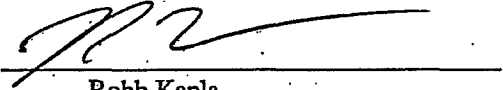
By: _____


Mohammed Nuru
Director of Public Works

Date: _____

12/4/15

APPROVED AS TO FORM:



Robb Kapla
Deputy City Attorney

**706 MISSION STREET CO LLC,
a Delaware limited liability company**

By: _____

Sean M. Jeffries

Title: Vice President

Date: _____

THE MEXICAN MUSEUM:

By: _____

Name: _____

Title: Chair of the Board of Directors

Date: _____

**THE MILLENNIUM MARKET STREET CENTER ASSOCIATION,
A California nonprofit mutual benefit corporation**

By: _____

Name: _____

Title: _____

Date: _____

**706 MISSION STREET CO LLC,
a Delaware limited liability company**

By: _____

Sean M. Jeffries

Title: Vice President

Date: _____

THE MEXICAN MUSEUM:

By: Andrew Kluge

Name: Andrew Kluge

Title: Chair of the Board of Directors

Date: 12/4/15

THE MILLENNIUM MARKET STREET CENTER ASSOCIATION,

A California nonprofit mutual benefit corporation

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Robb Kapla
Deputy City Attorney

706 MISSION STREET CO LLC,
a Delaware limited liability company

By: _____
Sean M. Jeffries
Title: Vice President
Date: 12-1-15

THE MEXICAN MUSEUM:

By: _____
Name: _____
Title: Chair of the Board of Directors
Date: _____

THE MILLENNIUM MARKET STREET CENTER ASSOCIATION,
A California nonprofit mutual benefit corporation

By: _____
Name: Sean Jeffries
Title: President
Date: 12/1/15

