

File No. 090263

Committee Item No. 6

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee BUDGET AND FINANCE

Date 1/27/10

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
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Completed by: Gail Johnson

Date 1/22/10

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 [Approval of an historical property contract for 166-178 Townsend Street

2  
3 **Resolution under Chapter 71 of the San Francisco Administrative Code, approving an**  
4 **historical property contract between 178 Townsend Properties LLC, the owner of 166-**  
5 **178 Townsend Street, and the City and County of San Francisco; authorizing the**  
6 **Director of Planning and the Assessor to execute the historical property contract.**

7  
8 WHEREAS, The California Mills Act (Government Code Section 50280 et seq.)  
9 authorizes local governments to enter into a contract with the owners of a qualified historical  
10 property who agree to rehabilitate, restore, preserve, and maintain the property in return for  
11 property tax reductions under the California Revenue and Taxation Code; and

12 WHEREAS, San Francisco contains many historic buildings that add to its character  
13 and international reputation and that have not been adequately maintained, may be  
14 structurally deficient, or may need rehabilitation, and the costs of properly rehabilitating,  
15 restoring, and preserving these historic buildings may be prohibitive for property owners; and,

16 WHEREAS, Chapter 71 of the San Francisco Administrative Code was adopted to  
17 implement the provisions of the Mills Act and to preserve these historic buildings; and

18 WHEREAS, 166-178 Townsend Street is designated as a contributing resource to the  
19 South End Historic District under Article 10 of the Planning Code and thus qualifies as an  
20 historical property as defined in Administrative Code Section 71.2; and

21 WHEREAS, A Mills Act application for an historical property contract has been  
22 submitted by 178 Townsend Properties LLC, the owner of 166-178 Townsend Street, detailing  
23 proposed rehabilitation work and proposing a maintenance plan for the property; and

1           WHEREAS, As required by Administrative Code Section 71.4(a), the application for the  
2 historical property contract for 166-178 Townsend Street was reviewed by the Assessor's  
3 Office and the Historic Preservation Commission; and

4           WHEREAS, The Assessor has reviewed the historical property contract and has  
5 provided the Board of Supervisors with an estimate of the property tax calculations and the  
6 difference in property tax assessments under the different valuation methods permitted by the  
7 Mills Act in its report transmitted to the Board of Supervisors on \_\_\_\_\_, which report  
8 is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is hereby  
9 declared to be a part of this resolution as if set forth fully herein; and,

10           WHEREAS, The Historic Preservation Commission recommended approval of the  
11 historical property contract in its Resolution No. 631 which Resolution is on file with the Clerk  
12 of the Board of Supervisors in File No 090263 and is hereby declared to be a part of this  
13 resolution as if set forth fully herein; and,

14           WHEREAS, The draft historical property contract between 178 Townsend Properties  
15 LLC, owner of 166-178 Townsend Street, and the City and County of San Francisco is on file  
16 with the Clerk of the Board of Supervisors in File No. 090263 and is hereby declared  
17 to be a part of this resolution as if set forth fully herein; and,

18           WHEREAS, The Board of Supervisors has conducted a public hearing pursuant to  
19 Administrative Code Section 71.4(d) to review the Historic Preservation Commission's  
20 recommendation and the information provided by the Assessor's Office in order to determine  
21 whether the City should execute the historical property contract for 166-178 Townsend Street;  
22 and

23           WHEREAS, The Board of Supervisors has balanced the benefits of the Mills Act to the  
24 owner of 166-178 Townsend Street with the cost to the City of providing the property tax  
25

1. reductions authorized by the Mills Act, as well as the historical value of 166-178 Townsend  
2 Street and the resultant property tax reductions; now, therefore, be it

3           RESOLVED, That the Board of Supervisors hereby approves the historical property  
4 contract between 178 Townsend Properties LLC, owner of 166-178 Townsend Street, and the  
5 City and County of San Francisco; and, be it

6           FURTHER RESOLVED, That the Board of Supervisors hereby authorizes the Director  
7 of Planning and the Assessor to execute the historical property contract.

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<b>Item # 6</b> <b>File 09-0263</b> <i>(continued from May 13, 2009)</i>	<b>Department(s):</b> The Planning Department Office of the Assessor-Recorder
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would approve the execution of a Mills Act Historical Property Contract between the City and County of San Francisco and 178 Townsend Properties LLC, the owner of the subject property located at 166-178 Townsend Street. Approval of a Historical Property Contract requires the property owner to rehabilitate and maintain the subject historical property in exchange for reductions in Property Taxes.</li> </ul> <p style="text-align: center;"><b>Fiscal Impacts</b></p> <ul style="list-style-type: none"> <li>• The proposed Historical Property Contract between the City and 178 Townsend Properties LLC would entitle 178 Townsend Properties LLC to pay reduced Property Taxes to the City, resulting in a first year estimated loss of \$186,599. Under the minimum ten-year term, the proposed Contract would result in an estimated \$1,865,990 ten-year Property Tax loss to the City, plus subsequent Property Tax losses to the City of an estimated \$186,599 annually.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The proposed Mills Act Historical Property Contract would provide 178 Townsend Properties LLC with Property Tax reductions in exchange for the property owner rehabilitating and maintaining the existing historical one-story brick building at 166-178 Townsend Street, which currently serves as a parking garage. The property owner intends to develop the property into a six-story mixed use building, which would extend above the roofline of the existing historical brick building. The Property Tax reductions to be granted by the City to the property owners under the proposed Mills Act Historical Property Contract would apply to the entire building, including the improvements which would extend above the existing historical brick building. In contrast, on November 18, 2008, the Board of Supervisors approved a Mills Act Historical Property Contract for 690 Market Street, which excluded the improvements extending beyond the historical 690 Market Street building.</li> <li>• The subject property located at 166-178 Townsend Street currently owes the City \$105,126 in delinquent Property Taxes for FY 2005-2006, FY 2008-2009 and FY 2009-2010.</li> <li>• Chapter 71 of the Administrative Code states that the Board of Supervisors, “shall have full discretion to determine whether it is in the public interest to enter a Mills Act Historical Property Contract with the owners of a particular qualified historical property. The Board of Supervisors may approve, disapprove or modify and approve the terms of any Historical Property Contract.”</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Disapprove the proposed resolution.</li> </ul>	

**MANDATE STATEMENT**

The Mills Act, codified in State Government Code Section 50280, authorizes local governments to enter into Historical Property Contracts with owners of qualified historical properties. The terms of such Historical Property Contracts provide that owners will rehabilitate, restore, preserve, and maintain their qualified historical properties in return for local governments reducing the assessed value of the subject properties according to a formula established in the Mills Act, thereby reducing the Property Taxes payable by the property owner to the City.

Chapter 71 of the City’s Administrative Code specifies (a) the Mills Act application and approval processes and (b) the terms and fees for individual property owners to apply for such Historical Property Contracts with the City, in order to receive such Mills Act Property Tax reductions. Chapter 71 further states that the Board of Supervisors has “full discretion to determine whether it is in the public interest to enter into a Mills Act Historical Property Contract with a particular qualified historical property. The Board of Supervisors may approve, disapprove or modify and approve the terms of the Historical Property Contract.”

**BACKGROUND**

According to Ms. Tara Sullivan, Legislative Affairs Liaison for the Planning Department, the City has four Mills Act Historical Property Contracts which were previously approved by the Board of Supervisors. Table 1 below summarizes the reduction in Property Taxes to the City in the first year of each of these previously approved four Mills Act Historical Property Contracts:

**Table 1: Existing Mills Act Historical Property Contracts**

		(A)	(B)	(C)	(C÷A)
		Estimated First Year Property Taxes Payable to the City Without a Mills Act Historical Property Contract	Estimated First Year Property Taxes Payable to the City With a Mills Act Contract	Estimated <sup>1</sup> First Year Property Tax Reduction With a Mills Act Historical Property Contract	Percent Reduction of Property Taxes Payable to the City
Board of Supervisors Approval Date	Address				
May 13, 2002	460 Bush Street	\$21,470	\$11,802	\$9,668	45%
May 15, 2007	1080 Haight Street	\$44,678	\$17,593	\$27,085	61%
August 7, 2007	1735 Franklin Street	\$27,101	\$18,103	\$8,998	33%
November 18, 2008	690 Market Street*	\$1,807,186	\$1,282,186	\$525,000 <sup>2</sup>	29%
*Chronicle Building		<b>Total</b>	<b>\$1,900,435</b>	<b>\$570,751</b>	

<sup>1</sup> The estimated reduction in Property Taxes reflect the Assessor’s estimates for the first year of the Historical Property Contract and are not updated to calculate the actual reductions in Property Taxes in subsequent years.

<sup>2</sup> The reduction in Property Taxes payable to the City for the 690 Market Street property was capped by the Board of Supervisors at \$525,000 per year. Without such a cap, the annual reduction in Property Taxes payable to the City would have been approximately \$1,450,145.



## DETAILS OF PROPOSED LEGISLATION

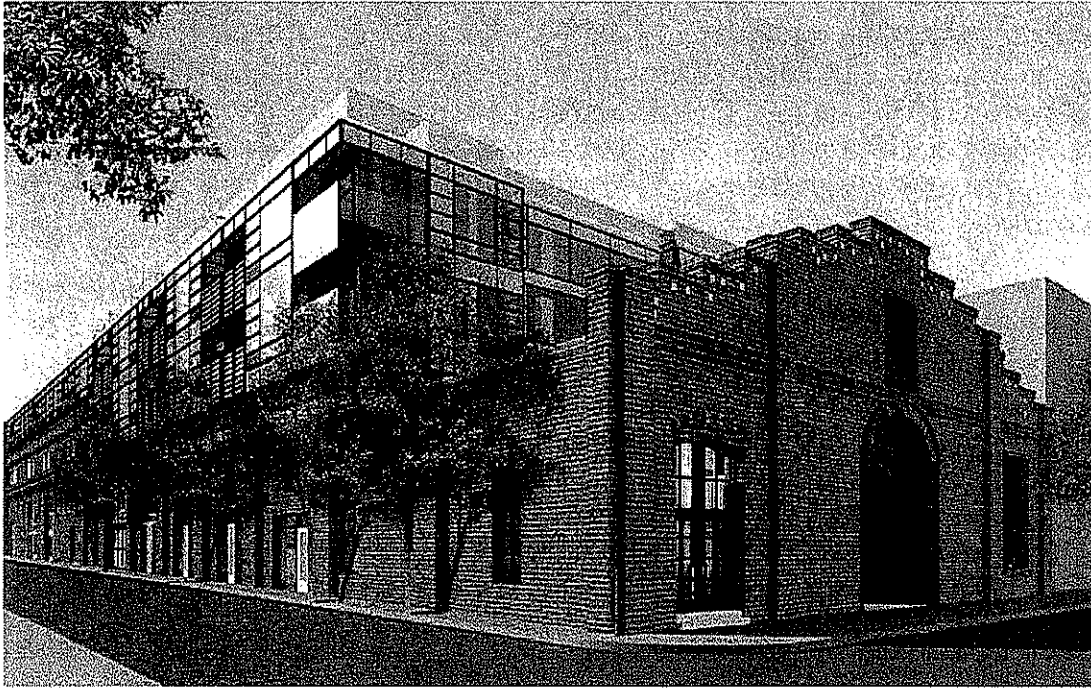
The proposed resolution would (a) approve a Mills Act Historical Property Contract with 178 Townsend Properties LLC, the owner of the property located at 166-178 Townsend Street, and (b) authorize the Director of Planning and the Assessor to execute the Historical Property Contract between 178 Townsend Properties LLC, and the City and County of San Francisco. Patrick McNerney is the president of the Martin Building Company, which owns 178 Townsend Properties LLC.

According to the Planning Department's Mills Act Contract Case Report on the subject 166-178 Townsend Street property, provided by Ms. Sullivan (a photograph of the subject property is shown below), the existing building at the corner of Townsend Street and Clarence Place, is a single story, 22,000 square foot brick building, which operates as a valet parking garage. The façade of the current building is approximately 24 feet tall at the corners and rises to 36 feet at the center. The building was designated as a contributing resource to the South End Historic District, approved by the Board of Supervisors in 1990 (Ordinance No. 104-90), which makes this property eligible as a qualified historic property under the Mills Act provisions in Chapter 71.2(d) of the City's Administrative Code.



According to Ms. Sullivan, the property owner, 178 Townsend Properties LLC, intends to improve the existing property into a six-story, 59,000 square foot, mixed-use building, which would include (a) up to 94 market rate residential units, (b) ground floor retail, (c) partially below-grade parking with 45 parking spaces, (d) street improvements along the adjacent street (Clarence Place), and (e) renovation of the existing historical brick exterior walls. Such improvements are estimated to be completed in June of 2011 at an estimated total cost of \$21 million to be fully paid by the property owners, including \$6,260,000 for the required rehabilitation work. The Budget Analyst notes that the proposed six-story mixed-use building would extend to a height of 62 feet, or approximately 26 feet higher than the highest point of the

existing 36 foot single-story historical brick building, as shown in the illustration below (from the Mills Act application submitted by the property owners).



In accordance with Section 71 of the Administrative Code, the City's Historic Preservation Commission reviewed the Mills Act application for 166-178 Townsend Street, including the proposed improvements to the existing building. On December 16, 2009, the Historic Preservation Commission adopted Resolution 640, which recommended approval of the proposed Mills Act Historical Property Contract.

## FISCAL IMPACTS

Currently, the property at 166-178 Townsend Street is assessed at \$3,820,348, with Property Taxes payable to the City in the amount \$44,278 for Fiscal Year 2009-2010.

Table 2 below reflects the estimated assessed value of the 166-178 Townsend Street Property both with and without the requested Mills Act Historical Property Contract, after the improvements proposed by 178 Townsend Properties, LLC are completed. As shown in Table 2 below, Mr. Felix Rodriguez, Senior Real Property Appraiser in the Assessor's Office, estimates<sup>3</sup> a first year reduction of \$186,599 in Property Taxes to be received by the City, if the proposed Mills Act Historical Property Contract is approved.

<sup>3</sup> The improvements to 166-178 Townsend Street are proposed to be completed in June of 2011. According to Mr. Rodriguez, the estimated assessment of the property assumes that market conditions (including rents, expenses, and capitalization rates) in June of 2011 would be the same as current market conditions.

**Table 2: Estimated First Year Reduction in Property Taxes Paid to the City for the Improved Property Under A Mills Act Historical Property Contract**

Improved Property at 166- 178 Townsend Street	Estimated Assessed Property Value	Estimated Property Taxes which would be Payable to the City Based on the Fiscal Year 2009-2010 Property Tax Rate of \$1.159 per \$100 of Assessed Value
Without a Mills Act Historical Property Contract	\$36,600,000	\$424,194
With a Mills Act Historical Property Contract	20,500,000	237,595
<b>Reduced First Year Property Taxes Payable to the City</b>		<b>\$186,599</b>

The first year annual Property Taxes to be paid to the City by the property owner would be reduced by \$186,599, representing a 44 percent reduction from the estimated annual first year Property Taxes of \$424,194 that would otherwise be paid to the City, if a Historical Property Contract was not authorized. As noted above, the term of the proposed Historical Property Contract is ten years, with automatic annual renewals thereafter, such that the estimated reduction in Property Taxes to be received by the City would be approximately \$1,865,990 (\$186,599 annually x ten years) over a ten-year period<sup>4</sup>. The reduced Property Taxes would continue annually in perpetuity, until the City or 178 Townsend Properties LLC notifies the other party that it wants to terminate the Mills Act Historical Property Contract. Such termination would be subject to Board of Supervisors approval.

The proposed Mills Act Historical Property Contract states that the estimated \$6,260,000 cost of rehabilitation work to be performed on the subject existing historical brick structure, excluding the cost of constructing any of the new improvements, would be fully paid by the property owners. The cost of annual maintenance of the historical brick building was not estimated because, according to Ms. Katie O'Brien, Development Manager for the property owner, the maintenance needs cannot be reasonably projected at this time. However such maintenance costs are to be fully paid by the property owners.

<sup>4</sup> The Budget Analyst notes that the actual reduction in Property Taxes payable to the City fluctuates annually based on (a) variables in the formula specified in the Mills Act which determine the assessed value of the subject property, such as market rental rates and conventional mortgage interest rates, (b) the assessed value of the subject property had a Mills Act Historical Property Contract not been approved, and (c) the Property Tax rate each year. Therefore, the actual annual reductions in Property Taxes payable to the City over the ten-year term of a Mills Act Historical Property Contract and payable annually thereafter, are not equal to the first year reduction in Property Taxes.

**POLICY CONSIDERATIONS**

**This resolution was previously heard and continued to the call of the Chair on May 13, 2009 by the Budget and Finance Committee. Since then, the proposed improvements have increased (a) in height, and (b) in potential Property Tax losses to the City.**

Previously, when the Budget and Finance Committee considered the proposed resolution, the property owners were proposing a shorter, five-story mixed use building with 85 market rate residential units, in contrast to the now requested six-story building with 94 market rate residential units. At the previous Budget and Finance Committee hearing on May 13, 2009, the Budget Analyst reported that the Assessor's estimated first-year Property Tax loss to the City would be \$170,961 based on the previously proposed development. Subsequent to that hearing, the property owner expanded the improvement plans to the current six-story mixed use building with 94 market rate residential units. As discussed above, the Assessor's current estimated first-year Property Tax loss to the City would be \$186,599, an additional Property Taxes loss to the City of \$15,638 or 9.1 percent from the previous estimates.

**Although the Planning Department has guidelines for reviewing applications for, as well as the ongoing management of, Mills Act Historical Property Contracts, those guidelines are not consistently followed. In addition, the Board of Supervisors has not adopted either criteria or guidelines for approving Mills Act Historical Property Contracts.**

The Planning Department's Preservation Bulletin No. 8 outlines guidelines for the review of Mills Act Historical Property Contract applications which include (a) a \$5,000,000 limit on the value of property which is eligible for a Historical Property Contract, (b) annual inspections of properties subject to approved Historical Property Contracts, and (c) a limit of \$1,000,000 cumulative annual Property Tax losses to the City for all properties granted Mills Act Historical Property Contracts.

Although the Planning Department developed the guidelines described above, the Budget Analyst notes that: (a) after the proposed improvements are completed, the subject property at 166-178 Townsend Street is estimated to be valued at \$36,600,000 (see Table 2 above), or \$31,600,000 more than the Planning Department's guidelines for the eligibility maximum of \$5,000,000<sup>5</sup>, (b) according to Ms. Sullivan, while no inspections of any properties subject to approved Historical Property Contract have been completed, the Planning Department is currently working on inspecting the four previously approved Mills Act historical properties (see Table 1 above) for compliance with the Mills Act Program, and (c) the Assessor does not track the annual Property Tax losses to the City resulting from the previously approved Mill Act Historical Property Contracts.

As noted above, Chapter 71 of the City's Administrative Code states that the Board of Supervisors has "full discretion to determine whether it is in the public interest to enter a Mills

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<sup>5</sup> According to Ms. Sullivan, the subject property's current value of \$3,820,348 was used when determining eligibility.

Act Historical Property Contract with a particular qualified historical property. The Board of Supervisors may approve, disapprove or modify and approve the terms of the Historical Property Contract.” The Budget Analyst notes that the Board of Supervisors has neither approved the Planning Departments guidelines nor adopted its own criteria or guidelines for evaluating whether to approve, disapprove or modify individual Historical Property Contracts. As shown above in Table 1, both the annual amount and percent of Property Tax reductions have varied considerably for the four previously approved Mills Act Historical Property Contracts. Given that each Historical Property Contract results in a direct loss of annual Property Taxes to the City, continues for a ten year period, and annually thereafter in perpetuity unless specifically terminated by the Board of Supervisors, the approval of cumulative Historical Property Contracts can have significant negative Property Tax revenue losses on the City’s General Fund.

**The reduced Property Taxes provided by the proposed Historical Property Contract would apply to both the historical portion of the building as well as the new construction which would extend above the existing historical building.**

As shown in Table 1 above, on November 18, 2008 the Board of Supervisors approved a Historical Property Contract pursuant to the Mills Act for the “Chronicle Building” located at 690 Market Street (File 08-1410). Prior to its application to the Planning Department, the owners of the Chronicle Building had improved the historical two-tower structure, by (a) constructing ground floor retail and luxury time-share residential units within the envelope (shell of the building) of the two historical towers and (b) constructing a third new tower on top of the two historical towers.

The Historical Property Contract previously approved by the Board of Supervisors for the Chronicle Building included only those improvements which were within the envelope of the two historical towers but specifically excluded the improvements in the third new tower which extended above the historical portion of the building.

In contrast to this previous decision of the Board of Supervisors, the subject requested Historical Property Contract for 166-178 Townsend Street would result in reduced Property Taxes to the City payable by the property owner for the entire proposed six story mixed-use building which would extend 26 feet higher than the existing single story historical brick building.

**The property owner stated no improvements would be made to the property, including the rehabilitation of the existing historical brick building, unless the proposed Mills Act Historical Property Contract is approved.**

According to Ms. O’Brien, the proposed improvements to 166-178 Townsend Street will not occur if the requested Historical Property Contract is not approved by the Board of Supervisors because of the concerns expressed by the Bank of the West, the project construction lender. Such concerns are stated in a December 1, 2008 letter from Bank of the West (see Attachment). However, the Budget Analyst notes that there are numerous factors, including available capital, cost of construction, interest rates, vacancy factors, anticipated income and ratio of expenses to income, in addition to the requested reductions in Property Taxes which would be provided by the subject Mills Act Historical Property Contract, which would also likely determine the project loan approvals.

The current annual Property Taxes for the existing building are \$44,278. The Budget Analyst notes that the Property Taxes which would be payable to the City if the proposed Mills Act Historical Property Contract is approved would be \$237,595 (as shown in Table 2 above), or \$193,317 more than the existing Property Taxes of \$44,278 payable to the City.

**The property currently has \$105,126 in past due Property Taxes.**

According to Mr. Francis Nguyen, Director of Property and License Tax at the Office of the Tax Collector, the property owner of 166-178 Townsend Street currently owes the City a total of \$105,126 in past-due delinquent Property Taxes, including Property Taxes payable for FY 2005-2006, FY 2008-2009, and the most recent payment due in December of 2009 for Fiscal Year 2009-2010.

## RECOMMENDATIONS

The Budget Analyst recommends disapproval of the requested Mills Act Historical Property Contract to provide Property Tax reductions to the property owner because the property owner currently owes the City \$105,126 in past-due delinquent Property Taxes for FY 2005-2006, FY 2008-2009 and FY 2009-2010.

Additionally, while the Board of Supervisors has not adopted criteria or guidelines for approving, disapproving or modifying discretionary Mills Act Historical Property Contracts, the Budget Analyst notes, as discussed above, (a) since the Budget and Finance Committee last reviewed this resolution and continued the resolution to the call of the Chair, the property owner increased the height of the proposed project from five floors to six floors, such that the City's estimated first year Property Tax losses increased from \$170,961 to \$186,599, an additional annual loss of \$15,638, or 9.1 percent, and (b) in contrast to a previous decision of the Board of Supervisors, the requested Historical Property Contract for 166-178 Townsend Street would result in reduced City Property Taxes for the entire proposed six-story mixed-use building, and not just for the portion of the proposed development within the existing single-story historic brick building.

Therefore, regardless of the delinquent Property Taxes discussed above, the Budget Analyst recommends disapproval of the proposed resolution.



December 1, 2008

To Whom It May Concern,

Bank of the West is currently underwriting a construction loan for the apartment project located at 178 Townsend Street, San Francisco. Given that the projected rental income (after expenses) is insufficient to cover the debt service in accordance with our underwriting guidelines, it would greatly benefit the project to utilize reduced operating costs afforded by a Mills Act contract for property taxes. The project's final loan approval is heavily reliant upon receipt of a fully executed Mills Act contract for the property.

Your expeditious review and approval is appreciated.

Sincerely,

Janette E. Drew  
Vice President  
Real Estate Industries Division  
(925) 979-4642 Phone  
(925) 937-1041 Fax





Brad Johnson  
AC



# SAN FRANCISCO PLANNING DEPARTMENT

January 7, 2010

Ms. Angela Calvillo, Clerk  
Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

Re: Transmittal of Planning Department  
Case Number 2009.0476U: Mills Act Historical  
Property Contract Application for 178 Townsend Street

Historic Preservation Commission Recommendation: Approval

Dear Ms. Calvillo,


On December 16, 2009, the San Francisco Historic Preservation Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance;

The proposed Resolution relative to Planning Dept. Case Number 2008.1277U would authorize the City and County of San Francisco to enter into a Mills Act Historic Property Contract with certain owners of 166-178 Townsend Street pursuant to Chapter 71 of the Administrative Code.

The proposed changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2).

At the December 16<sup>th</sup> hearing, the Commission adopted Resolution Number 640 to recommend that the Board of Supervisors approve the Mills Act Historical Property Contract for 166-178 Townsend Street.

Please find attached documents relating to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,  
  
John Rahaim  
Director of Planning

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2010 JAN 14 PM 4:42  
BY Re

Attachments (one copy of the following):  
Historic Preservation Commission Resolution No. 640  
Historic Preservation Commission Executive Summary for Case No. 2009.0476U

**HISTORIC PRESERVATION COMMISSION**

Case No. 2009.0476U  
166-178 Townsend Street  
Assessor's Block 3788, Lot 012  
Resolution No. 640

**SAN FRANCISCO**

**HISTORIC PRESERVATION COMMISSION**

**RESOLUTION #640**

**ADOPTING FINDINGS RECOMMENDING TO THE BOARD OF SUPERVISORS APPROVAL OF THE MILLS ACT HISTORICAL PROPERTY CONTRACT, REHABILITATION PROGRAM, AND MAINTENANCE PLAN FOR 166-178 TOWNSEND STREET.**

**PREAMBLE**

**WHEREAS**, in accordance with Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code, the City and County of San Francisco may provide certain property tax reductions, such as the Mills Act Historical Property Contract program; and

**WHEREAS**, the Mills Act Historical Property program authorizes local governments to enter into contracts with owners of private historical property who assure the rehabilitation, restoration, preservation and maintenance of a qualified historical property; and

**WHEREAS**, Ordinance No. 191-96 amended the San Francisco Administrative Code by adding Chapter 71 to implement California Mills Act, California Government Code Sections 50280 *et seq.*; and

**WHEREAS**, in 2005 Martin Building Company filed entitlement permits to construct an addition within the footprint of the existing building and develop the site for a mixed-use retail and commercial project; and

**WHEREAS**, this original 2005 submittal received a Certificate of Appropriateness on August 22, 2008 by the former Landmarks Preservation Advisory Board. The project also required Conditional Use Authorization from the Planning Commission, which was approved on September 4, 2008 and Variances from Planning Code Sections 134, 140, and 151, which were approved by the Zoning Administrator on September 30, 2008; and

**WHEREAS**, in addition to the entitlements listed above, the project sponsor applied to participate in the Mills Act Historical Property Contract program. The Historic Preservation Commission ("HPC") heard the application, based on the 2005-2008 project on February 4, 2009. The HPC recommended approval of the contract to the Board of Supervisors; and

**WHEREAS**, the Budget & Finance Committee considered the Mills Act contract for 178 Townsend on May 13, 2009, where the Committee continued the item, requesting additional valuation information from

HISTORIC PRESERVATION COMMISSION

Case No. 2009.0476U  
166-178 Townsend Street  
Assessor's Block 3788, Lot 012  
Resolution No. 640

the Assessor's Office concerning which portions of the project should be included in the contract; and

WHEREAS, On July 2, 2009, the project sponsor submitted substantial revisions to the 2005-2008 project. The July 2009 project received a Certificate of Appropriateness from the HPC on September 2, 2009 (see Motion No. 0026), a Conditional Use Authorization from the Planning Commission on September 3, 2009 (see Motion No. 17944), and Variances from the Zoning Administrator on September 3, 2009; and

WHEREAS, a revised Mills Act Historical Property Contract application based on the modified project was filed with the Department on December 3, 2009; and

WHEREAS, the Planning Department has reviewed the Mills Act Historical Property Contract application, historical property contract, rehabilitation program, and maintenance plan for 166-178 Townsend Street, which are located in Case Docket No. 2009.0476U. The Planning Department recommends approval of the Mills Act Historical Property contract, rehabilitation program, and maintenance plan; and

WHEREAS, at a duly noticed public hearing held on December 16, 2009, the HPC reviewed documents, correspondence and heard oral testimony on the Mills Act Historical Property Contract application, historical property contract, rehabilitation program, and maintenance plan for 166-178 Townsend Street, which are located in Case Docket No. 2009.0476U; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommends *approval of the proposed Mills Act Historical Property Contract* and adopts the attached Draft Resolution to that effect.

**FINDINGS**

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

1. 166-178 Townsend Street is a qualified historic property because it is designated as a contributory building to a historic district designated under Article 10 of the Planning Code – the South End Historic District;
2. The property's current tax assessed value is \$389,356, below the \$5,000,000 assessment for commercial properties;
3. A 10-year Rehabilitation and Maintenance Plan has been submitted and is adequate (see materials dated 12/02/09 in Department File No. 09-0476U);
4. The work proposed for the subject property and in the Rehabilitation and Maintenance Plan meets the Secretary of the Interior's Standards for the Treatment of Historic Properties;

**HISTORIC PRESERVATION COMMISSION**

Case No. 2009.0476U  
166-178 Townsend Street  
Assessor's Block 3788, Lot 012  
Resolution No. 640

5. The property owner will ensure that a portion of the Mills Act tax savings will be used to finance the preservation, rehabilitation, and maintenance of 166-178 Townsend Street; and
6. The Draft Mills Act Historical Property contract for 166-178 Townsend Street is adequate and sufficient.
7. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

**I. URBAN DESIGN ELEMENT**

THE URBAN DESIGN ELEMENT concerns the physical character and order of the city, and the relationship between people and their environment.

**GOALS**

*The Urban Design Element is concerned both with development and with preservation. It is a concerted effort to recognize the positive attributes of the city, to enhance and conserve those attributes, and to improve the living environment where it is less than satisfactory. The Plan is a definition of quality, a definition based upon human needs.*

**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 1.3**

*Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.*

**OBJECTIVE 2**

**CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.**

**POLICY 2.4**

*Preserve notable landmarks and areas of historic, architectural or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.*

**POLICY 2.5**

*Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings.*

**POLICY 2.7**

*Recognize and protect outstanding and unique areas that contribute in an extraordinary degree to San Francisco's visual form and character.*

*The goal of the proposed Mills Act Historical Property Contract is to provide incentives for property*

HISTORIC PRESERVATION COMMISSION

Case No. 2009.0476U  
166-178 Townsend Street  
Assessor's Block 3788, Lot 012  
Resolution No. 640

*owners who have significant historic resources to maintain and preserve them for future generations of San Franciscans. The proposed Mills Act Historical Property Contract for 166-178 Townsend Street will assist in the rehabilitation and preservation of a contributory structure in the South End Historic District.*

8. The proposed project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- a. The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The proposed Mills Act Historical Property Contract would not impact existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses.*

- b. The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

*The proposed Mills Act Historical Property Contract will strengthen neighborhood character by assisting in the funding of the preservation of a contributing structure to the South End Historic District.*

- c. The City's supply of affordable housing will be preserved and enhanced:

*The proposed Mills Act Historical Property Contract will help in the financing and construction of affordable residential units at 178 Townsend Street.*

- d. The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

*The proposed Mills Act Historical Property Contract will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

- e. A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

*The proposed Mills Act Historical Property Contract would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*

- f. The City will achieve the greatest possible preparedness to protect against injury and

HISTORIC PRESERVATION COMMISSION

Case No. 2009.0476U  
166-178 Townsend Street  
Assessor's Block 3788, Lot 012  
Resolution No. 640

loss of life in an earthquake:

*Preparedness against injury and loss of life in an earthquake is unaffected by the proposed Mills Act Historical Property Contract. Any construction or alteration associated would be executed in compliance with all applicable construction and safety measures.*

- g. That landmark and historic buildings will be preserved:

*The proposed Mills Act Historical Property Contract incentivizes the preservation of a contributory building within the South End Historic District.*

- h. Parks and open space and their access to sunlight and vistas will be protected from development:

*The proposed Mills Act Historical Property Contract will not impact the City's parks and open space.*

**THEREFORE BE IT RESOLVED** that the Historic Preservation Commission hereby recommends that the Board of Supervisors approve the Mills Act Historical Property Contract, rehabilitation program, and maintenance plan for the historic building located at 166-178 Townsend Street.

**BE IT FURTHER RESOLVED** that the Historic Preservation Commission hereby directs its Recording Secretary to transmit this Resolution, the Mills Act historical property contract, rehabilitation program, and maintenance plan for 166-178 Townsend Street, and other pertinent materials in the case file 2009.0476U to the Board of Supervisors.

I hereby certify that the foregoing Resolution was ADOPTED by the Historic Preservation Commission on December 16, 2009.



Linda Avery  
Recording Secretary

AYES: Chase, Damkroger, Hasz, Martinez, Buckley, Matsuda

NOES: Wolfram

ABSENT:

ADOPTED: December 16, 2009



# SAN FRANCISCO PLANNING DEPARTMENT

## Mills Act Historical Property Contract HISTORIC PRESERVATION COMMISSION CASE REPORT

*Hearing Date:* December 16, 2009  
*Filing Date:* December 3, 2009  
*Case No.:* 2009.0476U  
*Project Address:* 166-178 Townsend Street  
*Zoning:* SLI (Service/Light Industrial)  
65-X Height and Bulk District  
*Block/Lot:* 3788/012  
*Applicant:* Katie O'Brien  
Martin Building Co.  
14 Mint Plaza, 5<sup>th</sup> floor  
San Francisco, CA 94103  
*Staff Contact* Pilar LaValley – (415) 575-9084  
pilar.lavalley@sfgov.org  
*Reviewed By* Tina Tam – (415) 558-6325  
tina.tam@sfgov.org

### PROPERTY DESCRIPTION

The subject property (166-178 Townsend Street) is located on Lot 012 of Assessor's Block 3788, in the SLI (Service/Light Industrial) zoning district and a 65-X height and bulk district. The parcel is located on the north side of the street at the intersection of Clarence Place and Townsend Street.

The subject property, historically known as the California Electric Light Building Station B building, is a contributing resource within the Article 10 South End Historic District. The subject building was originally constructed in 1888 as a three-story rectilinear front volume (approximately 50'-0" tall) that was articulated by brick pilasters, arched window openings, a simple brick cornice, and a flat roof. In 1906, the building was severely damaged by the earthquake, which caused the partial collapse of the engine room (front volume). Although visible architectural elements from the original 1899 structure remain, the building was substantially rebuilt in 1908 using a different structural system and in an altered design. As a result of the earthquake damage, the building was reduced in height and a stepped gable parapet was constructed to cap the front volume (the former engine room). Physical evidence for this change includes the cornice along the Clarence Place façade. The brick above this band of simple corbelled brickwork was evidently cut off and what had been a belt course on the earlier three-story section turned into the cornice for the existing one-story building. The building has recently been used as a valet parking garage.

In 2005, Martin Building Company filed entitlement permits to construct an addition within the footprint of the existing building and develop the site for a mixed-use retail and commercial project.

PLANNING DEPARTMENT  
166-178 TOWNSEND ST  
SAN FRANCISCO, CA 94103  
415-558-6325  
WWW.SFPLANNING.ORG

The project submitted in 2005 provided for up to 85 dwelling units and ground floor retail space. The addition would fit within the footprint of the existing building and be setback approximately 40 feet from the Townsend Street façade. The original project included a 72-space partially below-grade parking garage, a five-story structure containing residential and retail uses, street improvements along Clarence Place, and the rehabilitation of the existing exterior walls and fenestration.

This original 2005 submittal received a Certificate of Appropriateness (with conditions) on August 22, 2008 by the former Landmarks Preservation Advisory Board. The project also required Conditional Use Authorization from the Planning Commission, which was approved on September 4, 2008 and Variances from Planning Code Sections 134, 140, and 151, which were approved by the Zoning Administrator on September 30, 2008.

In addition to the entitlements listed above, the project sponsor applied to participate in the Mills Act Historical Property Contract program. The Historic Preservation Commission ("HPC") heard the application, based on the 2005-2008 project on February 4, 2009. The HPC recommended approval of the contract to the Board of Supervisors. The Budget & Finance Committee considered the Mills Act contract for 178 Townsend on May 13, 2009, where the Committee continued the item, requesting additional valuation information from the Assessor's Office concerning which portions of the project should be included and/or excluded in the contract.

On July 2, 2009, the project sponsor submitted substantial revisions to the 2005-2008 project. The modified project will provide up to 94 dwelling units, 45 at or partially-below grade off-street parking spaces, and ground floor retail and daycare space within a new addition. The approximately 59,000 square foot, six-story addition would fit within the footprint of the existing building and rise to 62-feet in height. The 3<sup>rd</sup> through 5<sup>th</sup> floors would be setback at least 37-feet from the Townsend Street façade and the new 6<sup>th</sup> floor would be setback an additional 23-feet from the Townsend Street façade and 11-feet from the Clarence Place elevation.

The July 2009 project received a Certificate of Appropriateness from the HPC on September 2, 2009 (see Motion No. 0026), a Conditional Use Authorization from the Planning Commission on September 3, 2009 (see Motion No. 17944), and Variances from the Zoning Administrator on September 3, 2009.

A revised Mills Act Historical Property Contract application based on the modified project was filed with the Department on December 3, 2009.

## **MILLS ACT HISTORICAL PROPERTY CONTRACT REVIEW PROCESS**

Once a Mills Act Historical Property Contract application is received, the matter is referred to the Historic Preservation Commission ("HPC") for review and recommendation on the contract application, historical property contract, proposed rehabilitation program, and proposed maintenance plan. The HPC shall conduct a public hearing on the Mills Act Historical Property Contract application and contract and make a recommendation for approval or disapproval to the Board of Supervisors .

The Board of Supervisors ("BOS") will hold a public hearing to review and approve or disapprove the Mills Act Historical Property Contract application and contract. The BOS will review the HPC recommendation, information provided by the Assessor's Office, and any other information the Board



requires in order to determine whether the City should execute a historical property contract for the subject property.

The Board of Supervisors has full discretion to determine whether it is in the public interest to enter into a Mills Act Historical Property contract and may approve, disapprove, or modify and approve the terms of the contract. Upon approval, the Board of Supervisors shall authorize the Director of Planning and the Assessor's Office to execute the historical property contract.

### **MILLS ACT HISTORICAL PROPOERTY CONTRACT REVIEW PROCEDURES**

The HPC is requested to review and make recommendation on the following:

1. Whether the property meets the Mills Act Historical Property Contract policy criteria;
2. The draft Mills Act Historical Property Contract between the property owner and the City and County of San Francisco;
3. The proposed rehabilitation program; and
4. The proposed maintenance plan.

The HPC may also comment in making a determination as to whether the public benefit gained through restoration, continued maintenance, and preservation of the property is sufficient to outweigh the subsequent loss of property taxes to the City.

### **APPLICABLE PRESERVATION STANDARDS**

Ordinance No. 191-96 amended the San Francisco Administrative Code by adding Chapter 71 to implement the California Mills Act, California Government Code Sections 50280 *et seq.* The Mills Act authorizes local governments to enter into contracts with private property owners who will rehabilitate, restore, preserve, and maintain a "qualified historical property." In return, the property owner enjoys a reduction in property taxes for a given period. The property tax reductions must be made in accordance with Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.

Mills Act Historical Property Contracts are for a minimum of ten years. The contract automatically renews each year on its anniversary date and a new ten-year term becomes effective. The contract runs (essentially in perpetuity) with the land. The City must monitor the provisions of the contract until its expiration and may terminate the Mills Act Historical Property contract at any time if it determines that the owner is not complying with the terms of the contract or the legislation. Termination due to default immediately ends the contract term.

San Francisco Administrative Code Chapter 71, Section 71.2, defines a "qualified historic property" as one that is not exempt from property taxation and is one of the following:

1. Individually listed in the National Register of Historic Places;
2. Listed as a contributor to an historic district included on the National Register of Historic Places;



3. Designated as a City landmark pursuant to San Francisco Planning Code Article 10;
4. Designated as contributory to an historic district designated pursuant to San Francisco Planning Code Article 10; or
5. Designated as significant (Categories I or II) or contributory (Categories III or IV) to a conservation district designated pursuant to San Francisco Planning Code Article 11.

In addition to the qualifications listed above, the project/subject property should also meet the following policy criteria:

1. The property meets the property tax value assessments, as determined by the Assessor's Office and the Planning Department;
2. If the property does not meet the pre-contract assessments, it qualifies for an exemption from these limits;
3. The maintenance and rehabilitation plan is detailed and sufficient;
4. The proposed work to be conducted under the maintenance and rehabilitation plan meets the Secretary of the Interior's *Standards for the Treatment of Historic Properties* and/or the California Historic Building Code; and
5. The property owner will ensure that a portion of the Mills Act tax savings will be used to finance the preservation, rehabilitation, and maintenance of the property.

## **PUBLIC/NEIGHBORHOOD INPUT**

The Department has not received any public comment regarding the Mills Act Property Contract.

## **STAFF ANALYSIS**

As detailed in the Mills Act Historical Property Contract application, the Project Sponsor proposes to rehabilitate and restore the Townsend Street and Clarence Place façades and front two bays of the 1908 post-and-beam wood truss system as part of the broader proposed project. The retained pitched roofline will have a new roof, damaged and deteriorated brick will be repaired and/or replaced in-kind, non-historic infill will be removed, and appropriate new doors and windows will be installed. In addition, as part of the structural rehabilitation of the building and evolution of seismic building codes, a concrete sheer wall structural system will be installed without altering the existing exterior historic fabric or finishes.

As a result of restoration and rehabilitation of the subject building's historic façades and portion of existing roof that generally meet the Secretary of Interior's *Standards for Rehabilitation* and for *Restoration*, 166-178 Townsend Street remains a contributing resource to the South End Historic District designated pursuant to San Francisco Planning Code Article 10.

The Project Sponsor, Planning Department Staff, and the Office of the City Attorney have negotiated the attached draft historical property contract, which includes a draft rehabilitation program and draft maintenance plan for the historic building. Department staff believes that the draft historical property

contract, rehabilitation program, and maintenance plan are adequate. The rehabilitation program details proposed rehabilitation and restoration of the exterior of the historic property. The maintenance plan involves a cycle of annual inspections and maintenance and a longer-term maintenance cycle to be performed as necessary. The attached draft historical property contract will help the Project Sponsor mitigate these expenditures and will induce the Project Sponsor to maintain the property in excellent condition in the future.

### PLANNING DEPARTMENT RECOMMENDATION

The Planning Department recommends that the Historic Preservation Commission adopt a resolution recommending approval of the Mills Act historical property contract, rehabilitation program, and maintenance plan for 166-178 Townsend Street. In particular, the Department finds that:

- 166-178 Townsend Street is a qualified historic property because it is designated as a contributory building to a historic district designated under Article 10 of the Planning Code – the South End Historic District;
- The property's current tax assessed value is \$389,356, below the \$5,000,000 assessment for commercial properties;
- A 10-year Rehabilitation and Maintenance Plan has been submitted and is adequate (see materials dated 12/02/09 in Department File No. 09-0476U);
- The work proposed for the subject property and in the Rehabilitation and Maintenance Plan meets the Secretary of the Interior's *Standards for the Treatment of Historic Properties*;
- The property owner will ensure that a portion of the Mills Act tax savings will be used to finance the preservation, rehabilitation, and maintenance of 166-178 Townsend Street; and
- The Draft Mills Act Historical Property contract for 166-178 Townsend Street is adequate and sufficient.

### HISTORIC PRESERVATION COMMISSION ACTIONS

Review and adopt a resolution:

1. Recommending to the Board of Supervisors the approval of the proposed Mills Act Historical Property Contract between the property owner and the City and County of San Francisco;
2. Approving the proposed Mills Act rehabilitation program for 166-178 Townsend Street;
3. Approving the proposed Mills Act maintenance plan for 166-178 Townsend Street; and
4. Commenting on the "value" of the Mills Act contract for 166-178 Townsend Street to assist the Board of Supervisors in making a determination as to whether the Mills Act contract



reducing property taxes in exchange for the rehabilitation, continued maintenance, and preservation of the property is appropriate and beneficial.

**Attachments:**

- Attachment A: Draft Resolution recommending approval of the Mills Act historical property contract, rehabilitation program, and maintenance plan, to the Board of Supervisors
- Attachment B: Historic Preservation Motion 0026, dated September 2, 2009
- Attachment C: Planning Commission Motion 17944, dated September 3, 2009
- Attachment D: Draft Mills Act historical property contract
- Attachment E: Project Sponsor Submission, including Rehabilitation and Maintenance Plan

**DRAFT DRAFT DRAFT**

Recording Requested by, and  
when recorded, send notice to:  
Director of Planning  
1660 Mission Street  
San Francisco, California 94103-2414

**CALIFORNIA MILLS ACT  
HISTORIC PROPERTY AGREEMENT  
166-178 TOWNSEND STREET  
("CALIFORNIA ELECTRIC LIGHT COMPANY STATION B")  
SAN FRANCISCO, CALIFORNIA**

THIS AGREEMENT is entered into by and between the City and County of San Francisco, a California municipal corporation (hereinafter called the "City") and 178 Townsend Properties, LLC (hereinafter called the "Owner").

**RECITALS**

Owner is the owner of the property located at 166-178 Townsend Street, in San Francisco, California (Block 3788, Lot 012). The building located at 166-178 Townsend Street is designated as a contributory structure to the South End Historic District pursuant to Article 10 of the Planning Code and is also known as the "The California Electric Light Company Station B" (hereinafter called the "Historic Property".)

Owner desires to execute a rehabilitation and ongoing maintenance project for the Historic Property. Owner's application calls for the rehabilitation and restoration of the Historic Property according to established preservation standards, which it estimates will cost approximately Six Million Two Hundred Sixty Thousand Dollars (\$6,260,000) **[SUBJECT TO REVISION/CONFIRMATION WITH OWNER]**. (See Rehabilitation Plan, Exhibit A.)

The State of California has adopted the "Mills Act" (California Government Code Sections 50280-50290, and California Revenue & Taxation Code, Article 1.9 [Section 439 et seq.]) authorizing local governments to enter into agreements with property owners to reduce their property taxes, or to prevent increases in their property taxes, in return for improvement to and maintenance of historic properties. The City has adopted enabling legislation, San Francisco Administrative Code Chapter 71, authorizing it to participate in the Mills Act program.

Owner desires to enter into a Mills Act Agreement with the City to help mitigate its anticipated expenditures to restore and maintain the Historic Property. The City is willing to enter into such Agreement to mitigate these expenditures and to induce Owner to restore and maintain the Historic Property in excellent condition in the future.

NOW, THEREFORE, in consideration of the mutual obligations, covenants, and conditions contained herein, the parties hereto do agree as follows:

1. Application of Mills Act. The benefits, privileges, restrictions and obligations provided for in the Mills Act shall be applied to the Historic Property during the time that this Agreement is in effect commencing from the date of recordation of this Agreement.

2. Rehabilitation of the Historic Property. Owner shall undertake and complete the work set forth in Exhibit A ("Rehabilitation Plan") attached hereto according to certain standards and requirements. Such standards and requirements shall include, but not be limited to: the Secretary of the Interior's Standards for the Treatment of Historic Properties ("Secretary's Standards"); the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation ("OHP Rules and Regulations"); the State Historical Building Code as determined applicable by the City; all applicable building safety standards; and the requirements of the San Francisco Historic Preservation Commission ("HPC"), the San Francisco Planning Commission, and the San Francisco Board of Supervisors, including but not limited to any Certificates of Appropriateness approved under Planning Code Article 10. The Owner shall proceed diligently in applying for any necessary permits for the work and shall apply for such permits not less than six (6) months after recordation of this Agreement, shall commence the work within six (6) months of receipt of necessary permits, and shall complete the work within three (3) years from the date of receipt of permits. Upon written request by the Owner, the Zoning Administrator, at his or her discretion, may grant an extension of the time periods set forth in this paragraph. Owner may apply for an extension by a letter to the Zoning Administrator, and the Zoning Administrator may grant the extension by letter without a hearing. Work shall be deemed complete when the Director of Planning determines that the Historic Property has been rehabilitated in accordance with the standards set forth in this Paragraph. Failure to timely complete the work shall result in cancellation of this Agreement as set forth in Paragraphs 13 and 14 herein.

3. Maintenance. Owner shall maintain the Historic Property during the time this Agreement is in effect in accordance with the standards for maintenance set forth in Exhibit B ("Maintenance Plan"), the Secretary's Standards; the OHP Rules and Regulations; the State Historical Building Code as determined applicable by the City; all applicable building safety standards; and the requirements of the HPC, the San Francisco Planning Commission, and the San Francisco Board of Supervisors, including but not limited to any Certificates of Appropriateness approved under Planning Code Article 10.

4. Damage. Should the Historic Property incur damage from any cause whatsoever, which damages fifty percent (50%) or less of the Historic Property, Owner shall replace and repair the damaged area(s) of the Historic Property. For repairs that do not require a permit, Owner shall commence the repair work within thirty (30) days of incurring the damage and shall diligently prosecute the repair to completion within a reasonable period of time, as determined by the City. Where specialized services are required due to the nature of the work and the historic character of the features damaged, "commence the repair work" within the meaning of this paragraph may include contracting for repair services. For repairs that require a permit(s), Owner shall proceed diligently in applying for any necessary permits for the work and shall apply for such permits not less than sixty (60) days after the damage has been incurred, commence the repair work within one hundred twenty (120) days of receipt of the required permit(s), and shall diligently prosecute the repair to completion within a reasonable period of time, as determined by the City. Upon written request by the Owner, the Zoning Administrator, at his or her discretion, may grant an extension of the time periods set forth in this paragraph. Owner may apply for an extension by a letter to the Zoning Administrator, and the Zoning Administrator may grant the extension by letter without a hearing. All repair work shall comply with the design and standards established for the Historic Property in Exhibits A and B attached hereto and Paragraph 3 herein. In the case of damage to twenty percent (20%) or more of the Historic Property due to a catastrophic event, such as an earthquake, or in the case of damage from any cause whatsoever that destroys more than fifty percent (50%) of the Historic Property, the City and Owner may mutually agree to terminate this Agreement. Upon such termination, Owner shall not be obligated to pay the cancellation fee set forth in Paragraph 14 of this Agreement. Upon such termination, the City shall assess the full value of the Historic Property without regard to any restriction imposed upon

the Historic Property by this Agreement and Owner shall pay property taxes to the City based upon the valuation of the Historic Property as of the date of termination.

5. Insurance. Owner shall secure adequate property insurance to meet Owner's repair and replacement obligations under this Agreement and shall submit evidence of such insurance to the City upon request.

6. Inspections. Owner shall permit periodic examination of the exterior and interior of the Historic Property by representatives of the HPC, the City's Assessor, the Department of Building Inspection, the Planning Department, the Office of Historic Preservation of the California Department of Parks and Recreation, and the State Board of Equalization, upon seventy-two (72) hours advance notice, to monitor Owner's compliance with the terms of this Agreement. Where access is required to areas not generally accessible to the public, such examination shall occur during regular business hours. Owner shall provide all reasonable information and documentation about the Historic Property demonstrating compliance with this Agreement as requested by any of the above-referenced representatives.

7. Term. This Agreement shall be effective upon the date of its recordation and shall be in effect for a term of ten years from such date ("Initial Term"). As provided in Government Code section 50282, one year shall be added automatically to the Initial Term, on each anniversary date of this Agreement, unless notice of nonrenewal is given as set forth in Paragraph 10 herein.

8. Valuation. Pursuant to Section 439.4 of the California Revenue and Taxation Code, as amended from time to time, this Agreement must have been signed, accepted and recorded on or before the lien date (January 1) for a fiscal year (the following July 1-June 30) for the Historic Property to be valued under the taxation provisions of the Mills Act for that fiscal year.

9. Termination. In the event Owner terminates this Agreement during the Initial Term, Owner shall pay the Cancellation Fee as set forth in Paragraph 14 herein. In addition, the City Assessor shall determine the fair market value of the Historic Property without regard to any restriction imposed on the Historic Property by this Agreement and shall reassess the property taxes payable for the fair market value of the Historic Property as of the date of Termination without regard to any restrictions imposed on the Historic Property by this Agreement. Such reassessment of the property taxes for the Historic Property shall be effective and payable six (6) months from the date of Termination.

10. Notice of Nonrenewal. If in any year after the Initial Term of this Agreement has expired either the Owner or the City desires not to renew this Agreement that party shall serve written notice on the other party in advance of the annual renewal date. Unless the Owner serves written notice to the City at least ninety (90) days prior to the date of renewal or the City serves written notice to the Owner sixty (60) days prior to the date of renewal, one year shall be automatically added to the term of the Agreement. The San Francisco Board of Supervisors shall make the City's determination that this Agreement shall not be renewed and shall send a notice of nonrenewal to the Owner. Upon receipt by the Owner of a notice of nonrenewal from the City, Owner may make a written protest. At any time prior to the renewal date, City may withdraw its notice of nonrenewal. If in any year after the expiration of the Initial Term of the Agreement, either party serves notice of nonrenewal of this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the execution of the last renewal of the Agreement.

11. Payment of Fees. Within one month of the execution of this Agreement, City shall tender to Owner a written accounting of its reasonable costs related to the preparation and approval of the Agreement as provided for in Government Code Section 50281.1 and San Francisco Administrative Code Section 71.6. Owner shall promptly pay the requested amount within forty-five (45) days of receipt.

12. Default. An event of default under this Agreement may be any one of the following:

- (a) Owner's failure to timely complete the rehabilitation work set forth in Exhibit A in accordance with the standards set forth in Paragraph 2 herein;
- (b) Owner's failure to maintain the Historic Property in accordance with the requirements of Paragraph 3 herein;
- (c) Owner's failure to repair any damage to the Historic Property in a timely manner as provided in Paragraph 4 herein;
- (d) Owner's failure to allow any inspections as provided in Paragraph 6 herein;
- (e) Owner's termination of this Agreement during the Initial Term;
- (f) Owner's failure to pay any fees requested by the City as provided in Paragraph 11 herein;
- (g) Owner's failure to maintain adequate insurance for the replacement cost of the Historic Property; or
- (h) Owner's failure to comply with any other provision of this Agreement.

An event of default shall result in cancellation of this Agreement as set forth in Paragraphs 13 and 14 herein and payment of the cancellation fee and all property taxes due upon the Assessor's determination of the full value of the Historic Property as set forth in Paragraph 14 herein. In order to determine whether an event of default has occurred, the San Francisco Board of Supervisors shall conduct a public hearing as set forth in Paragraph 13 herein prior to cancellation of this Agreement.

13. Cancellation. As provided for in Government Code Section 50284, City may initiate proceedings to cancel this Agreement if it makes a reasonable determination that Owner has breached any condition or covenant contained in this Agreement, has defaulted as provided in Paragraph 12 herein, or has allowed the Historic Property to deteriorate such that the safety and integrity of the Historic Property is threatened or it would no longer meet the standards for a Qualified Historic Property. In order to cancel this Agreement, City shall provide notice to the Owner and to the public and conduct a public hearing before the Board of Supervisors as provided for in Government Code Section 50285. The Board of Supervisors shall determine whether this Agreement should be cancelled.

14. Cancellation Fee. If the City cancels this Agreement as set forth in Paragraph 13 above, Owner shall pay a cancellation fee of twelve and one-half percent (12.5%) of the fair market value of the Historic Property at the time of cancellation. The City Assessor shall determine fair market value of the Historic Property without regard to any restriction imposed on the Historic Property by this Agreement. The cancellation fee shall be paid to the City Tax Collector at such time and in such manner as the City shall prescribe. As of the date of cancellation, the Owner shall pay property taxes to the City without regard to any restriction imposed on the Historic Property by this Agreement and based upon the Assessor's determination of the fair market value of the Historic Property as of the date of cancellation.

15. Enforcement of Agreement. In lieu of the above provision to cancel the Agreement, the City may bring an action to specifically enforce or to enjoin any breach of any condition or covenant of this Agreement. Should the City determine that the Owner has breached this Agreement, the City shall give the Owner written notice by registered or certified mail setting forth the grounds for the breach. If the Owner does not correct the breach, or if it does not undertake and diligently pursue corrective action, to the reasonable satisfaction of the City within thirty (30) days from the date of receipt of the notice, then the City may, without further notice, initiate default procedures under this Agreement as set forth in Paragraph 13 and bring any action necessary to enforce the obligations of the Owner set forth in this Agreement. The City



does not waive any claim of default by the Owner if it does not enforce or cancel this Agreement.

16. Indemnification. The Owners shall indemnify, defend, and hold harmless the City and all of its boards, commissions, departments, agencies, agents and employees (individually and collectively, the "City") from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person, loss of or damage to property occurring in or about the Historic Property; (b) the use or occupancy of the Historic Property by the Owners, its Agents or Invitees; (c) the condition of the Historic Property; (d) any construction or other work undertaken by Owners on the Historic Property; or (e) any claims by unit or interval owners for property tax reductions in excess those provided for under this Agreement. This indemnification shall include, without limitation, reasonable fees for attorneys, consultants, and experts and related costs that may be incurred by the City and all indemnified parties specified in this Paragraph and the City's cost of investigating any claim. In addition to Owners obligation to indemnify City, Owner specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim that actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false, or fraudulent, which obligation arises at the time such claim is tendered to owner by City, and continues at all times thereafter. The Owners' obligations under this Paragraph shall survive termination of this Agreement.

17. Eminent Domain. In the event that a public agency acquires the Historic Property in whole or part by eminent domain or other similar action, this Agreement shall be cancelled and no cancellation fee imposed as provided by Government Code Section 50288.

18. Binding on Successors and Assigns. The covenants, benefits, restrictions, and obligations contained in this Agreement shall be deemed to run with the land and shall be binding upon and inure to the benefit of all successors and assigns in interest of the Owner.

19. Legal Fees. In the event that either the City or the Owner fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the prevailing party may recover all costs and expenses incurred in enforcing or establishing its rights hereunder, including reasonable attorneys' fees, in addition to court costs and any other relief ordered by a court of competent jurisdiction. Reasonable attorneys fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

20. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

21. Recordation. Within 20 days from the date of execution of this Agreement, the City shall cause this Agreement to be recorded with the Office of the Recorder of the City and County of San Francisco.

22. Amendments. This Agreement may be amended in whole or in part only by a written recorded instrument executed by the parties hereto in the same manner as this Agreement.

23. No Implied Waiver. No failure by the City to insist on the strict performance of any obligation of the Owner under this Agreement or to exercise any right, power, or remedy arising out of a breach hereof shall constitute a waiver of such breach or of the City's right to demand strict compliance with any terms of this Agreement.

24. Authority. If the Owner signs as a corporation or a partnership, each of the persons executing this Agreement on behalf of the Owner does hereby covenant and warrant that such entity is a duly authorized and existing entity, that such entity has and is qualified to do business in California, that the Owner has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of the Owner are authorized to do so.

25. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

26. Tropical Hardwood Ban. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.

27. Charter Provisions. This Agreement is governed by and subject to the provisions of the Charter of the City.

28. Signatures. This Agreement may be signed and dated in parts

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as follows:

CITY AND COUNTY OF SAN FRANCISCO:

By: \_\_\_\_\_  
Phil Ting  
Assessor-Recorder

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
John Rahaim  
Director of Planning

DATE: \_\_\_\_\_

APPROVED AS TO FORM:  
DENNIS J. HERRERA  
CITY ATTORNEY

By: \_\_\_\_\_  
Marlena G. Byrne  
Deputy City Attorney

DATE: \_\_\_\_\_

178 TOWNSEND PROPERTIES LLC

By: \_\_\_\_\_  
Patrick M. McNerney, President  
Martin McNerney Development, Inc., its Manager

DATE: \_\_\_\_\_

OWNERS' SIGNATURE(S) MUST BE NOTARIZED.  
ATTACH PUBLIC NOTARY FORMS HERE.

**HISTORIC PRESERVATION COMMISSION**

Case No. 2008.1277U  
166-178 Townsend Street  
Assessor's Block 3788, Lot 012  
Resolution No. 631

**SAN FRANCISCO**

**HISTORIC PRESERVATION COMMISSION**

**RESOLUTION #631**

**ADOPTING FINDINGS RECOMMENDING TO THE BOARD OF SUPERVISORS APPROVAL OF THE MILLS ACT HISTORICAL PROPERTY CONTRACT, REHABILITATION PROGRAM, AND MAINTENANCE PLAN FOR 166-178 TOWNSEND STREET.**

**WHEREAS**, in accordance with Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code, the City and County of San Francisco may provide certain property tax reductions, such as the Mills Act; and

**WHEREAS**, the Mills Act authorizes local governments to enter into contracts with owners of private historical property who assure the rehabilitation, restoration, preservation and maintenance of a qualified historical property; and

**WHEREAS**, Ordinance No. 191-96 amended the San Francisco Administrative Code by adding Chapter 71 to implement California Mills Act, California Government Code Sections 50280 *et seq.*; and

**WHEREAS**, the existing building located at 166-178 Townsend Street is designated as a contributing resource to the South End Historic District pursuant to San Francisco Planning Code Article 10, and thus qualifies as a historic property; and

**WHEREAS**, at a duly noticed public hearing held on August 20, 2008, the Landmarks Preservation Advisory Board reviewed documents, correspondence and heard oral testimony on the Certificate of Appropriateness application for 178 Townsend Street, which are located in Case Docket No. 2005.0470A, and determined that the proposed project was in conformance with the *Secretary of the Interior's Standards for Rehabilitation* and recommend approval of the Certificate of Appropriateness; and

**WHEREAS**, at a duly noticed public hearing held on September 4, 2008, the Planning Commission reviewed documents, correspondence and heard oral testimony the Conditional Use application for 178 Townsend Street, which are located in Case Docket No. 2005.0470C, and authorized the Conditional Use with conditions; and

**WHEREAS**, the Planning Department has reviewed the Mills Act application, historical property contract, rehabilitation program, and maintenance plan for 166-178 Townsend Street, which are located in Case Docket

**HISTORIC PRESERVATION COMMISSION**

Case No. 2008.1277U  
166-178 Townsend Street  
Assessor's Block 3788, Lot 012  
Resolution No. 631

No. 2008.1277U. The Planning Department recommends approval of the Mills Act historical property contract, rehabilitation program, and maintenance plan; and

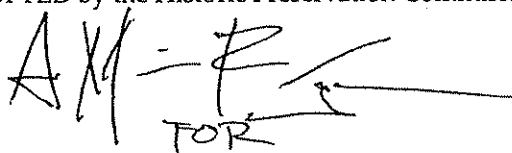
**WHEREAS**, the Historic Preservation Commission (HPC) recognizes the historic building at 166-178 Townsend Street as an historical resource and believes the rehabilitation and maintenance plans are appropriate for the property; and

**WHEREAS**, at a duly noticed public hearing held on February 4, 2009, the Historic Preservation Commission reviewed documents, correspondence and heard oral testimony on the Mills Act application, historical property contract, rehabilitation program, and maintenance plan for 166-178 Townsend Street, which are located in Case Docket No. 2008.1277U. The Historic Preservation Commission recommends approval of the Mills Act historical property contract, rehabilitation program, and maintenance plan.

**THEREFORE BE IT RESOLVED** that the **Historic Preservation Commission hereby recommends** that the Board of Supervisors approve the Mills Act historical property contract, rehabilitation program, and maintenance plan for the historic building located at 166-178 Townsend Street.

**BE IT FURTHER RESOLVED** that the **Historic Preservation Commission hereby directs** its Recording Secretary to transmit this Resolution, the Mills Act historical property contract, rehabilitation program, and maintenance plan for 166-178 Townsend Street, and other pertinent materials in the case file 2008.1277U to the Board of Supervisors.

I hereby certify that the foregoing Resolution was **ADOPTED** by the Historic Preservation Commission on February 4, 2009.

A handwritten signature in black ink, appearing to read 'Linda Avery', with the word 'FOR' written below it. The signature is stylized and includes a horizontal line extending to the right.

Linda Avery  
Recording Secretary

**AYES:** Commissioners Chase, Damkroger, Hasz, Martinez

**NOES:** None

**ABSENT:** None

**ADOPTED:** February 4, 2009



# SAN FRANCISCO PLANNING DEPARTMENT

## Mills Act Contract Case Report

*Hearing Date:* February 4, 2009  
*Filing Date:* November 6, 2008  
*Case No.:* 2008.1277U  
*Project Address:* 166-178 Townsend Street  
*Zoning:* SLI (Service/Light Industrial)  
50-X Height and Bulk District  
*Block/Lot:* 3788/012  
*Applicant:* Katie O'Brien  
Martin Building Co.  
14 Mint Plaza, 5<sup>th</sup> floor  
San Francisco, CA 94103  
*Staff Contact:* Pilar LaValley – (415) 575-9084  
pilar.lavalley@sfgov.org  
*Reviewed By:* Mark Luellen – (415) 558-6478  
mark.luellen@sfgov.org

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

### PROPERTY DESCRIPTION

The subject property (166-178 Townsend Street) is located on Lot 012 of Assessor's Block 3788, in the SLI (Service/Light Industrial) zoning district and a 50-X height and bulk district. The parcel is located on the north side of the street at the intersection of Clarence Place and Townsend Street.

The subject property, historically known as the California Electric Light Building Station B building, is a contributing resource within the South End Historic District. The subject building was originally constructed in 1888 as a three-story rectilinear front volume (approximately 50'-0" tall) that was articulated by brick pilasters, arched window openings, a simple brick cornice, and a flat roof. In 1906, the building was severely damaged by the earthquake, which caused the partial collapse of the engine room (front volume). Although visible architectural elements from the original 1899 structure remain, the building was substantially rebuilt in 1908 using a different structural system and in an altered design. As a result of the earthquake damage, the building was reduced in height and a stepped gable parapet was constructed to cap the front volume (the former engine room). Physical evidence for this change includes the cornice along the Clarence Place façade. The brick above this band of simple corbelled brickwork was evidently cut off and what had been a belt course on the earlier three-story section turned into the cornice for the existing one-story building. The building has recently been used as a valet parking garage.

In 2005, Martin Building Company initiated a project to provide up to 85 dwelling units and ground floor retail space within a new addition to the existing building. The proposed addition would fit within the footprint of the existing building and be setback approximately 40 feet from the Townsend Street façade. The proposed project includes partially below-grade parking garage (72 spaces), a five-story structure containing residential and retail, street improvements along Clarence Place, and existing exterior walls and fenestration will be rehabilitated.

As the proposed project includes exterior alteration to a building within a locally-designated historic district a Certificate of Appropriateness was required. The Certificate of Appropriateness for the project was approved with conditions on August 22, 2008. The proposed project also required Conditional Use Authorization, which was approved with conditions by Planning Commission on September 4, 2008, and a Variance from requirements of Planning Code Sections 134, 140, and 151, which was approved with conditions by the Zoning Administrator on September 30, 2008.

## **PROJECT DESCRIPTION**

This project is a Mills Act Historical Property Contract application.

## **MILLS ACT REVIEW PROCESS**

Once a Mills Act application is received, the matter is referred to the Historic Preservation Commission (HPC) for review and recommendation on the historical property contract, proposed rehabilitation program, and proposed maintenance plan. The Historic Preservation Commission shall conduct a public hearing on the Mills Act application and contract and make a recommendation for approval or disapproval to the Board of Supervisors.

The Board of Supervisors will hold a public hearing to review and approve or disapprove the Mills Act application and contract. The Board of Supervisors shall conduct a public hearing to review the Historic Preservation Commission recommendation, information provided by the Assessor's Office, and any other information the Board requires in order to determine whether the City should execute a historical property contract for the subject property.

The Board of Supervisors shall have full discretion to determine whether it is in the public interest to enter into a Mills Act contract and may approve, disapprove, or modify and approve the terms of the contract. Upon approval, the Board of Supervisors shall authorize the Director of Planning and the Assessor's Office to execute the historical property contract.

## **MILLS ACT REVIEW PROCEDURES**

The Historic Preservation Commission is requested to review and make recommendation on the following:

- The draft Mills Act historical property contract between the property owner and the City and County of San Francisco
- The proposed rehabilitation program
- The proposed maintenance plan

The Historic Preservation Commission may also comment in making a determination as to whether the public benefit gained through restoration, continued maintenance, and preservation of the property is sufficient to outweigh the subsequent loss of property taxes to the City.

## APPLICABLE PRESERVATION STANDARDS

Ordinance No. 191-96 amended the San Francisco Administrative Code by adding Chapter 71 to implement the California Mills Act, California Government Code Sections 50280 *et seq.* The Mills Act authorizes local governments to enter into contracts with private property owners who will rehabilitate, restore, preserve, and maintain a "qualified historical property." In return, the property owner enjoys a reduction in property taxes for a given period. The property tax reductions must be made in accordance with Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.

Mills Act contracts must be made for a minimum term of ten years, which ten-year period is automatically renewed by one year annually to create a rolling ten-year term. One year is added automatically to the initial term of the contract on the anniversary date of the contract, unless notice of nonrenewal is given or the contract is terminated. If the City issues a notice of nonrenewal, then one year will no longer be added to the term of the contract on its anniversary date and the contract will only remain in effect for the remainder of its term. The City must monitor the provisions of the contract until its expiration and may terminate the Mills Act contract at any time if it determines that the owner is not complying with the terms of the contract or the legislation. Termination due to default immediately ends the contract term. Mills Act contracts remain in force when a property is sold.

San Francisco Administrative Code Chapter 71, Section 71.2, defines a "qualified historic property" as one that is not exempt from property taxation and that is one of the following:

- (a) Individually listed in the National Register of Historic Places;
- (b) Listed as a contributor to an historic district included on the National Register of Historic Places;
- (c) Designated as a City landmark pursuant to San Francisco Planning Code Article 10;
- (d) Designated as contributory to an historic district designated pursuant to San Francisco Planning Code Article 10; or
- (e) Designated as significant (Categories I or II) or contributory (Categories III or IV) to a conservation district designated pursuant to San Francisco Planning Code Article 11.

## PUBLIC/NEIGHBORHOOD INPUT

The Department has not received any public comment regarding the Mills Act Property Contract.

## STAFF ANALYSIS

As detailed in the Mills Act application, the Project Sponsor proposes to rehabilitate and restore the Townsend Street and Clarence Place façades and front two bays of the 1908 post-and-beam wood truss system as part of the broader proposed project. The retained pitched roofline will have a new roof, damaged and deteriorated brick will be repaired and/or replaced in-kind, non-historic infill will be removed, and appropriate new doors and windows will be installed. In addition, as part of the structural rehabilitation of the building and evolution of seismic building codes, a concrete sheer wall structural system will be installed without altering the existing exterior historic fabric or finishes.

As a result of restoration and rehabilitation of the subject building's historic façades and portion of existing roof that generally meet the Secretary of Interior's Standards for Rehabilitation and for

Restoration, 166-178 Townsend Street remains a contributing resource to the South End Historic District designated pursuant to San Francisco Planning Code Article 10.

The Project Sponsor, Planning Department Staff, and the Office of the City Attorney have negotiated the attached draft historical property contract, which includes a draft rehabilitation program and draft maintenance plan for the historic building. Department staff believes that the draft historical property contract, rehabilitation program, and maintenance plan are adequate. The rehabilitation program details proposed rehabilitation and restoration of the exterior of the historic property. The maintenance plan involves a cycle of annual inspections and maintenance and a longer-term maintenance cycle to be performed as necessary. The attached draft historical property contract will help the Project Sponsor mitigate these expenditures and will induce the Project Sponsor to maintain the property in excellent condition in the future.

### **PLANNING DEPARTMENT RECOMMENDATION**

The Planning Department recommends that the Historic Preservation Commission adopt a resolution recommending approval of the Mills Act historical property contract, rehabilitation program, and maintenance plan for 166-178 Townsend Street.

### **HISTORIC PRESERVATION COMMISSION ACTIONS**

Review and adopt a resolution:

1. Recommending to the Board of Supervisors the approval of the proposed Mills Act historical property contract between the property owner and the City and County of San Francisco;
2. Approving the proposed Mills Act rehabilitation program for 166-178 Townsend Street;
3. Approving the proposed Mills Act maintenance plan for 166-178 Townsend Street; and
4. Commenting on the "value" of the Mills Act contract for 166-178 Townsend Street to assist the Board of Supervisors in making a determination as to whether the Mills Act contract reducing property taxes in exchange for the rehabilitation, continued maintenance, and preservation of the property is appropriate and beneficial.

### **Attachments:**

Map

Draft Mills Act historical property contract.

Proposed rehabilitation program.

Proposed maintenance plan.

Draft Resolution recommending approval of the Mills Act historical property contract, rehabilitation program, and maintenance plan, to the Board of Supervisors.

Project Sponsor Submission, including Mills Act Application.



*DRAFT DRAFT DRAFT*

Recording Requested by, and  
when recorded, send notice to:  
Director of Planning  
1660 Mission Street  
San Francisco, California 94103-2414

**CALIFORNIA MILLS ACT  
HISTORIC PROPERTY AGREEMENT  
166-178 TOWNSEND STREET  
("CALIFORNIA ELECTRIC LIGHT COMPANY STATION B")  
SAN FRANCISCO, CALIFORNIA**

THIS AGREEMENT is entered into by and between the City and County of San Francisco, a California municipal corporation (hereinafter called the "City") and 178 Townsend Properties, LLC (hereinafter called the "Owner").

**RECITALS**

Owner is the owner of the property located at 166-178 Townsend Street, in San Francisco, California (Block 3788, Lot 012). The building located at 166-178 Townsend Street is designated as a contributory structure to the South End Historic District pursuant to Article 10 of the Planning Code and is also known as the "The California Electric Light Company Station B" (hereinafter called the "Historic Property".)

Owner desires to execute a rehabilitation and ongoing maintenance project for the Historic Property. Owner's application calls for the rehabilitation and restoration of the Historic Property according to established preservation standards, which it estimates will cost approximately Six Million Two Hundred Sixty Thousand Dollars (\$6,260,000) **[SUBJECT TO REVISION/CONFIRMATION WITH OWNER]**. (See Rehabilitation Plan, Exhibit A.)

The State of California has adopted the "Mills Act" (California Government Code Sections 50280-50290, and California Revenue & Taxation Code, Article 1.9 [Section 439 et seq.]) authorizing local governments to enter into agreements with property owners to reduce their property taxes, or to prevent increases in their property taxes, in return for improvement to and maintenance of historic properties. The City has adopted enabling legislation, San Francisco Administrative Code Chapter 71, authorizing it to participate in the Mills Act program.

Owner desires to enter into a Mills Act Agreement with the City to help mitigate its anticipated expenditures to restore and maintain the Historic Property. The City is willing to enter into such Agreement to mitigate these expenditures and to induce Owner to restore and maintain the Historic Property in excellent condition in the future.

NOW, THEREFORE, in consideration of the mutual obligations, covenants, and conditions contained herein, the parties hereto do agree as follows:

1. Application of Mills Act. The benefits, privileges, restrictions and obligations provided for in the Mills Act shall be applied to the Historic Property during the time that this Agreement is in effect commencing from the date of recordation of this Agreement.

2. Rehabilitation of the Historic Property. Owner shall undertake and complete the work set forth in Exhibit A ("Rehabilitation Plan") attached hereto according to certain standards and requirements. Such standards and requirements shall include, but not be limited to: the Secretary of the Interior's Standards for the Treatment of Historic Properties ("Secretary's Standards"); the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation ("OHP Rules and Regulations"); the State Historical Building Code as determined applicable by the City; all applicable building safety standards; and the requirements of the San Francisco Historic Preservation Commission ("HPC"), the San Francisco Planning Commission, and the San Francisco Board of Supervisors, including but not limited to any Certificates of Appropriateness approved under Planning Code Article 10. The Owner shall proceed diligently in applying for any necessary permits for the work and shall apply for such permits not less than six (6) months after recordation of this Agreement, shall commence the work within six (6) months of receipt of necessary permits, and shall complete the work within three (3) years from the date of receipt of permits. Upon written request by the Owner, the Zoning Administrator, at his or her discretion, may grant an extension of the time periods set forth in this paragraph. Owner may apply for an extension by a letter to the Zoning Administrator, and the Zoning Administrator may grant the extension by letter without a hearing. Work shall be deemed complete when the Director of Planning determines that the Historic Property has been rehabilitated in accordance with the standards set forth in this Paragraph. Failure to timely complete the work shall result in cancellation of this Agreement as set forth in Paragraphs 13 and 14 herein.

3. Maintenance. Owner shall maintain the Historic Property during the time this Agreement is in effect in accordance with the standards for maintenance set forth in Exhibit B ("Maintenance Plan"), the Secretary's Standards; the OHP Rules and Regulations; the State Historical Building Code as determined applicable by the City; all applicable building safety standards; and the requirements of the HPC, the San Francisco Planning Commission, and the San Francisco Board of Supervisors, including but not limited to any Certificates of Appropriateness approved under Planning Code Article 10.

4. Damage. Should the Historic Property incur damage from any cause whatsoever, which damages fifty percent (50%) or less of the Historic Property, Owner shall replace and repair the damaged area(s) of the Historic Property. For repairs that do not require a permit, Owner shall commence the repair work within thirty (30) days of incurring the damage and shall diligently prosecute the repair to completion within a reasonable period of time, as determined by the City. Where specialized services are required due to the nature of the work and the historic character of the features damaged, "commence the repair work" within the meaning of this paragraph may include contracting for repair services. For repairs that require a permit(s), Owner shall proceed diligently in applying for any necessary permits for the work and shall apply for such permits not less than sixty (60) days after the damage has been incurred, commence the repair work within one hundred twenty (120) days of receipt of the required permit(s), and shall diligently prosecute the repair to completion within a reasonable period of time, as determined by the City. Upon written request by the Owner, the Zoning Administrator, at his or her discretion, may grant an extension of the time periods set forth in this paragraph. Owner may apply for an extension by a letter to the Zoning Administrator, and the Zoning Administrator may grant the extension by letter without a hearing. All repair work shall comply with the design and standards established for the Historic Property in Exhibits A and B attached hereto and Paragraph 3 herein. In the case of damage to twenty percent (20%) or more of the Historic Property due to a catastrophic event, such as an earthquake, or in the case of damage from any cause whatsoever that destroys more than fifty percent (50%) of the Historic Property, the City and Owner may mutually agree to terminate this Agreement. Upon such termination, Owner shall not be obligated to pay the cancellation fee set forth in Paragraph 14 of this Agreement. Upon such termination, the City shall assess the full value of the Historic Property without regard to any restriction imposed upon

the Historic Property by this Agreement and Owner shall pay property taxes to the City based upon the valuation of the Historic Property as of the date of termination.

5. Insurance. Owner shall secure adequate property insurance to meet Owner's repair and replacement obligations under this Agreement and shall submit evidence of such insurance to the City upon request.

6. Inspections. Owner shall permit periodic examination of the exterior and interior of the Historic Property by representatives of the HPC, the City's Assessor, the Department of Building Inspection, the Planning Department, the Office of Historic Preservation of the California Department of Parks and Recreation, and the State Board of Equalization, upon seventy-two (72) hours advance notice, to monitor Owner's compliance with the terms of this Agreement. Where access is required to areas not generally accessible to the public, such examination shall occur during regular business hours. Owner shall provide all reasonable information and documentation about the Historic Property demonstrating compliance with this Agreement as requested by any of the above-referenced representatives.

7. Term. This Agreement shall be effective upon the date of its recordation and shall be in effect for a term of ten years from such date ("Initial Term"). As provided in Government Code section 50282, one year shall be added automatically to the Initial Term, on each anniversary date of this Agreement, unless notice of nonrenewal is given as set forth in Paragraph 10 herein.

8. Valuation. Pursuant to Section 439.4 of the California Revenue and Taxation Code, as amended from time to time, this Agreement must have been signed, accepted and recorded on or before the lien date (January 1) for a fiscal year (the following July 1-June 30) for the Historic Property to be valued under the taxation provisions of the Mills Act for that fiscal year.

9. Termination. In the event Owner terminates this Agreement during the Initial Term, Owner shall pay the Cancellation Fee as set forth in Paragraph 14 herein. In addition, the City Assessor shall determine the fair market value of the Historic Property without regard to any restriction imposed on the Historic Property by this Agreement and shall reassess the property taxes payable for the fair market value of the Historic Property as of the date of Termination without regard to any restrictions imposed on the Historic Property by this Agreement. Such reassessment of the property taxes for the Historic Property shall be effective and payable six (6) months from the date of Termination.

10. Notice of Nonrenewal. If in any year after the Initial Term of this Agreement has expired either the Owner or the City desires not to renew this Agreement that party shall serve written notice on the other party in advance of the annual renewal date. Unless the Owner serves written notice to the City at least ninety (90) days prior to the date of renewal or the City serves written notice to the Owner sixty (60) days prior to the date of renewal, one year shall be automatically added to the term of the Agreement. The San Francisco Board of Supervisors shall make the City's determination that this Agreement shall not be renewed and shall send a notice of nonrenewal to the Owner. Upon receipt by the Owner of a notice of nonrenewal from the City, Owner may make a written protest. At any time prior to the renewal date, City may withdraw its notice of nonrenewal. If in any year after the expiration of the Initial Term of the Agreement, either party serves notice of nonrenewal of this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the execution of the last renewal of the Agreement.

11. Payment of Fees. Within one month of the execution of this Agreement, City shall tender to Owner a written accounting of its reasonable costs related to the preparation and approval of the Agreement as provided for in Government Code Section 50281.1 and San Francisco Administrative Code Section 71.6. Owner shall promptly pay the requested amount within forty-five (45) days of receipt.

12. Default. An event of default under this Agreement may be any one of the following:

- (a) Owner's failure to timely complete the rehabilitation work set forth in Exhibit A in accordance with the standards set forth in Paragraph 2 herein;
- (b) Owner's failure to maintain the Historic Property in accordance with the requirements of Paragraph 3 herein;
- (c) Owner's failure to repair any damage to the Historic Property in a timely manner as provided in Paragraph 4 herein;
- (d) Owner's failure to allow any inspections as provided in Paragraph 6 herein;
- (e) Owner's termination of this Agreement during the Initial Term;
- (f) Owner's failure to pay any fees requested by the City as provided in Paragraph 11 herein;
- (g) Owner's failure to maintain adequate insurance for the replacement cost of the Historic Property; or
- (h) Owner's failure to comply with any other provision of this Agreement.

An event of default shall result in cancellation of this Agreement as set forth in Paragraphs 13 and 14 herein and payment of the cancellation fee and all property taxes due upon the Assessor's determination of the full value of the Historic Property as set forth in Paragraph 14 herein. In order to determine whether an event of default has occurred, the San Francisco Board of Supervisors shall conduct a public hearing as set forth in Paragraph 13 herein prior to cancellation of this Agreement.

13. Cancellation. As provided for in Government Code Section 50284, City may initiate proceedings to cancel this Agreement if it makes a reasonable determination that Owner has breached any condition or covenant contained in this Agreement, has defaulted as provided in Paragraph 12 herein, or has allowed the Historic Property to deteriorate such that the safety and integrity of the Historic Property is threatened or it would no longer meet the standards for a Qualified Historic Property. In order to cancel this Agreement, City shall provide notice to the Owner and to the public and conduct a public hearing before the Board of Supervisors as provided for in Government Code Section 50285. The Board of Supervisors shall determine whether this Agreement should be cancelled.

14. Cancellation Fee. If the City cancels this Agreement as set forth in Paragraph 13 above, Owner shall pay a cancellation fee of twelve and one-half percent (12.5%) of the fair market value of the Historic Property at the time of cancellation. The City Assessor shall determine fair market value of the Historic Property without regard to any restriction imposed on the Historic Property by this Agreement. The cancellation fee shall be paid to the City Tax Collector at such time and in such manner as the City shall prescribe. As of the date of cancellation, the Owner shall pay property taxes to the City without regard to any restriction imposed on the Historic Property by this Agreement and based upon the Assessor's determination of the fair market value of the Historic Property as of the date of cancellation.

15. Enforcement of Agreement. In lieu of the above provision to cancel the Agreement, the City may bring an action to specifically enforce or to enjoin any breach of any condition or covenant of this Agreement. Should the City determine that the Owner has breached this Agreement, the City shall give the Owner written notice by registered or certified mail setting forth the grounds for the breach. If the Owner does not correct the breach, or if it does not undertake and diligently pursue corrective action, to the reasonable satisfaction of the City within thirty (30) days from the date of receipt of the notice, then the City may, without further notice, initiate default procedures under this Agreement as set forth in Paragraph 13 and bring any action necessary to enforce the obligations of the Owner set forth in this Agreement. The City

does not waive any claim of default by the Owner if it does not enforce or cancel this Agreement.

16. Indemnification. The Owners shall indemnify, defend, and hold harmless the City and all of its boards, commissions, departments, agencies, agents and employees (individually and collectively, the "City") from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person, loss of or damage to property occurring in or about the Historic Property; (b) the use or occupancy of the Historic Property by the Owners, its Agents or Invitees; (c) the condition of the Historic Property; (d) any construction or other work undertaken by Owners on the Historic Property; or (e) any claims by unit or interval owners for property tax reductions in excess those provided for under this Agreement. This indemnification shall include, without limitation, reasonable fees for attorneys, consultants, and experts and related costs that may be incurred by the City and all indemnified parties specified in this Paragraph and the City's cost of investigating any claim. In addition to Owners obligation to indemnify City, Owner specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim that actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false, or fraudulent, which obligation arises at the time such claim is tendered to owner by City, and continues at all times thereafter. The Owners' obligations under this Paragraph shall survive termination of this Agreement.

17. Eminent Domain. In the event that a public agency acquires the Historic Property in whole or part by eminent domain or other similar action, this Agreement shall be cancelled and no cancellation fee imposed as provided by Government Code Section 50288.

18. Binding on Successors and Assigns. The covenants, benefits, restrictions, and obligations contained in this Agreement shall be deemed to run with the land and shall be binding upon and inure to the benefit of all successors and assigns in interest of the Owner.

19. Legal Fees. In the event that either the City or the Owner fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the prevailing party may recover all costs and expenses incurred in enforcing or establishing its rights hereunder, including reasonable attorneys' fees, in addition to court costs and any other relief ordered by a court of competent jurisdiction. Reasonable attorneys fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

20. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

21. Recordation. Within 20 days from the date of execution of this Agreement, the City shall cause this Agreement to be recorded with the Office of the Recorder of the City and County of San Francisco.

22. Amendments. This Agreement may be amended in whole or in part only by a written recorded instrument executed by the parties hereto in the same manner as this Agreement.

23. No Implied Waiver. No failure by the City to insist on the strict performance of any obligation of the Owner under this Agreement or to exercise any right, power, or remedy arising out of a breach hereof shall constitute a waiver of such breach or of the City's right to demand strict compliance with any terms of this Agreement.

24. Authority. If the Owner signs as a corporation or a partnership, each of the persons executing this Agreement on behalf of the Owner does hereby covenant and warrant that such entity is a duly authorized and existing entity, that such entity has and is qualified to do business in California, that the Owner has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of the Owner are authorized to do so.

25. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

26. Tropical Hardwood Ban. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.

27. Charter Provisions. This Agreement is governed by and subject to the provisions of the Charter of the City.

28. Signatures. This Agreement may be signed and dated in parts

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as follows:

CITY AND COUNTY OF SAN FRANCISCO:

By: \_\_\_\_\_  
Phil Ting  
Assessor-Recorder

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
John Rahaim  
Director of Planning

DATE: \_\_\_\_\_

APPROVED AS TO FORM:  
DENNIS J. HERRERA  
CITY ATTORNEY

By: \_\_\_\_\_  
Marlena G. Byrne  
Deputy City Attorney

DATE: \_\_\_\_\_

178 TOWNSEND PROPERTIES LLC

By: \_\_\_\_\_  
Patrick M. McNerney, President  
Martin McNerney Development, Inc., its Manager

DATE: \_\_\_\_\_

OWNERS' SIGNATURE(S) MUST BE NOTARIZED.  
ATTACH PUBLIC NOTARY FORMS HERE.



November 6, 2008

Pilar LaValley, Preservation Planner  
San Francisco Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Re: 178 Townsend – Mills Act

Dear Ms. LaValley:

178 Townsend is a contributor to the South End Historic District. The South End Historic District is a local San Francisco historic district as well as a Nationally Certified District by NPS. In addition, the project received approvals on September 4, 2008 from the Planning Commission for a CU and Variance as well as a Certificate of Appropriateness from the Landmark's Preservation Board.

We would like to pursue the Mills Act for the project. Enclosed please find an application binder for the Mills Act, it includes the following:

- Mills Act Application Form
- Letter from NPS and Ordinance 67-06.
- Present Physical Condition of the Property including photographs
- Rehabilitation Work to be Performed and Costs
- Site Plan, Elevations and Floor Plans
- Maintenance Plan

Also included is the application fee payable to the San Francisco Planning Department for \$8,412.00.

I look forward to working with you on the Mills Act for 178 Townsend.

Sincerely,

A handwritten signature in cursive script that reads "Katie O'Brien".

Katie O'Brien

## MILLS ACT APPLICATION FORM

### General Instructions:

The Mills Act authorizes local governments to enter into contracts with owners of private historical property who will rehabilitate, restore, preserve, and maintain a "qualified historical property." For purposes of the Mills Act, a qualified historical property is a privately owned property that is not exempt from property taxation and which is one and/or both of the following:

- Individually listed in the National Register of Historic Places
- Designated as a San Francisco Landmark pursuant to Article 10 of the Planning Code.

An owner, or an authorized agent of an owner of a qualified historical property may submit an application for a Mills Act historical property contract to the Planning Department on the form below and a fee as set forth in Planning Code Section 356(e). This fee covers the first four hours of Planning Department staff time. A time and materials fee may later be assessed as set forth in Planning Code Section 350(c).

### A. QUALIFIED HISTORICAL PROPERTY INFORMATION

Property Name: 178 Townsend  
Historic Name (if known): California Electric Light Station B  
Address of Property: 178 Townsend  
Cross Streets: Clarence Place, between 3rd and 2nd Streets  
Block and Lot of Property: Block 3788 Lot 012  
Owner: 178 Townsend Properties, LLC (Phone #) (415) 348-4652

### B. EVIDENCE THAT PROPERTY IS A QUALIFIED HISTORICAL PROPERTY

Is property individually listed on the National Register of Historic Places? If so, please attach evidence of National Register of Historic Places listing and National Register Status Code assigned to the property.

Evidence of National Register of Historic Places listing:  (attached)

Evidence of National Register of Historic Places rating: \_\_\_\_\_ (attached)

Is property a designated San Francisco Landmark? If so, please attach evidence of San Francisco Landmark



Per Ordinance 67-06 this property is listed as a contributor to the South End Historic District.

designation.

San Francisco Landmark Name: \_\_\_\_\_ (attached)

San Francisco Landmark Number: \_\_\_\_\_ (attached)

**C. PRESENT PHYSICAL CONDITION OF PROPERTY**

Please provide a description of the present physical condition of the property. What type of work is needed to ensure its long-term preservation and maintenance? Please attach photos or other evidence to convey present physical condition.

Please see attached description.

**D. REHABILITATION, RESTORATION AND PRESERVATION WORK TO BE PERFORMED**

Please provide an explanation of the nature and cost of rehabilitation, restoration and preservation work to be performed on the property. Please attach cost estimates, architectural drawings or other evidence to explain work to be performed.

Please see attached rehabilitation costs.

**E. MAINTENANCE WORK TO BE PERFORMED**

Please outline plans for the continued maintenance of the property. \_\_\_\_\_

Please see attached Maintenance Plan.

**F. APPLICANT'S AFFIDAVIT**

Under penalty of perjury, I, the applicant, declare that I am the owner or authorized agent of the owner(s) of this property, and that the information presented is true and correct to the best of my knowledge.

Signed: Katie O'Brien

Katie O'Brien, 178 Townsend Properties LLC  
(Print Name of Applicant in Full)

Date: 10/31/08

Please return this form to:

Preservation Coordinator  
San Francisco Planning Department  
1660 Mission Street, 5<sup>th</sup> Floor  
San Francisco, CA 94103

**DO NOT WRITE BELOW THIS LINE - PLANNING DEPARTMENT INFORMATION**

- 1. Property determined eligible for Mills Act? \_\_\_\_\_ Yes \_\_\_\_\_ No
- 2. Application deemed acceptable? \_\_\_\_\_ Yes \_\_\_\_\_ No
- 3. Additional comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

178 Townsend Properties, LLC  
54 Mint Street, 5<sup>th</sup> Floor  
San Francisco, CA 94103

April 25, 2008

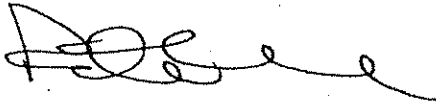
Attn: Tim Frye, Preservation Planner  
San Francisco Planning Department  
1650 Mission St., Ste. 400  
San Francisco, CA 94103

Re: 166-179 Townsend St.  
Authorization

Dear Mr. Frye,

This letter it confirm that I authorize Katie O'Brien as an Authorized Agent for 178 Townsend Properties, LLC.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick McNerney', with a long horizontal flourish extending to the right.

Patrick McNerney, Managing Member  
178 Townsend Properties, LLC



## United States Department of the Interior

### NATIONAL PARK SERVICE

1849 C Street, N.W.  
Washington, D.C. 20240

October 27, 2008

John Rahaim  
Director of Planning  
City of San Francisco  
1650 Mission St., Suite 400  
San Francisco, CA 94103-2479

Dear Mr. Rahaim:

The National Park Service is pleased to inform you as duly authorized representative that the South End Historic District has been certified by the Secretary of the Interior for purposes of the Tax Reform Act of 1986, as substantially meeting all the requirements for listing in the National Register of Historic Places.

As a result of this determination, individual property owners of depreciable buildings within this district may now pursue Federal tax incentives for historic preservation by completing the Historic Preservation Certification Application -- Parts 1 and 2 and submitting them to the State Historic Preservation Office (SHPO). Application forms are available directly from the SHPO. Applications should be submitted as early as possible in the planning of a rehabilitation project.

Review boards and commissions should become familiar with the Secretary of the Interior's Standards for Rehabilitation (copy enclosed), used by the Secretary in certifying rehabilitation work for the historic preservation tax incentives. The SHPO and the NPS are available to advise individuals and organizations about the Standards.

To clarify a reference in your request regarding certification of this district as a National Register historic district, please note that this certification is for purposes of the Federal Preservation Tax Incentives Program only, not the National Register of Historic Places. It constitutes a determination of eligibility for listing in the National Register of Historic Places, because it was evaluated under the National Register criteria and found to meet them. The certification is not a National Register listing, however, and the certified local district is not a formal National Register historic district as a result of this process. If a listing in the National Register of Historic Places is needed in the future for purposes beyond the scope of the Federal Preservation Tax Incentives Program, you may contact the State Historic Preservation Office to pursue listing procedures outlined in Federal Regulations 36 CFR 60.

Please be aware that changes to the historic district as presently certified will render this certification null and void and will require recertification of the revised district for continued benefits under the above laws.

If you have any questions, please call me at (202) 354-2025.

Sincerely,

Guy M. Lapsley  
Technical Preservation Services

cc: National Register  
CA SHPO

## Attachment C

### California Electric Light Company Station B 178 Townsend

#### C. PRESENT PHYSICAL CONDITION OF PROPERTY

##### PHYSICAL DESCRIPTION

The former California Electric Light Company Station B is located on a rectangular-shaped, 22,000 SF parcel with frontages on Townsend Street (to the south) and Clarence Place (to the west). The property is located in the locally-listed South End Historic District. Constructed in 1888, this industrial building is comprised of two parts: a front volume (originally the engine room) facing Townsend Street to the south, and a rear volume (originally the boiler room) to the north. The entire building has a long, rectangular footprint. The two volumes are separated by a shared 18"-thick brick gable demising wall with a central, arched opening. This wall rises to 51'-0" at its highest point. The south façade (Townsend Street) features a corbelled cornice and a stepped parapet, which rises from 23'-7" tall at the side corner pilasters to 35'-7" at the tallest point of the stepped parapet.

The south façade is composed of three bays and four rectangular pilasters; the brick is laid in a running bond pattern below the cornice and a common bond from the cornice to the parapet. The west bay of the south façade features an entrance to a former office space. This opening features a segmental arch with a large wood frame transom and two sidelights framing a hollow metal door; it is accessed by two concrete steps. The central bay features a semi-circular arched vehicular entry with a metal rolling door. A small, fixed steel-sash window with two lites is located above the cornice line; a vent is attached to the bottom of the window. The east bay features a tall, rectangular opening filled with two 1x1, aluminum-sash windows over two 2x2 steel casement windows; the upper and lower sash are separated by a sunken panels of 3"-wide vertical wood siding.

The west façade (Clarence Place) consists of two visually disparate sections: the front volume located to the south of the central brick demising wall, and the rear volume located to the north of central demising wall. As mentioned previously, the front volume corresponds to the former engine room, and is composed of eight bays delineated by rectangular brick pilasters. The brick is laid in a common bond pattern and rises to 19'-6" with a subtle projecting cornice of two brick courses. The bay furthest north is approximately 12" taller than the other bays and is capped with a stepped brick cornice that more closely matches the northern section of the building. The rear volume corresponds to the former boiler room and consists of a wall that rises to 33'-9" at the eaves and features a corbelled brick cornice at the top, an intermediate cornice with corbelled supports, and a 4'-5"-tall concrete water table. The west façade along Clarence Place has six identical windows set high beneath the intermediate cornice; all window openings are segmentally arched and have brick sills. Of the six windows, there are three 2x2 wood divided lite casement windows, while the other three openings are filled with plywood. An original segmentally arched vehicular entrance, now filled with brick, is located at the far north end of this bay. Two larger vehicular openings, both with metal overhead doors occur near the midpoint of the wall. The faded words "Continental House Bonded Warehouse," a later use, can be seen in paint on a brick panel above the vehicular door to the south.

The northeast corner is all that remains visible of the north and east façades, since adjacent buildings abut both façades. Four window openings at the interior of the east wall are infilled with CMU. An entrance on the northernmost side of the east façade has been infilled with brick.

## **PROJECT DESCRIPTION**

The proposed project would restore and incorporate the first two bays of the building's 1908 post-and-beam wood truss system but remove the remaining six wood trusses, which have been severely compromised. The historic pitched roofline and volume of the front two bays of the original building would be preserved, and the existing non-historic corrugated steel roof and fiberglass skylights would be replaced with a new glass and steel skin. In the rear volume, the existing non-historic corrugated roof will be removed, as will the existing steel trusses and interior smokestack.

### **South Façade (Townsend Street)**

The majority of the building's exterior walls and façades would be preserved intact. It was acknowledged by the Landmark's Preservation Advisory Board that the accretive nature of the Townsend façade has merit in its own right. Therefore on the Townsend Street façade minimal changes are planned, the existing openings will be left as they are. Only non-historic features such as aluminum windows and signs that date from after the historic district's period of significance would be removed. The roll-down center door would be replaced with wood "barn" doors. All historic brick on this façade would be patched and repaired and/or replaced with in-kind materials. The restoration and reconstruction of features on this façade would closely follow the Secretary of the Interior's Standards for Restoration and Reconstruction.

### **West Façade (Clarence Place)**

On Clarence Place new residential entries would be cut into the existing façade. In addition, rectangular "strip" windows would be added above the intermediate corbelled brick cornice of the rear volume. All historic windows along Clarence Place would remain and all existing pedestrian and vehicular openings previously altered by non-historic construction would be re-opened and re-activated for use as residential or vehicular entries. The western-most opening along Clarence Place, which is currently bricked up, will be re-opened with non-historic brick being removed. Pedestrian access to the residential units will occur via an entrance on Clarence Place, as well as through the individual unit entries (and one common stairwell entry) along Clarence Place. The painted signage on the Clarence Place façade will be retained and preserved in place.

### **Exterior Brick Walls**

The red brick walls currently exhibit several material deterioration issues. These include inappropriate previous cleanings, water intrusion, and cracking in the masonry. These issues will be addressed through appropriate conservation and repair techniques.

### **Gable Roof**

The gable roof form is extant but the roof system is failing and in need of repair or replacement.

### **Multi-lite Window Sash**

Wood multi-lite window windows display a range of conditions, requiring interventions that range from simply repainting to full replacement of rotted or missing elements.

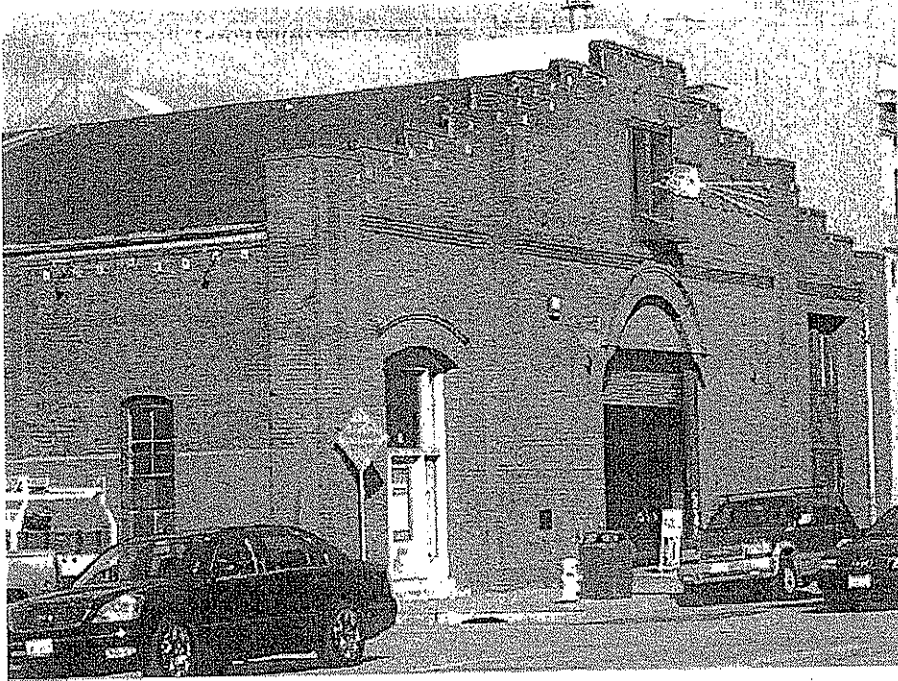
### **Painted Signs on Clarence Place**

The sign above a garage opening has faded and lost most of its paint. The sign will be preserved and treated to prevent further deterioration.

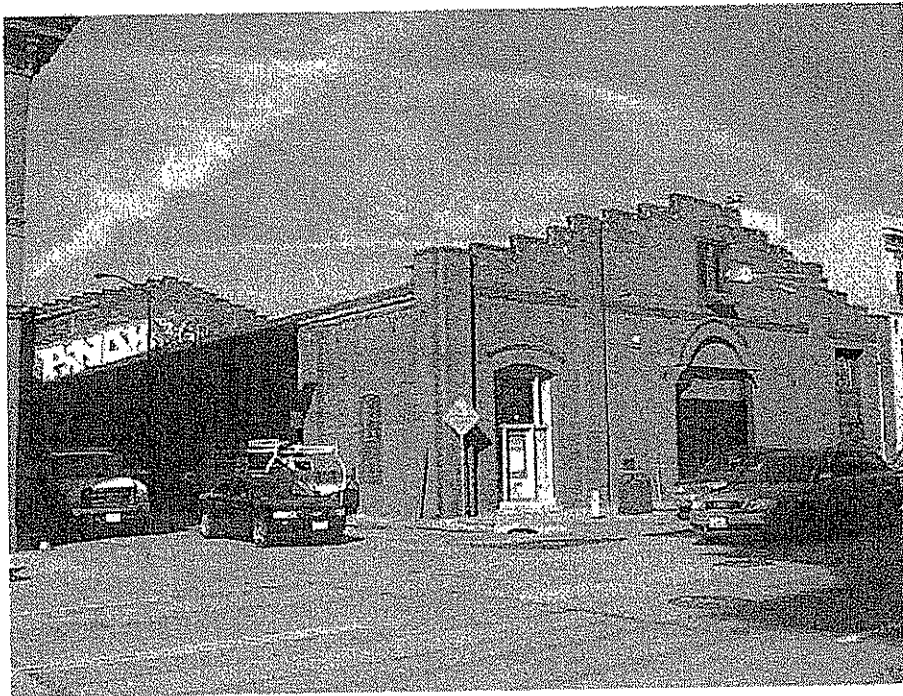
Attachment C

C. PRESENT PHYSICAL CONDITION OF PROPERTY

California Electric Light Company Station B  
178 Townsend Street



Primary façade of 178 Townsend Street, looking North from opposite side of Townsend Street



178 Townsend Street facade and side view down Clarence Place looking North from opposite side of Townsend Street

**Attachment C**  
**178 Townsend – Present Physical Condition of Property**



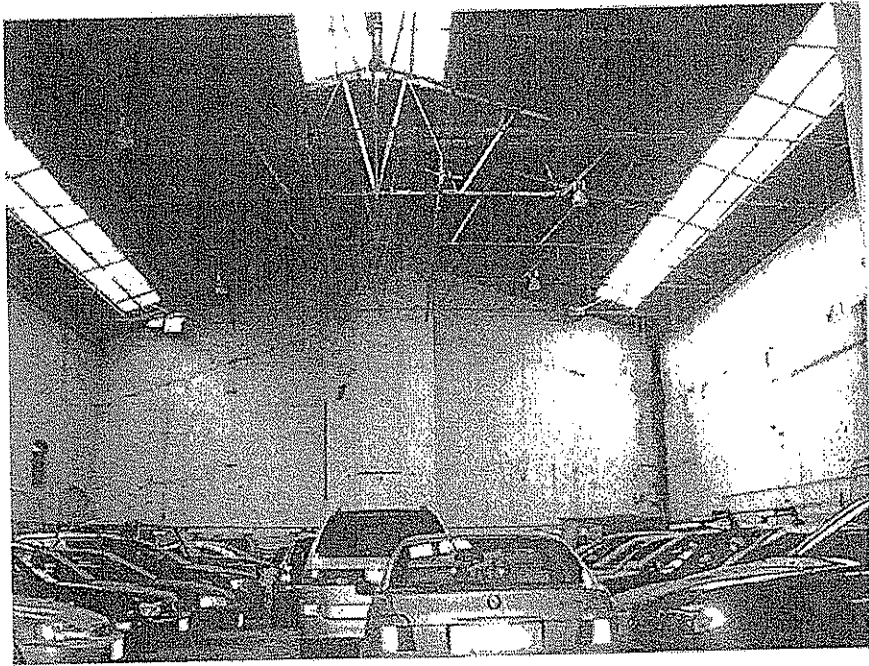
West elevation, front volume, along Clarence Place, looking northwest



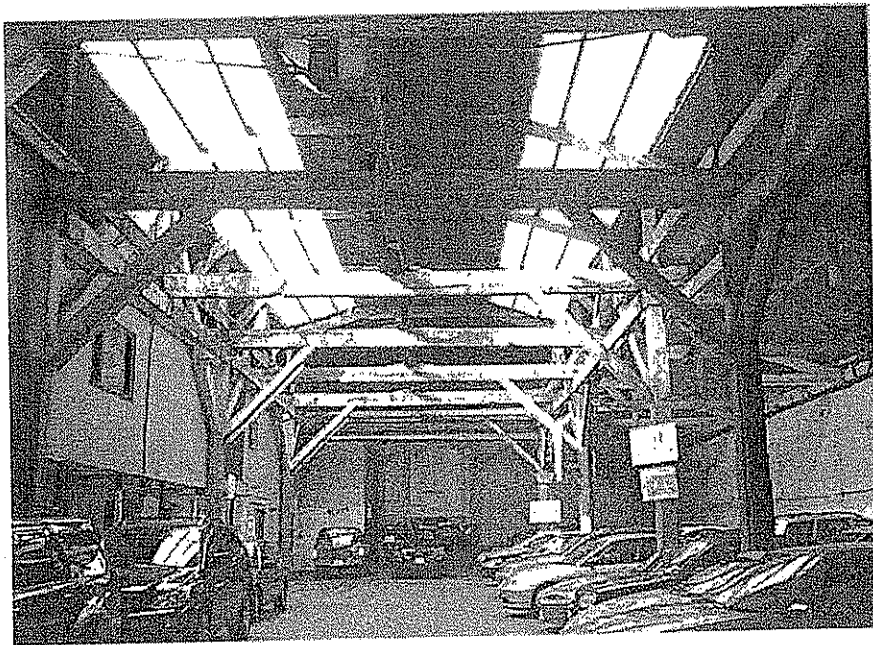
West elevation, rear volume, along Clarence Place looking north



Attachment C  
178 Townsend – Present Physical Condition of Property

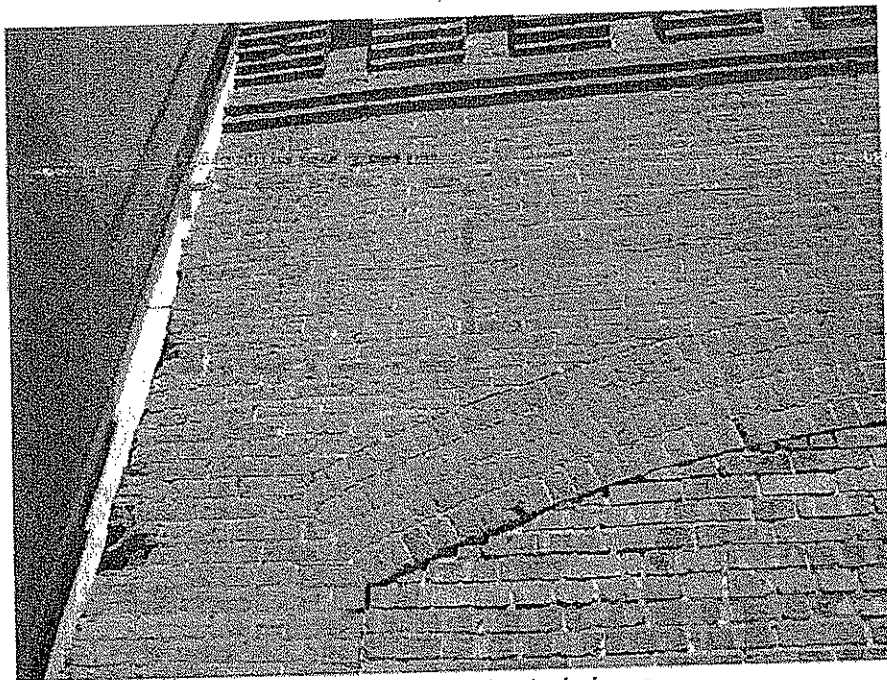


Rear volume interior, looking northwest



Front volume interior, looking northwest

**Attachment C**  
**178 Townsend – Present Physical Condition of Property**

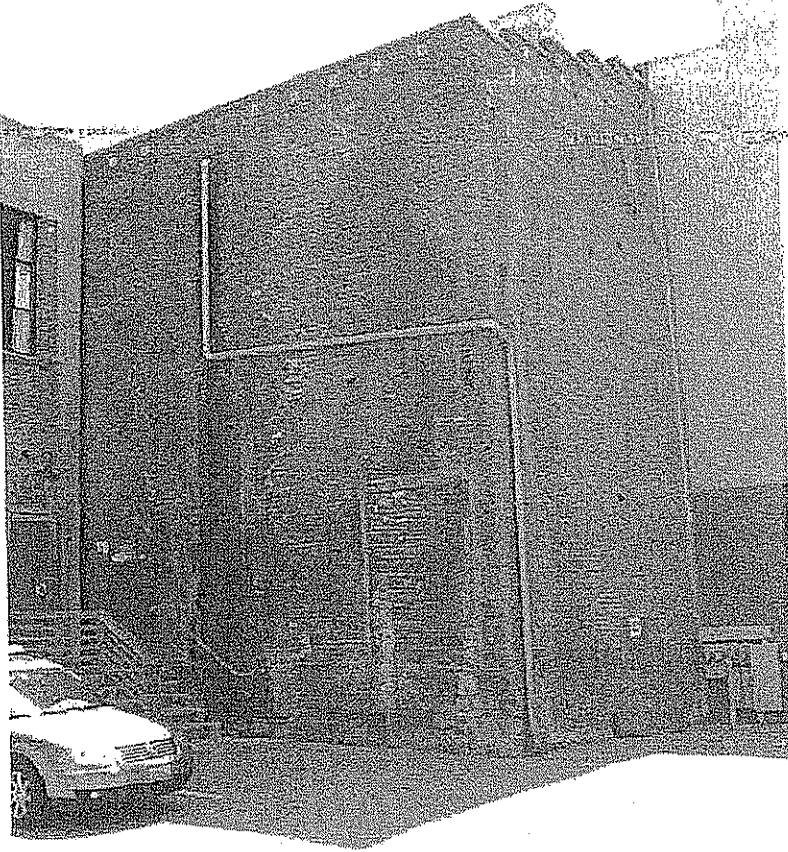


Brick damaged by previous abrasive cleaning techniques.



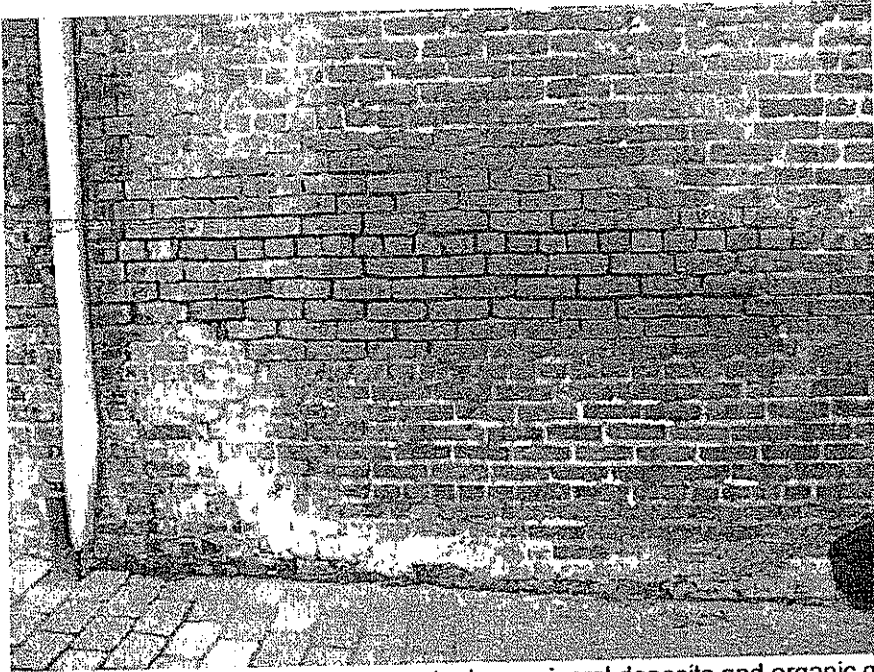
Detail of "scars" left by abrasive cleaning.

**Attachment C**  
**178 Townsend – Present Physical Condition of Property**

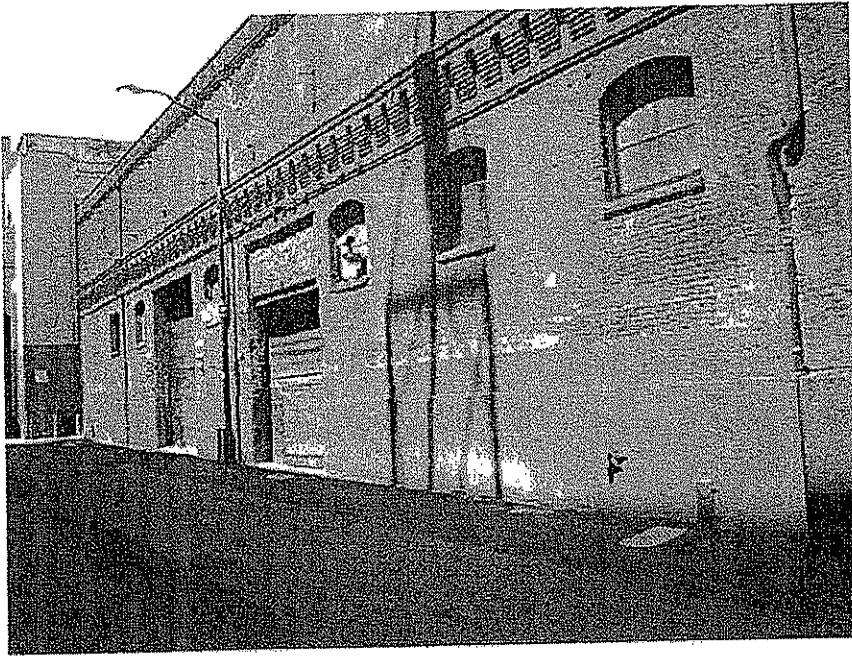


Signs of water intrusion and shedding issues evidenced by organic growth, staining and efflorescence.

Attachment C  
178 Townsend – Present Physical Condition of Property

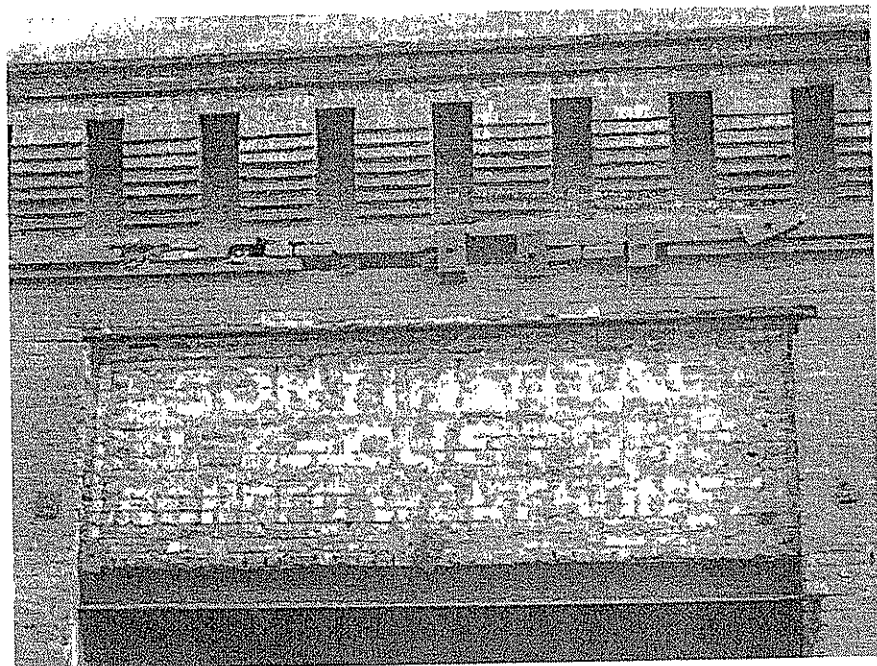


Detail of exterior masonry wall exhibiting mortar loss, mineral deposits and organic growth.



Painted lower portion of brick masonry and cement water table, Clarence Place façade.

Attachment C  
178 Townsend – Present Physical Condition of Property



Painted Signage over roll-up door on Clarence Place façade.



## Attachment D

### California Electric Light Company Station B 178 Townsend

#### ~~D. REHABILITATION, RESTORATION AND PRESERVATION WORK~~ TO BE PERFORMED

##### NATURE AND COST OF REHABILITATION, RESTORATION AND PRESERVATION WORK TO BE PERFORMED

###### Red Brick Walls

*Issue:* The red brick walls currently exhibit several material deterioration issues. These include inappropriate previous cleanings, water intrusion, and cracking in the masonry.

*Treatment:* The existing brick will be retained in place. However, the abrasive cleaning has compromised the exterior envelop of the building. Siloxane water repellants, masonry consolidants or a combination of both will be tested and used on the walls to promote the water intrusion resistance of the exterior shell and the longevity of the brick.

*Issue:* Water Intrusion Deterioration resulting from inadequate flashing and water shedding systems at the roof. The water issues are expressed as staining, mortar erosion, organic growth and efflorescence on the exterior. On the interior, water intrusion is expressed as significant organic growth, mortar loss and paint blistering on interior.

*Treatment – Exterior:* The correction of this problem will be a three-step process:

1. Repair or replace the roof cladding, flashing and water shedding systems.
2. Damage to the wall itself, such as mortar erosion or deterioration of the brick would be repaired. Bricks units that exhibit more than 30% loss of either their surface skin or total volume would be replaced in kind. Repoint mortar joints that exhibit erosion in excess of  $\frac{1}{4}$ " from the surface of the wall face.
3. After the walls are properly weather-tight, the staining and deterioration issues can be treated empirically: We would test the appropriate products and methods for each type of stain: biocides on the organic growth, mild acidic cleaners for lime deposits and efflorescence runs and masonry cleaners for staining and use appropriately.

*Treatment – Interior:* The interior features exposed brick walls that are painted. On the interior of the building, this has the effect of trapping water within the wall, behind the paint layer. The removal of the failing paint is a necessary prior to treating the brick. The same guidelines described for the exterior brick apply to the treatment of the interior brick. We would consult with a hazardous materials specialist before undertaking any changes or removal of the paint.

*Issue:* Cracking. Both the interior and exterior walls exhibit cracks in the masonry and mortar joints. These range from hairline cracks to larger openings that allow water to intrude into the walls or indicate past or present stresses on the building.

*Treatment:* When cracks occur along mortar joint, remove mortar a minimum of 1-1/2" in depth. Repoint mortar joints with an appropriately formulated mortar. When cracks that are less than 1/8" wide occur in bricks, they would be patched using mortar pigmented to match the color of the brick. For cracks that exceed 1/8" in width, we would replace the brick unit in kind.

**Brick/concrete water table at rear volume**

The water table exhibits only minor spalling as a result of impact from vehicles.

*Treatment:* The scarring of the wall (vehicle impacts, minor spalling at the returns flanking the doors) are part of the character of this feature and do not pose a threat to the preservation of the element or the building as a whole. No treatment is recommended.

**Gable Roof Form**

The gable roof form is extant but the roof system is failing and in need of repair or replacement.

*Treatment:* Install new roof diaphragm and water shedding systems.

**Multi-lite window sash**

The Clarence Place façade retains ten original window openings, many of which contain wood multi-lite window sashes. These windows display a range of conditions, requiring interventions that range from simply repainting to full replacement of rotted or missing elements.

*Treatment:* Original windows of historic merit would be replaced with like-kind windows.

**Painted signage on Clarence Place**

There is a sign featured on the Clarence Place façade above a garage opening. It is discernable, but has faded and lost most of its paint.

*Treatment:* Using the gentlest means possible, we would repair the brick substrate as necessary (crack repair, repointing mortar joints). The signs can be preserved using a clear masonry sealant, as described in the "Red Brick Walls" section (see above).

**REHABILITATION COSTS**

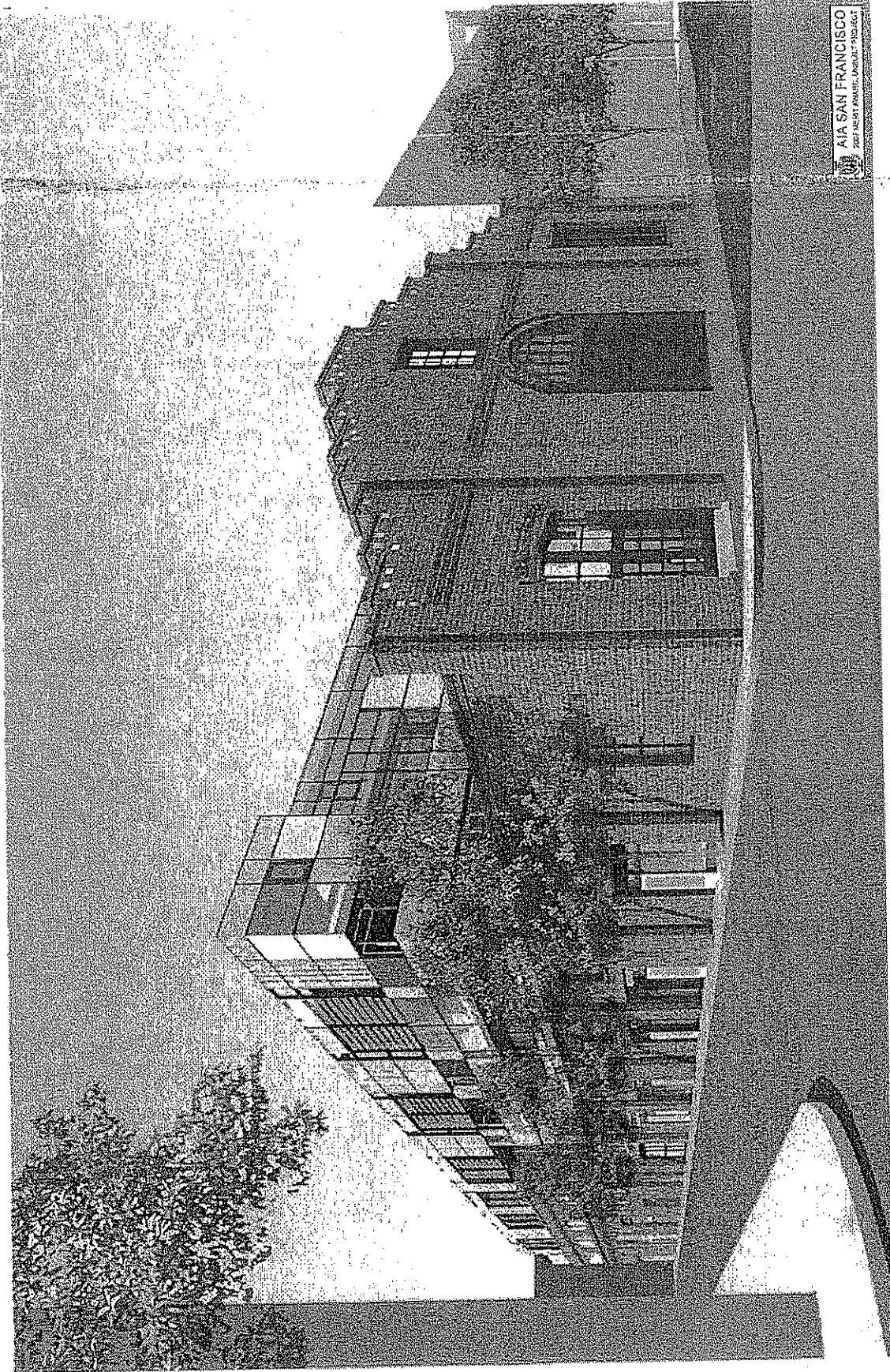
The costs for the major project components of the rehabilitation are listed below.

Foundations - Concrete  
Cost: \$236,473

Superstructure – Concrete shear wall structural system  
Cost: \$3,823,304

Exterior Closure – Existing brick cleaning & sealing, exterior plaster and joint sealers, historic windows and glazing  
Cost: \$1,195,275

Roofing & Sheet Metal – Sheet metal and flashing, waterproofing, membrane roofing  
Cost: \$1,005,175



AIA SAN FRANCISCO  
2007 BEST PRACTICE AWARD, AIA/USGBC PRODUCT

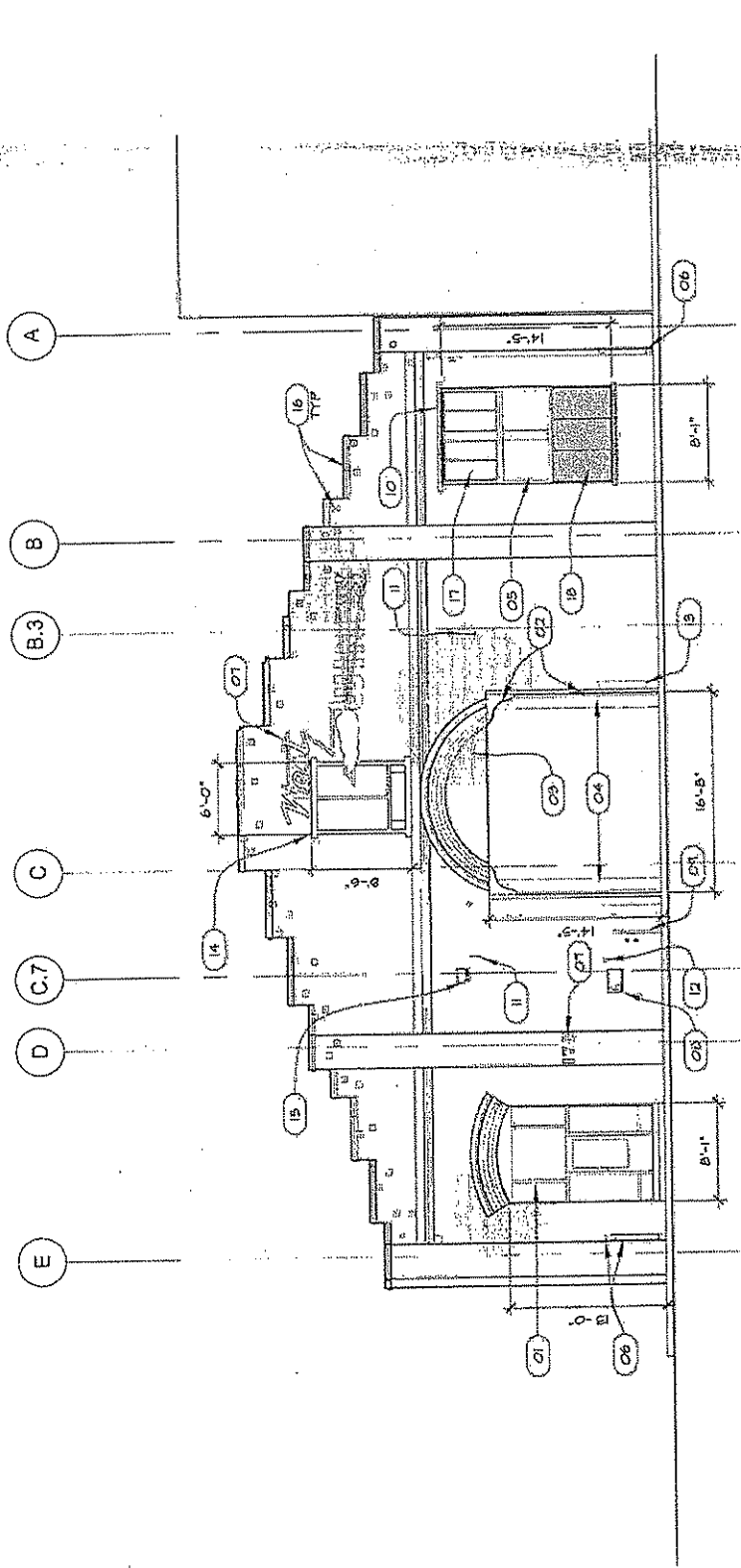
**ib d**  
ian bichajli + associates  
300 bealle street, suite a  
san francisco, ca. 94105  
t: 415.512.9640 f: 415.512.9663  
www.ibdsgn.com  
project contact: Wilam Durcansan

## Townsend Street Perspective

**178 Townsend Properties LLC**  
54 Mint Street, Fifth Floor  
San Francisco, CA 94103  
T: 415.442.4800

Date: 08/20/08





**KEY NOTES**

- O1 NON-HISTORIC STOREFRONT AND NON-HISTORIC ROUGH MASONRY OPENING AT ELL
- O2 NON-HISTORIC STEEL FRAME AND LUTEL
- O3 NON-HISTORIC BRICK INFILL
- O4 NON-HISTORIC STEEL COLUMN
- O5 NON-HISTORIC WOOD BLIND PANEL
- O6 NON-HISTORIC DOWNPOUT
- O7 NON-HISTORIC SIGNAGE
- O8 NON-HISTORIC LANDMARK PLaque
- O9 NON-HISTORIC EXPOSED ELECTRIC SERVICE
- O10 NON-HISTORIC ROUGH MASONRY OPENING AT WINDOW HEAD
- O11 NON-HISTORIC LIGHT FIXTURE
- O12 NON-HISTORIC KEY BOX
- O13 NON-HISTORIC STEEL PLATE GUARD
- O14 NON-HISTORIC METAL FRAMED WINDOW
- O15 NON-HISTORIC METAL JUNCTION BOX
- O16 NON-HISTORIC STEEL TIE-BACKS
- O17 NON-HISTORIC WINDOW SASH & FRAME
- O18 NON-HISTORIC STEEL FRAME & EXPANDED WESH SCREEN

\*PLEASE NOTE: ALL DIMENSIONS ARE ACCURATE TO PLUS OR MINUS 1/2"

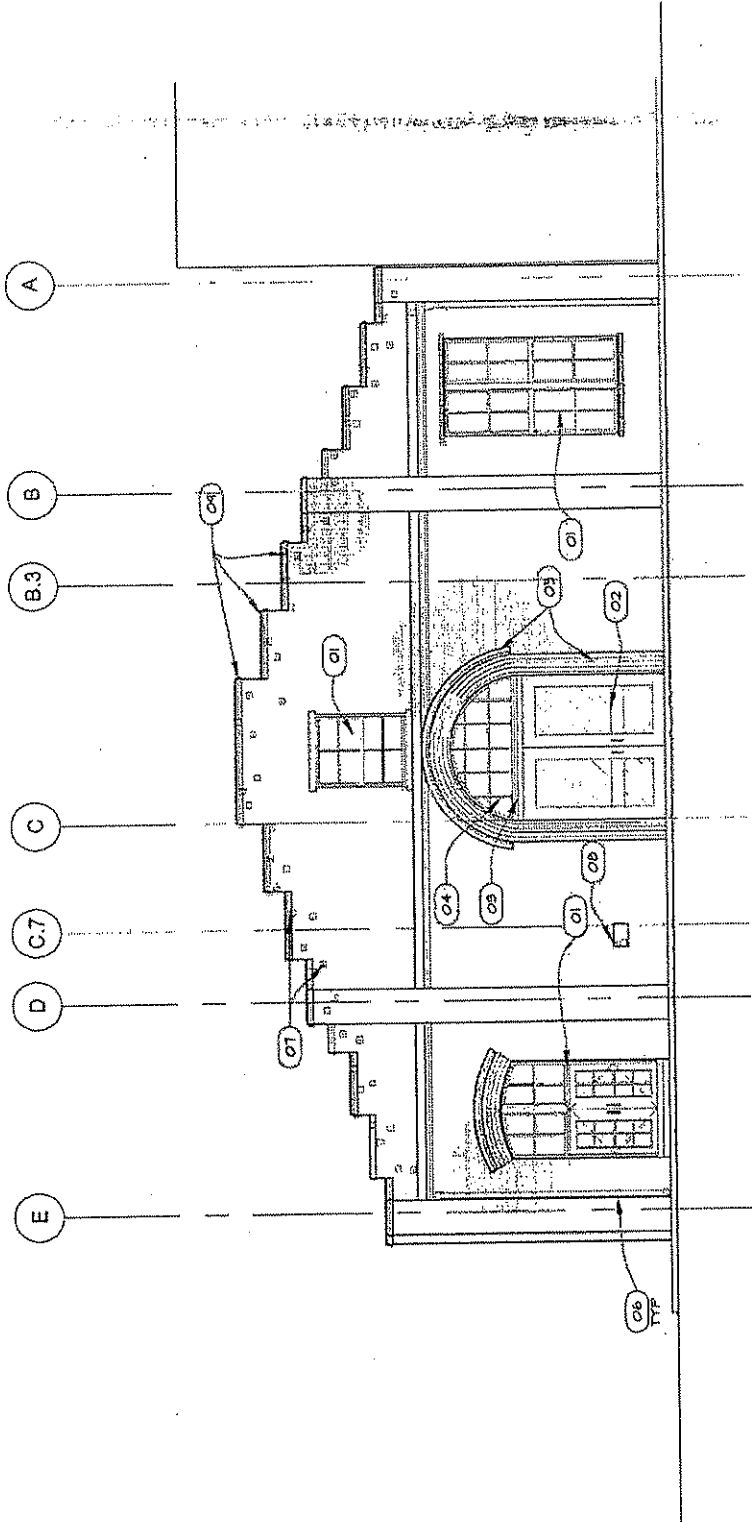


ian birchall + associates  
 300 beale street, suite a  
 san francisco, ca. 94105  
 t: 415.512.7600 f: 415.512.7663  
 www.bodesign.com  
 project contact: William Duncanson

**178 Townsend Elevation - Existing**

**178 Townsend Properties LLC**  
 54 Mint Street, Fifth Floor  
 San Francisco, CA 94103  
 T: 415.442.4800

Date: 08/20/08



**KEY NOTES**

- (O1) IN SINGLE-HUNG WOOD WINDOW TO APPROXIMATE HISTORIC MULTI-PANE SASH AND GLASS PATTERN OBSERVED IN CIRCA 1934 PHOTO OF TOWNSEND STREET ELEVATION
- (O2) IN WOOD SASH DOOR
- (O3) IN WOOD HEADER
- (O4) IN FIXED WINDOW FRAME AND SASH OVER IN WOOD HEADER
- (O5) IN DOOR OPENING REDUCED AND IN BRICKWORK EXTENDED FROM EXISTING REHAB ARCH TO APPROXIMATE HISTORIC DOORWAY AND BRICKWORK OBSERVED IN CIRCA 1934 PHOTO OF TOWNSEND STREET ELEVATION
- (O6) IN DOWNSCOTS
- (O7) IN NON-HISTORIC STEEL TIE-BACKS TO REMAIN
- (E) LANDMARK PLACE TO REMAIN
- (O8) BRICKWORK AT PARAPET RESTORED AND RESTORED TO MATCH EXISTING



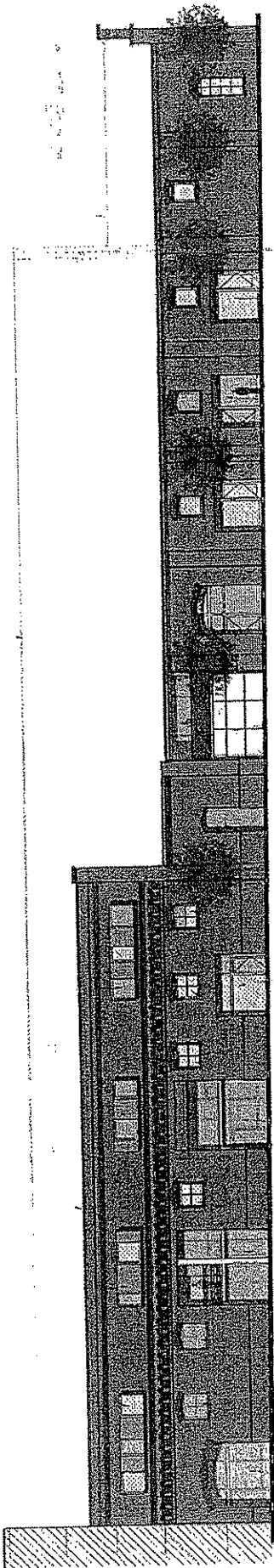
ian birchall + associates  
 300 beale street, suite a  
 san francisco, ca. 94105  
 t: 415.512.9660 f: 415.512.9663  
 www.ibdadsign.com  
 project contact: William Duncanson

**178 Townsend Elevation - Proposed**

**178 Townsend Properties LLC**  
 54 Mint Street, Fifth Floor  
 San Francisco, CA 94103  
 T: 415.442.4800

Date: 08/20/08



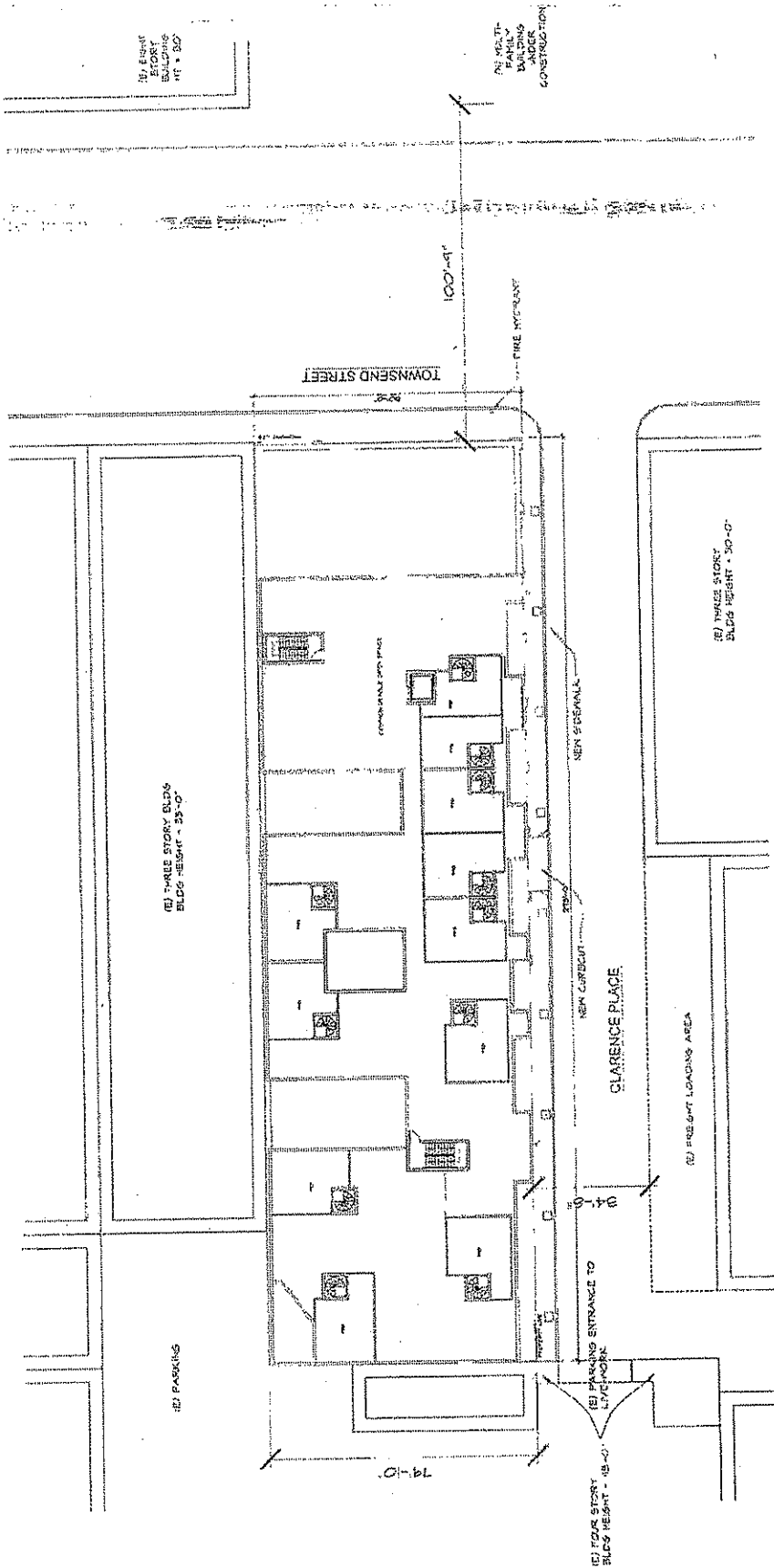


ian birchall + associates  
300 beale street, suite a  
san francisco, ca. 94105  
t: 415.512.9660 f: 415.512.9663  
www.ibodesign.com  
project contact: William Duranson

## Clarence Elevation - Proposed

178 Townsend  
Properties LLC  
54 Mint Street, Fifth Floor  
San Francisco, CA 94103  
T: 415.442.4800

Date: 08/20/08



10-10' EXISTING BUILDING HEIGHT = 10'-0"

10-10' EXISTING BUILDING UNDER CONSTRUCTION

(E) THREE STORY BLDG BLDG HEIGHT = 35'-0"

(E) THREE STORY BLDG HEIGHT = 30'-0"

CLARENCE PLACE

(E) PRESENT LOADING AREA

(E) PARKING ENTRANCE TO LIFECORP

(E) FOUR STORY BLDG HEIGHT = 48'-0"

(E) PARKING

178 Townsend Properties LLC  
 54 Mint Street, Fifth Floor  
 San Francisco, CA 94103  
 T. 415.442.4800

Date: 08/20/08

Site Plan

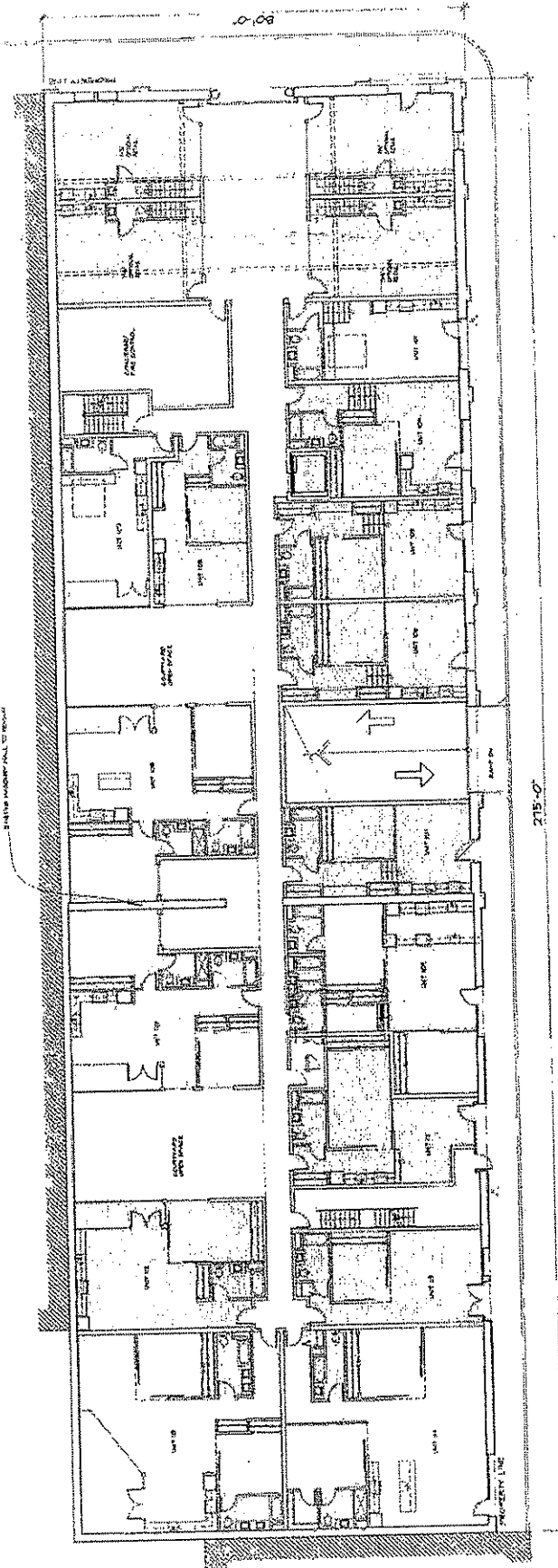


Ian Birchall + Associates  
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 project contact: William Duncan

Date: 08/20/08

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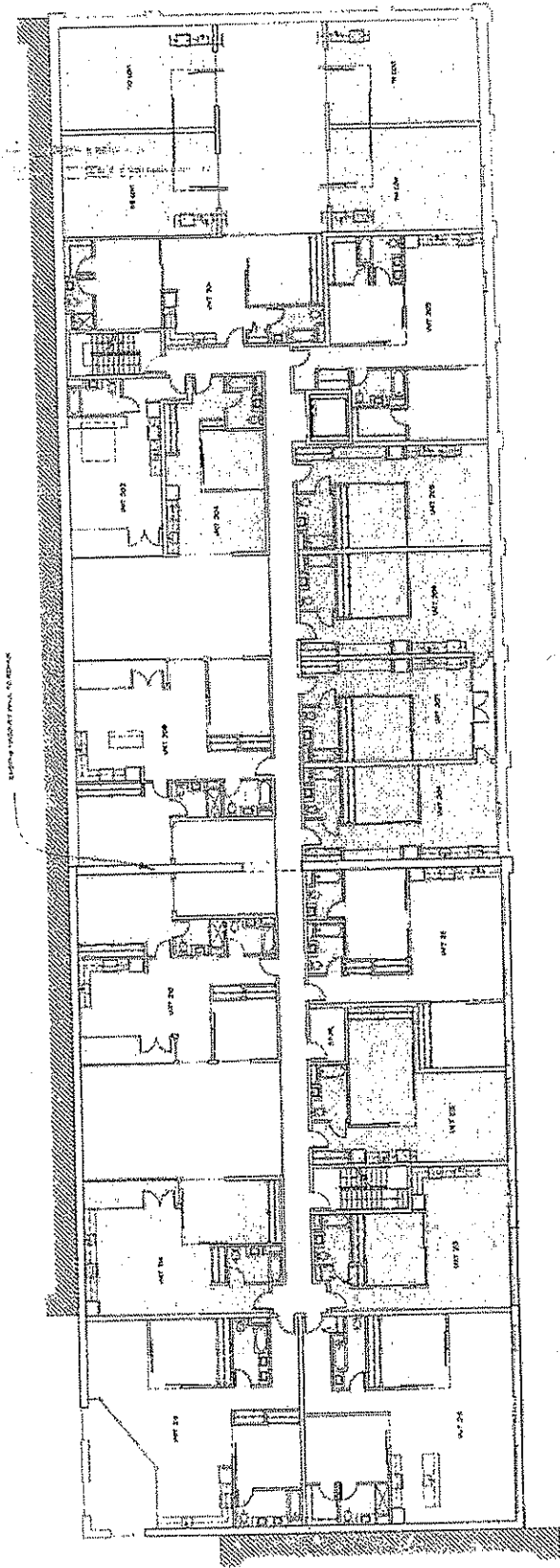
## First (Grade) Floor Plan

### Key

- Studio
- One Bedroom
- Two Bedroom
- Commercial



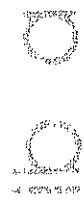
tan birchall + associates | t. 415.512.9660 | f. 415.512.9643  
 300 beale street, suite a  
 san francisco, ca. 94105  
 project contact: William Durcouson



178 Townsend  
 Properties LLC  
 54 Mint Street, Fifth Floor  
 San Francisco, CA 94103  
 T: 415.442.4600

Second Floor Plan

- Key**
- Studio
  - One Bedroom
  - Two Bedroom
  - Commercial

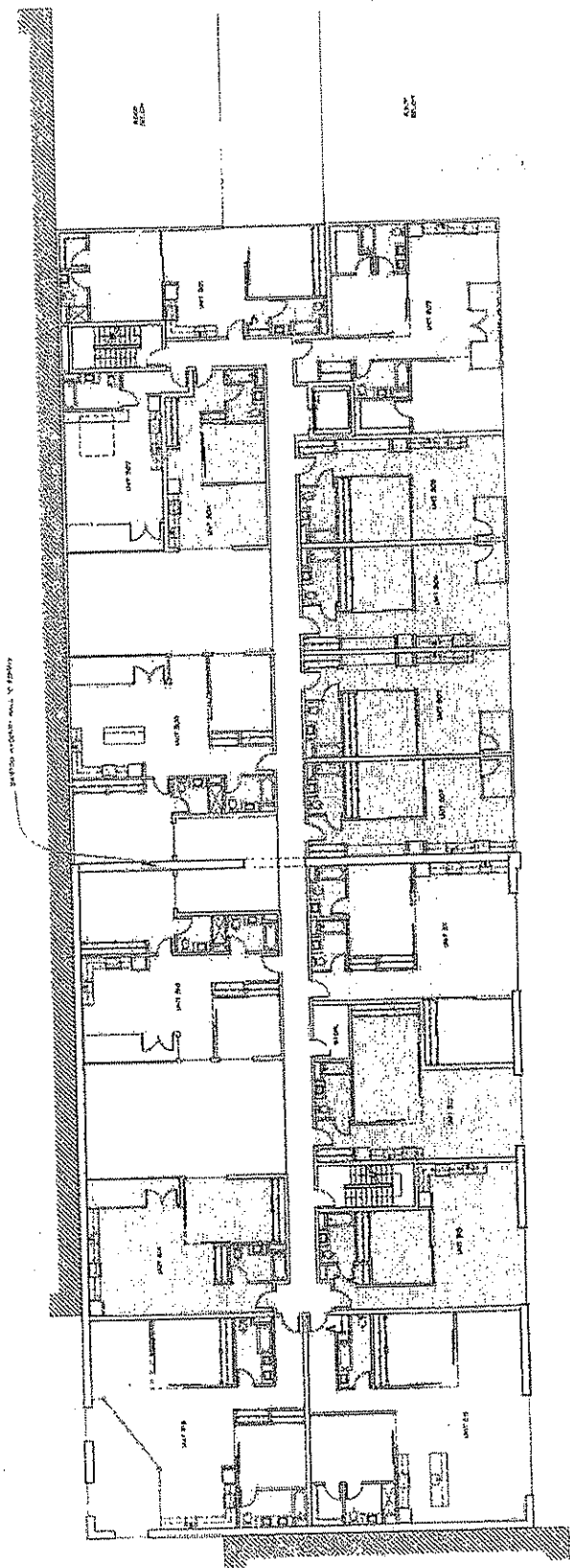


ion bichard + associates  
 300 Beale Street, Suite A  
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 T: 415.612.9640 | 415.612.9663  
 www.ionbichard.com  
 project contact: Wilson Durcorson

Date: 08/20/08

# 178 Townsend Properties LLC

54 Mint Street, Fifth Floor  
San Francisco, CA 94103  
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## Third Floor Plan

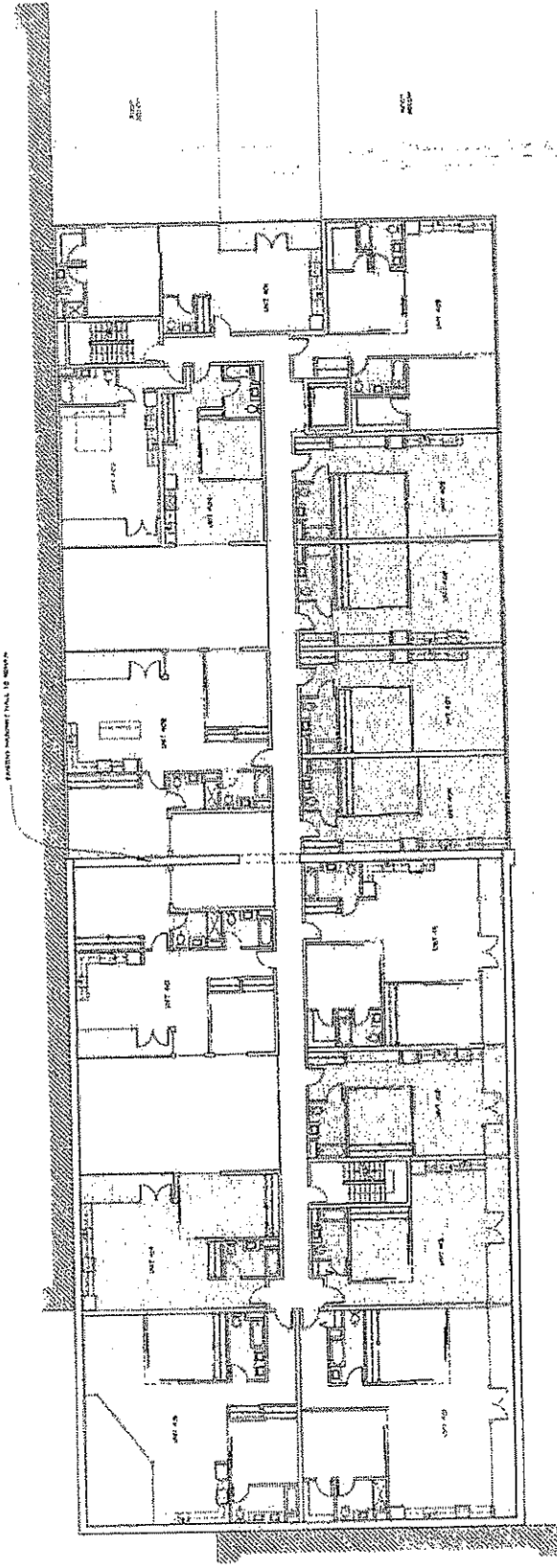
- Key**
- Studio
  - One Bedroom
  - Two Bedroom
  - Commercial



i: 415.512.9660 f: 415.612.9663  
www.ianritchie.com  
project contact: William Duncanson

Ian Ritchie + Associates  
300 Beale Street, Suite C  
San Francisco, CA 94105





**Key**

	Studio
	One Bedroom
	Two Bedroom
	Commercial

## Fourth Floor Plan

**178 Townsend Properties LLC**  
 54 Mint Street, Fifth Floor  
 San Francisco, CA 94103  
 T. 415.442.4800

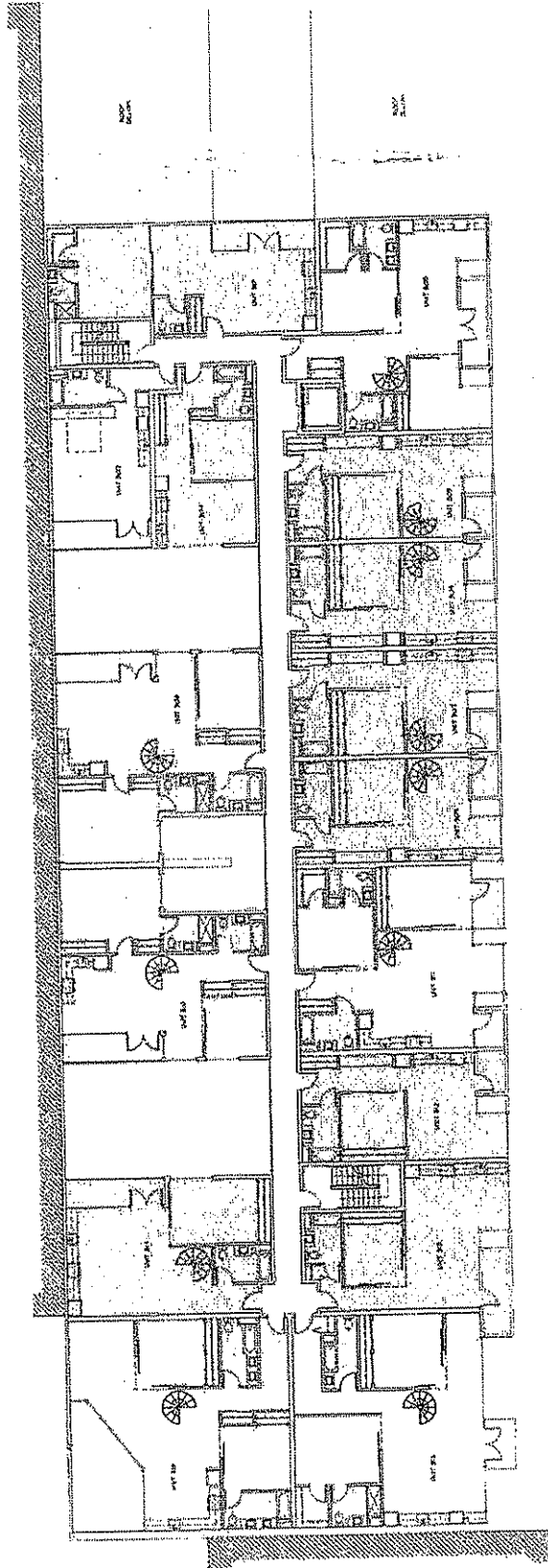
ian birchall + associates  
 300 beale street, suite c1  
 san francisco, ca, 94105  
 t: 415.512.9660 f: 415.512.9663  
 www.badesign.com  
 project contact: william durbinson

Date: 08/20/08

Date: 08/20/08

# 178 Townsend Properties LLC

54 Mint Street, Fifth Floor  
San Francisco, CA 94103  
T: 415.442.4800

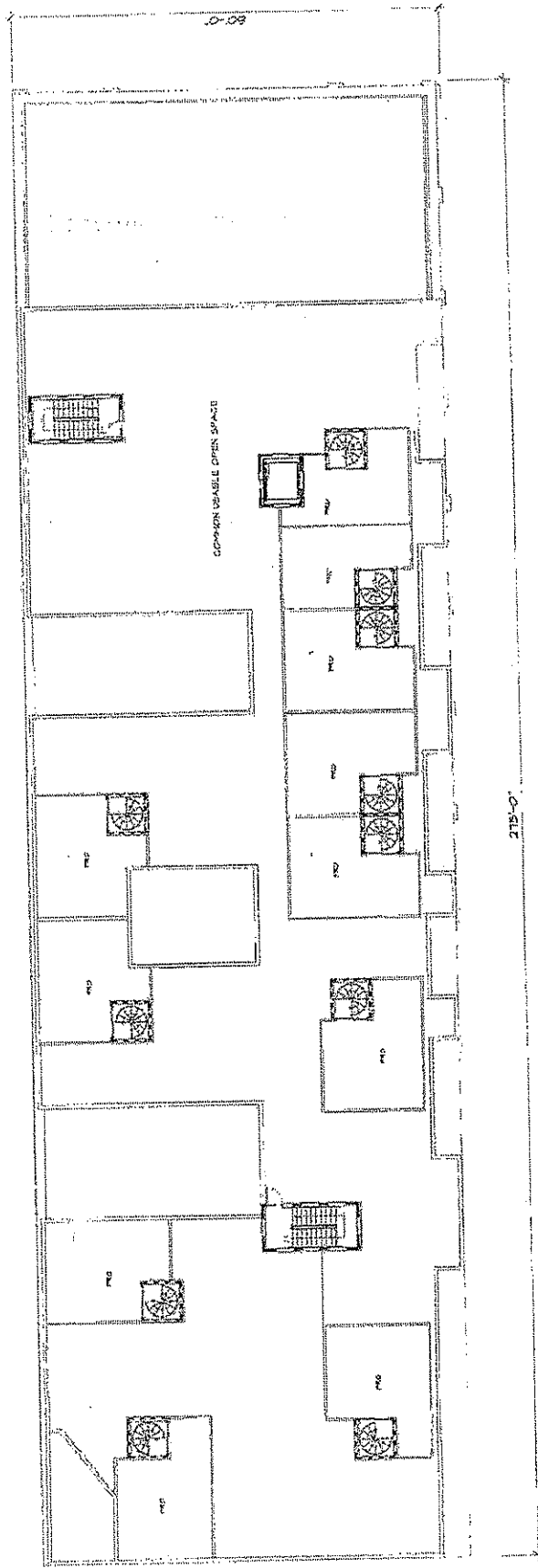


**Key**

- Studios
- One Bedroom
- Two Bedroom
- Commercial

## Fifth Floor Plan

ion bichall + associates  
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san francisco, ca, 94105  
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project contact: William Duncan



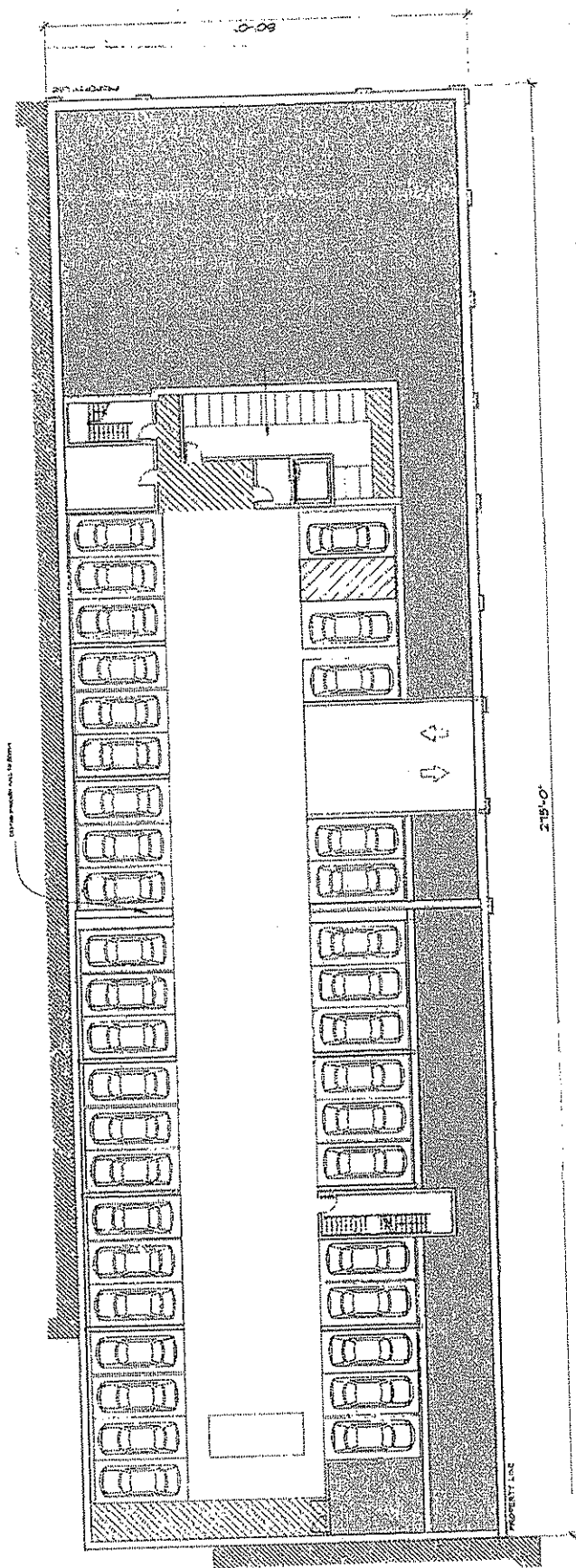
Date: 08/20/08

**178 Townsend Properties LLC**  
 54 Mint Street, Fifth Floor  
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Roof Plan



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 www.iaabdesign.com  
 project contact: William Durcanton



**Key**  
 Perking  
 Unexcavated



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 san francisco, ca. 94105  
 t: 415.512.9660 f: 415.512.9663  
 www.ibdesign.com  
 project contact: William Duncanson

## Basement/Garage Plan

**178 Townsend Properties LLC**  
 54 Mint Street, Fifth Floor  
 San Francisco, CA 94103  
 T: 415.442.4800

Date: 08/20/08

## Attachment E

### California Electric Light Company Station B 178 Townsend

#### E. MAINTENANCE WORK TO BE PERFORMED

The following Maintenance Plan was prepared by 178 Townsend Properties, LLC.

##### EXTERIOR

###### Graffiti

Inspect: Daily

Remove: As occurs on façade.

###### Brick – South Façade (Townsend Street) and West Façade (Clarence Place) and Interior

Inspect: Annually

Maintain: As required approximately every 10-15 years. Clean with detergent and spot clean as needed. Patch cracks when necessary. Repair missing mortar as needed.

###### Roof

Inspect: Annually

Maintain: As required approximately every 15 years. Inspect roof for membrane failure and separation of joints. Repair minor damage. Re-roof as required.

###### Windows – South Façade (Townsend Street) and West Façade (Clarence Place)

Inspect: Annually

Maintain: As required approximately every 5 years. Inspect for missing and loose compound, moisture seepage. Remove loose glazing compound. Repaint as needed. Repair hardware as needed.

###### Painted Signage – West Façade (Clarence Place)

Inspect: Annually

Maintain: Repair the brick substrate as necessary (crack repair, repointing mortar joints). The signs can be preserved recoating with a clear masonry sealant as necessary.



# SAN FRANCISCO PLANNING DEPARTMENT

February 27, 2009

Ms. Angela Calvillo, Clerk  
Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

**Re: Transmittal of Planning Department Case Number 2008.1277U:  
166-178 Townsend Street Mills Act Contract  
Historic Preservation Commission Recommendation: Approval**

BY \_\_\_\_\_  
2009 MAR -2 PM 12:36  
RECEIVED  
BOARD OF SUPERVISORS  
1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479  
Reception  
415.558.6378  
Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

Dear Ms. Calvillo,


The Historic Preservation Commission (hereinafter "Commission") held a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Resolution on February 4, 2009.

The proposed Resolution relative to Planning Dept. Case Number 2008.1277U would authorize the City and County of San Francisco to enter into a Mills Act Historic Property Contract with certain owners of 166-178 Townsend Street pursuant to Chapter 71 of the Administrative Code.

The Planning Department has determined that actions by regulatory agencies for the protection of the environment are exempt from environmental review.

At the February 4<sup>th</sup> hearing, the Commission adopted Resolution Number 631 to recommend that the Board of Supervisors approve the Mills Act Historical Property Contract for 166-178 Townsend Street.

Please find attached documents relating to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,  
  
John Kahaim  
Director of Planning

cc: Supervisor Daly

Attachments (one copy of the following):  
Historic Preservation Commission Resolution No. 631  
Historic Preservation Commission Case Report for Case No. 2008.1277U