

File No. 160517

Committee Item No. 4

Board Item No. 22

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date May 25, 2016

Board of Supervisors Meeting

Date June 7, 2016

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
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Completed by: Linda Wong Date May 20, 2016
 Completed by: Linda Wong Date May 31, 2016

1 [Option to Ground Lease - 455 Fell, L.P. - For No Cost]

2
3 **Resolution authorizing the execution and performance of an Option to Ground Lease in**
4 **connection with the parcel located at 455 Fell Street (Assessor's Parcel Block No. 831,**
5 **Lot No. 24) (the "Property") for no cost, and which expires on June 30, 2017, with an**
6 **extension option of six months until December 31, 2017, between the City and County**
7 **of San Francisco and 455 Fell, L.P., a California limited partnership; adopting findings**
8 **that the conveyance is consistent with the General Plan, and the eight priority policies**
9 **of Planning Code, Section 101.1; and authorizing and directing the execution of any**
10 **documents necessary to implement this Resolution, as defined herein.**

11
12 WHEREAS, In September 2014, the Mayor's Office of Housing and Community
13 Development ("MOHCD") issued a Notice of Funding Availability ("NOFA") to provide
14 predevelopment financing for the development of an affordable family rental housing,
15 including units serving formerly homeless families and ground floor commercial space (the
16 "Project"); and

17 WHEREAS, Mercy Housing California submitted an application in response to the
18 NOFA and was selected to be the developer for the development of the Project; and

19 WHEREAS, Mercy Housing California established a separate entity named 455 Fell
20 Street, L.P., a California limited partnership ("Optionee") under which to lease the Property
21 and develop the Project; and

22 WHEREAS, The Option expires on June 30, 2017, with an extension option for one
23 additional 6-month period, and sets forth the material terms of the Ground Lease as follows:

24 (i) a term of 75 years with an extension option for 24 additional years; (ii) tenant shall be
25 responsible for all property taxes and assessments levied against the Property; (iii) the

1 Property shall be used during the term of the ground lease only for affordable housing with
2 maximum rent and income levels set at no greater than 60% area median, ("AMI"); (iv) the
3 annual rent shall be set at 10% of fair market value of the land as determined by an MAI
4 appraiser prior to execution of the Ground Lease (the "Rent"); (v) Rent shall consist of an
5 annual base rent of Fifteen Thousand Dollars (\$15,000) (the "Base Rent") and the remainder
6 in residual rent, which shall be payable only to the extent proceeds are available from the
7 Project at all times thereafter; (vi) the annual rent shall be adjusted on the fifteenth (15th)
8 anniversary of the expiration of the first full calendar lease year and every fifteenth (15) year
9 thereafter, and shall be equal to ten percent (10%) of then appraised value of the land as
10 determined by a MAI appraiser selected by, and at the sole cost of, the tenant; any such
11 adjustment shall be made to the residual rent and not the base rent; (vii) tenant shall be
12 responsible for construction, operation and maintenance of the Property; (viii) the City will own
13 fee title to the land and the tenant will own fee title to all improvements; (ix) at the end of the
14 term, fee title to all the improvements shall vest in the City; (x) the Ground Lease shall include
15 standard mortgagee protection provisions; (xi) the City will provide any notice of and defaults
16 to the tenant and the tenant's limited partners and lenders and allow any such parties the right
17 to cure such default; (xii) the tenant can encumber its leasehold interest to secure loans, as
18 approved by MOHCD; and

19 WHEREAS, In order to consummate the transfer and ground lease of the Property, the
20 Board of Supervisors desires to authorize the execution, delivery and performance of the
21 Option and, if the Sponsor exercises the Option, the Ground Lease (collectively, the
22 "Transaction Documents"); and

23 WHEREAS, By Planning Commission Motion 19544, dated January 7, 2016, the
24 Department of City Planning adopted and issued a General Plan Consistency Finding, a copy
25 of which is on file with the Clerk of the Board, wherein the Department of City Planning found

1 that the acquisition and ground lease of the Property are consistent with the City's General
2 Plan, and with the eight priority policies under Planning Code, Section 101.1; now, therefore,
3 be it

4 RESOLVED, That the Board of Supervisors hereby finds that the ground lease terms
5 contained in the Option of the Property are consistent with the General Plan, and with the
6 eight priority policies of Planning Code, Section 101.1 for the same reasons as set forth in the
7 Planning Commission Motion 19544, dated January 7, 2016, and hereby incorporates such
8 findings by reference as though fully set forth in this Resolution; and, be it

9 FURTHER RESOLVED, That in accordance with the recommendation of the Director
10 of Property and the Director of MOHCD, the Board of Supervisors approves the Transaction
11 Documents, and authorizes the Director of Property (or his designee) and the Director of
12 MOHCD (or his designee) to execute and deliver the Transaction Documents and any such
13 other documents that are necessary or advisable to complete the transaction contemplated by
14 the Transaction Documents, including the Ground Lease (if the Sponsor exercises the
15 Option); and, be it

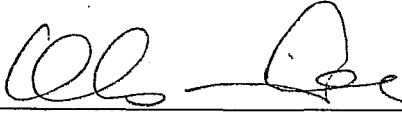
16 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
17 Property (or his designee) and the Director of MOHCD (or his designee), in consultation with
18 the City Attorney, to enter into any additions, amendments or other modifications to the Option
19 and, if the Option is exercised, the Ground Lease, and any other documents or instruments
20 necessary in connection therewith, that the Director of Property and the Director of MOHCD
21 determine are in the best interests of the City, do not materially decrease the benefits to the
22 City with respect to the Property, do not materially increase the obligations or liabilities of the
23 City, and are necessary or advisable to complete the transaction contemplated therein and
24 that effectuate the purpose and intent of this Resolution, such determination to be
25 conclusively evidenced by the execution and delivery by the Director of Property (or his

1 designee) and the Director of MOHCD (or his designee) of any such additions, amendments,
2 or other modifications; and, be it

3 FURTHER RESOLVED, That all actions authorized and directed by this Resolution and
4 heretofore taken are hereby ratified, approved and confirmed by this Board of Supervisors.
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13 RECOMMENDED:

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15 _____
16 John Updike, Director of Property

17 
18 _____
19 Olson Lee, Director, Mayor's Office of Housing and Community Development
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SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Affordable Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 414)
- Other

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Planning Commission Motion 19544

HEARING DATE: JANURAY 7, 2016

Date: December 28, 2015
Case Number: 2015-002837CUA
Project Name: 455 Fell Street
Zoning: RTO (Residential Transit Oriented District)
 40-X / 50-X
Block/Lot: 0831 / 024
Project Sponsor: Tim Dunn
 Mercy Housing
 1360 Mission Street, Suite 300
 San Francisco, CA 94103
tdunn@mercyhousing.org
Staff Contact: Tina Chang - 415-575-9197
tina.chang@sfgov.org
Recommendation: Approval with Conditions

ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION, PURSUANT TO PLANNING CODE SECTIONS 303, AND 304 TO APPROVE A PLANNED UNIT DEVELOPMENT WITH SPECIFIC MODIFICATIONS TO PLANNING CODE REGULATIONS AS THEY RELATE TO SETBACKS, EXPOSURE, OFF-STREET LOADING, OPEN SPACE AND OBSTRUCTIONS TO PERMIT THE CONSTRUCTION OF 108 DWELING UNITS AND 1,200 SQUARE FEET OF RETAIL, AND TO ALLOW RESIDENTIAL DENSITY EXCEEDING ONE DWELING UNIT PER 600 SQUARE FET OF LOT AREA WITHIN AN RTO (RESIDENTIAL TRANSIT ORIENTED) ZONING DISTRICT AND A 40-50-X HEIGHT AND BULK DISTRICT, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

PREAMBLE

On September 2, 2015, Tim Dunn, on behalf of Mercy Housing (hereinafter referred to the "Project Sponsor"), submitted a Conditional Use Authorization Application (CUA) with the Planning Department (hereinafter "Department"), Case No. 2015-002837CUA to approve a Planned Unit Development (PUD) pursuant to Planning Code Sections 303 and 304 on Assessor's Block 0831, Lot 024 ("Project").

The environmental effects of the Project were determined by the San Francisco Planning Department to have been fully reviewed under the Market and Octavia Area Plan Environmental Impact Report (hereinafter "EIR"). The EIR was prepared, circulated for public review and comment, and, at a public hearing on April 5, 2007, by Motion No. 17406, certified by the Commission as complying with the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., hereinafter "CEQA"). The certification of the EIR was upheld on appeal to the Board of Supervisors at a public hearing on June 19, 2007. The Commission has reviewed the Final EIR, which has been available for this Commission's review as well as public review.

The EIR is a Program EIR. Pursuant to CEQA Guideline 15168(c)(2), if the lead agency finds that no new effects could occur or no new mitigation measures would be required, the agency may approve the project as being within the scope of the project covered by the program EIR, and no additional or new environmental review is required. In approving the Market and Octavia Area Plan, the Commission adopted CEQA Findings in its Motion No. 17406 and hereby incorporates such Findings by reference.

Additionally, State CEQA Guidelines Section 15183 provides a streamlined environmental review for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, except as might be necessary to examine whether there are project-specific effects which are peculiar to the project or its site. Section 15183 specifies that examination of environmental effects shall be limited to those effects that (a) are peculiar to the project or parcel on which the project would be located, (b) were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent, (c) are potentially significant off-site and cumulative impacts which were not discussed in the underlying EIR, or (d) are previously identified in the EIR, but which are determined to have a more severe adverse impact than that discussed in the underlying EIR. Section 15183(c) specifies that if an impact is not peculiar to the parcel or to the proposed project, then an EIR need not be prepared for that project solely on the basis of that impact.

On December 16, 2015, as documented in the "Note to File" for the Project, the Planning Department of the City and County of San Francisco determined that the proposed application did not require further environmental review under Section 15183 of the CEQA Guidelines and Public Resources Code Section 21083.3. The Project is consistent with the adopted zoning controls in the Market and Octavia Area Plan and was encompassed within the analysis contained in the Final EIR. Since the Final EIR was finalized, there have been no substantial changes to the Market and Octavia Area Plan and no substantial changes in circumstances that would require major revisions to the Final EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIR. The file for this project, including the Market and Octavia Area Final EIR and the Community Plan Exemption certificate, is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California.

On March 25, 2015, Department staff received a request for review of a development exceeding 40 feet in height (Case No. 2015-002837SHD), pursuant to Section 295, analyzing the potential impacts of the development to properties under the jurisdiction of the Department of Recreation and Parks. Department staff prepared a shadow fan depicting the potential shadow cast by the development and concluded that

the Project could potentially cast shadow on Patricia's Green. After reviewing and analyzing a secondary analysis submitted by the Project Sponsor, dated August 7, 2015, the Planning Department concluded the Project did in fact cast shadow on the play structure located on the southern portion of Patricia's Green. Department Staff recommended that the northeast corner of the Project be further sculpted to reduce shadow impacts on the park. The Project Sponsor removed the fifth floor at the northeast corner of the Project Site, reducing the Project by four units from 112 to 108 units, the Project's current scope. Based on this scope, the shadow study found that the new shadow due to the proposed project would occur on the southern portion of the park from October 13 – February 28, for a total of 140 days annually. The shadows would be located where plantings, the children's play area and benches are located. The maximum shadow impact from the proposed 38 to 50-foot tall building at 455 Fell Street would be on January 26th and November 15th when new shadow would be cast on the park between 3:16 PM to 3:58 PM, for approximately 42 minutes. The shadow analysis found that the theoretically available amount of sunlight on Patricia's Green is approximately 66,595,904 square feet, while the existing annual total shading on the park is 11,706,388 square foot hours (or 17.58 percent). The proposed project would add approximately 44,936 square feet of new shade, resulting in a 0.07 percent (less than one tenth of one percent) decrease in the theoretically available sunlight. The results of the shadow study are consistent with the analysis of the EIR, and substantial changes have not occurred with respect to the circumstances under which the proposed Project is being undertaken. The Project was heard and recommended for approval by the Recreation and Park Department (RPD) Commission's Capitol Committee on December 2, 2015 and unanimously recommended for approval by the RPD's full Commission on December 17, 2015.

Planning Department staff prepared a Mitigation, Monitoring and Reporting Program (MMRP), and this material was made available to the public and this Commission for the Commission's review, consideration and action.

On January 7, 2016, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Case No. 2015-002837CUA.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2015-002837CUA, subject to the conditions contained in "Exhibit A" of this motion, based on the following findings:

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. The above recitals are accurate and constitute findings of this Commission.

2. **Site Description.** The project site occupies a former Central Freeway parcel (Parcel O) that measures 37,428 square foot lot, or 0.86 acres, and has frontage on Fell Street to the north, Laguna Street to the west and Hickory Street to the south. The site slopes up, moving east to west to east, with a grade change of approximately 16 from the site's eastern most point at Hickory Street, towards Octavia Street, to its highest point at the Hickory Street and Laguna Street intersection. The site is currently vacant and was most recently used for construction staging for the adjacent parcel to the south, Parcel P, project (Case No. 2011.0744E).
3. **Surrounding Neighborhood.** Another parcel formerly occupied by the Central Freeway occupies the majority of the southern half of the subject block at 400 Laguna Street (Parcel P), where a mixed-use residential development containing approximately 182 dwelling units and 3,800 square feet of ground floor commercial uses was recently constructed.

Beyond the immediate vicinity, the area surrounding the project site primarily consists of residential buildings of two to five stories in height. Ground floor retail and restaurant uses are found along Hayes Street one block north of the Project Site, while other isolated commercial establishments are scattered throughout the neighborhood. The Civic Center district is located to the northeast, and includes various government buildings, museums, libraries and performance spaces. Open spaces in the vicinity include the Hays Valley Playground to the northwest, Patricia's Green to the northeast, Koshland Park to the southwest and Page and Laguna Mini-park to the south.

4. **Project Description.** The application before the Commission is the Conditional Use authorization for the new construction of a 100 percent affordable, mixed-use building with 108 residential units, 1,200 square-feet (sf) of retail space, 2,028 square feet of office space that would be accessory to the residential uses and 2,890 sf of community activities space. Of the Project's 108 residential units, 50 or 46 percent will contain two or more bedrooms. The proposed residential and commercial structure would be approximately 111,121 gross square feet and would range in height from 38 feet – 4 inches to 50 feet (up to 60 feet with elevator penthouse) tall. The Project does not include any off-street vehicular parking, but 118 bicycle parking spaces (108 Class 1, 8 Class 2 and 2 cargo spaces), exceeding Planning Code Requirements.

The Project, more or less, matches the height and bulk of the building to its rear. The Project consists of two structures, one larger, up-to-five story building, and a second two-story building containing two-story rowhomes. Though the larger structure has four frontages, the structure is well articulated as a series of different, yet related forms, with varying architectural expression across the site. All portions of the project utilize a rhythm of projections and voids, creating texture and functioning to break down the building's mass. The low-rise, two-story, townhouse structure fronting Hickory Street further reduces the scale of the overall development and enriches the visual texture of the Project. Along the Fell Street frontage, the building follows a stepping pattern, mimicking the natural grade of the site, and reaching its maximum height of 50-feet at Laguna Street. The two buildings are situated around a central courtyard, which can be accessed through a midblock passage, connecting to a similar passage through the development

to the south at 400 Laguna Street. The midblock passage and portions of the inner courtyard will be publically accessible during business hours.

5. **Public Comment.** To date, the Planning Department has received one letter opposing the project due to lack of off-street parking and a letter of support from the Hayes Valley Neighborhood Association.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
 - A. **Use and Density.** Per Section 209.4 dwelling units within the RTO District may exceed a density of one dwelling unit per 600 square feet of lot area with Conditional Use Authorization, provided that certain affirmative findings are made per Planning Code Section 207. Section 231 permits Commercial Uses in RTO Districts up to 1,200 square feet in size provided that all applicable provisions and conditions are met.

The Project provides 108 units, which exceeds a density of one dwelling unit per 600 square feet, which would permit 62 dwelling units. Section 209.4 requires Conditional Use Authorization pursuant to criteria in Section 207(c)(2), which exempts affordable units from being counted toward density calculations or be limited by lot area. Accordingly, the Project is meets criteria contained in Section 207.

The 1,200 square-foot ground floor retail space placed on the corner of Laguna and Fell Streets where corner retail establishments characterize the intersection is permitted by Section 231, and therefore compliant with the Planning Code.

- B. **Height and Bulk.** The subject property is located within a 40-50-X Height and Bulk District. Pursuant to Section 270, projects within "-X" Bulk Districts are not subject to specific bulk controls. Pursuant to Section 261.1, upper portions of buildings that abut narrow streets must be set back at least 10 feet at the property line above a height equivalent to 1.25 times the width of the abutting narrow street. This additional height restriction applies to the portion of the narrow street frontage that is located 60 feet away from an intersection with a street wider than 40 feet.

The northern half of the project site fronting Fell Street falls within a 50-X height and bulk district, while the southern half fronting Hickory Street is zoned as a 40-X height and bulk district. The northeast corner of the building fronting Fell Street is 39 feet – 4 inches and grows to 50-foot heading west towards Laguna Street.

The applicable sunlight access plane required by Section 261.1 applies above a height of 43 feet – 9 inches, and also on the portions of the project site located 60-feet or more away from the intersection of Hickory and Laguna Streets. On the south side of the project site fronting Hickory Street, the large building ranges from approximately 35 feet - 10 inches to 37 feet - 4 inches. The smaller, two-story structure containing rowhome units fronting Hickory Street is approximately 19 feet – 6 inches. Since

the height of the proposed buildings never reach a height of 43 feet – 9 inches on the portions of the building where Section 261.1 applies, and is also within the principally permitted height limit, the Project complies with Sections 260, 261.1 and 270.

- C. **Front Setback.** Planning Code Section 132 requires that where one or both of the buildings adjacent to the subject property have front setbacks, any building constructed shall be set back to the average of the adjacent front setbacks. If only one of the adjacent buildings has a front setback, then the required setback for the subject property shall be equal to one-half the front setback of such adjacent building.

The adjacent building on Fell Street has a front setback of 7 feet. Therefore, a Code-compliant setback would measure 3.5 feet, or result in an area equal to the area produced by a Code-compliant front setback. The Project provides setbacks ranging from 0-feet to 7 feet – 6 inches, resulting in an area of 1029.6 square feet - less than the Code-compliant area of 1058.8 square feet (3.5 feet times 302.5 feet). Additionally, per Section 132(g), 20 percent of the required front setback area must be devoted landscaping. Section 132(h) requires that no less than 50 percent of the required front setback area be devoted to permeable surfaces. According to Sections 132(g) and (h), the Project requires approximately 212 square feet of landscaping and 529 square feet of permeable surfaces. Approximately 430 square feet of landscaping and permeable surfaces is provided in the front setback areas. Accordingly, the Project is compliant with respect to the amount of landscaping required, but falls short of meeting Planning Code requirements with respect to the total front setback area and amount of space required to be devoted to permeable surfaces. Therefore, modification to front setback requirements through the PUD process is required. Compliance with PUD criteria is discussed under Item #8.

- D. **Rear Yard.** Planning Code Section 134 requires a rear yard amounting to 45% of lot depth for properties located in RTO Zoning Districts. Per Section 134(c)(4)(A), the forward edge of the required yard shall be reduced to a line on which is at the depth of the rear building wall of the adjacent building fronting on the same street or alley. Further, per Section 134(c)(4)(C) where a lot is through with frontage on both the front and rear rights of way, the rear yard shall be located in the central portion of the lot between the buildings on such a lot, and the depth of the rear yard of each building from the street or alley on which it fronts shall be established by the average of the depths of the rear building walls of the adjacent buildings fronting on that street, though in no case less than 25 percent of lot depth or 15 feet, whichever is greater.

The Project consists of two separate buildings: one large five-story structure that fronts onto Fell Street and wraps around onto Laguna Street, where it drops to four-stories, and a second, two-story structure that fronts onto Hickory Street. Both structures are situated around an interior, east-west courtyard, a north-south midblock passage and a side-yard and community garden. While the forward edge of the rear yard is reduced to a line at the depth of the adjacent building's rear building wall, and although the area of the open spaces provided by the inner courtyard, midblock passage and side yard and community garden amount to more than 25% of lot depth in that the open space does not span the entire length of the lot, rear yard requirements are not met, and thus modification of rear yard

requirements through the PUD process is required. Compliance with PUD criteria is discussed under Item #8.

- E. **Usable Open Space.** Section 135 requires that a minimum of 100 square feet of private usable open space or 133 square feet of common usable open space be provided for dwelling units with RTO Zoning Districts. This Section specifies that the area counting as usable open space must meet minimum area and dimensional requirements. Additional standards per Section 135(g)(2) apply to inner courts, requiring that the enclosed space is not less than 20 feet in every horizontal dimension and 400 square feet in area; is such that no point on any such wall or projection is higher than one foot for each foot that such point is horizontally distant from the opposite side of the clear space of the court.

The Project provides common open space only and therefore must provide at least 14,364 square-feet (108 units multiplied by 133 square feet) of usable open space. A total of 15,124 square feet of common open space is provided, exceeding the total amount of open space required by the Planning Code. However, one small portion of the western side of the inner court does not meet the additional standards applicable to inner courts such that the wall created by the building on north side is approximately 14 feet, and that on the south side is 5 feet, taller than the permissible height per Section 135(g)(2). Thus, a modification of open space requirement through the PUD process is required.

In addition to the inner courtyard, midblock passage, and side yard and community garden, a roof deck is also provided. The inner courtyard is separated into an upper and lower court, a function of the elevation changes on-site. The lower court is connected and adjacent to the midblock passage, whereas the upper court also contains a play area for the proposed day care which will occupy two of the residential units. The side yard and community garden is sensitively situated to provide a buffer between the proposed new construction and the adjacent three-story, two-unit residential structure to the east. The community garden abuts as is located behind the rear yard of said three-story residential structure, serving as an extension of the existing midblock open space. All common open spaces meet the minimum 300 square foot area, 15-foot dimensional requirements. Though, as mentioned above, one small portion of the western side of the inner court does not meet the additional standards applicable to inner courts. Thus, a modification of open space requirement through the PUD process is required. Compliance with PUD criteria is discussed under Item #8.

- F. **Permitted Obstructions.** Section 136 permits obstructions within required setback areas. Overhead projections, including bay windows, must have a minimum head-height clearance of 7.5 feet. Bay windows have a maximum permitted projection of 3-feet while sunshades may project up to 3-feet into a front setback at the roof level, and 1-foot at every other level. Awnings must have a minimum head height of 12-feet, and may project up to 4-feet into the required setback.

The Project proposes a number of obstructions, including bay windows, awnings and sunshades throughout the project site. While the awnings and most bay windows comply with Section 136, sunshades proposed along Laguna Street, and at the corners of the Laguna and Fell Street and Laguna

and Hickory Street intersections exceed the maximum permitted projection by 1-foot. In all cases, the projections serve to articulate and vary the massing of the Project, providing enhanced scale and prominence to the specific aspects of design. The sunshades proposed at the corner intersections, for example, help define and draw attention to important edges of the building. As the obstructions are not entirely Code-compliant, modification of Section 136(c)(1) is required through the PUD process. Compliance with PUD criteria is discussed under Item #8.

- G. Streetscape and Pedestrian Improvements.** Section 138.1 requires that the Project include streetscape and pedestrian improvements appropriate to the site in accordance with the Better Streets Plan, as well as the planting of trees.

The Project was reviewed by the Street Design Action Team, who determined that the Project is required to install a raised crosswalk, crossing Hickory Street at Laguna Street. The Project Sponsor has included the feature in proposed plans in addition to the planting of street trees at 20-foot intervals along Laguna and Fell Streets. A total of 6 trees are required along Laguna Street and 15 trees along Fell Street; the Project Sponsor proposes 4 street trees along Laguna Street and 13 street trees along Fell Street. An in-lieu fee for any tree that cannot be planted will be required, as determined by the Department of Public Works, Bureau of Urban Forestry. Additionally, a publically accessible midblock passage through the project site will be provided, which lines up with the midblock passage included as part of the development of the parcel to the south.

- H. Dwelling Unit Exposure.** Section 140 requires that at least one room of all dwelling units face onto a public street, a rear yard or other open area that meets minimum requirements for area and horizontal dimensions.

The majority of dwelling units have exposure onto Fell, Laguna or Hickory Streets. However, 12 of the 108 proposed units do not meet all the dimensional requirements of Section 140 and therefore require modification from these requirements via the PUD process. Section 140 specifies that an open area must have minimum horizontal dimensions of 25-feet at the lowest floor containing a dwelling unit and floor immediately above, with an increase of five feet in horizontal dimensions for each subsequent floor above. According to this methodology, the open above the inner courtyard would need to measure at least 30-feet at the 3rd floor, 35-feet at the 4th floor and 40-feet at the fifth floor.

The core of the east-west oriented courtyard measures 33 feet – 4 inches at all levels, whereas the north-south oriented mid-block passage measures 24 feet – 6 inches at all levels. The side yard is 16-foot wide and opens into a 43 foot – 6 inch community garden. One unit at the 4th floor of the building facing south towards Hickory Street onto the inner courtyard on the eastern side of the block do not comply, as the courtyard would need to be at least 35 feet wide high on the 4th floor and 40 feet wide on the 5th floor. Since the 5th floor of the building facing south toward Hickory Street is taller than the building at across the courtyard at the rear, exposure is not restricted by the building, and is therefore compliant with respect to exposure. Additionally, eleven units only expose onto the midblock passage or side yard, which do not comply with minimum dimensional requirements per Section 140. Compliance with PUD criteria is discussed under Item #8.

- I. **Street Frontages.** Section 145.1 requires active uses to be located at the ground-floor of the Project, with the exception of space allowed for parking and building egress and access to mechanical systems. Active uses may include commercial uses with transparency along the sidewalk, walk-up residential units, and spaces accessory to residential uses.

All three right-of-way frontages at Fell, Laguna and Hickory Streets are occupied by several active spaces, including a retail use along Fell and Laguna Streets, a midblock passage for tenant and public access into the inner courtyard along Hickory and Fell Street frontages, and walk-up residential along all three frontages. The presences of these active uses will enliven the streetscape and contribute to a desirable pedestrian realm. The Project complies with Section 145.1.

- J. **Parking Requirement.** Section 151 permits up to 3 parking spaces per 4 dwelling units in RTO Zoning Districts. Accordingly, up to 81 vehicular parking spaces would be principally permitted.

The Project does not propose any vehicular parking. Therefore, this Section does not apply.

- K. **Loading.** Section 152 provides a schedule of required off-street freight loading spaces for all uses in districts other than C-3 or South of Market. Pursuant to this Section, residential uses measuring between 100,001 to 200,000 square feet require one off-street loading space. In addition, retail uses measuring between 10,001 to 60,000 square feet require one off-street loading space.

The Project proposes approximately 109,921 square feet of residential uses and 1,200 square feet of retail uses, therefore, one off-street loading space is required. In lieu of providing the required off-street loading space, the Project proposes two on-street loading spaces; one accessible space on Hickory Street and another on Fell Street. While the number of loading spaces exceed the requirements of the Code, the spaces are not provided on-site or off-street, and therefore do not satisfy Planning Code requirements. The Project requires a modification of the off-street loading requirements through the PUD process. Compliance with the PUD criteria is discussed under Item #8.

- L. **Bicycle Parking.** Section 155.2 requires one Class 1 space for every dwelling unit for the first 100 units, and one Class 1 space for every four dwelling units over 100. One Class 2 bicycle parking space is required for every 20 dwelling units. A minimum of two Class 2 spaces are required for every 2,500 square feet of occupied floor area of retail space.

Per Section 155.2, the Project requires 102 Class 1 bicycle parking spaces and eight Class 2 bicycle parking spaces for a total of 110 bicycle parking spaces. The Project proposes 108 Class 1, eight Class 2 and two bicycle parking spaces intended for cargo, for a total of 118 bicycle parking spaces - exceeding Planning Code requirements. Therefore, this Project complies with Section 155.2.

- G. **Car Share.** Section 166 requires 1 car share space for any development proposing 50 or more parking spaces, and additional space for every 50 parking spaces over 50.

The Project does not provide any vehicular parking spaces. Therefore this Section does not apply.

- H. **Dwelling Unit Mix.** Section 207.6 requires that, for projects creating five or more dwelling units in RTO Zoning Districts, a minimum of 40 percent of dwelling units contain at least two bedrooms.

The Project proposes a total of 108 dwelling units. Forty-two are two-bedroom and eight are three-bedroom units, for a total of 50 units, or 46 percent, that exceed the minimum two-bedroom requirement. This Project exceeds Section 207.6 requirements, and therefore complies with dwelling unit mix requirements.

- I. **Inclusionary Affordable Housing Program.** Planning Code Section 415 sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, the current percentage requirements apply to projects that consist of 10 or more units. Project sponsors may choose to comply by ensuring that at least 12 percent of all units are Affordable, pursuant to Section 415 of the Planning Code. If Affordable Units are provided off-site, 20 percent of the total unit count must be provided. An in-lieu fee at 20 percent may also be provided in lieu of constructing on- or off-site Affordable Units.

All 108 or 100 percent of dwelling units on-site will be made affordable to households whose incomes do not exceed 60 percent of Area Median Income (AMI), exceeding Planning Code Requirements. In the event that the Project changes and some or all of the units become market-rate, the Project shall comply with the inclusionary housing requirements set forth in Section 415 of the Code. The Project Sponsor has submitted an 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to the Planning Department stating that the Project is exempt from the requirements of Planning Code Section 415 because it is a 100% affordable project.

- a. **Conditional Use Authorization.** Planning Code Section 303(c) establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- a. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The Project will add significant housing opportunities at a density suitable for an urban context that is well served by public transit. The project will also add a new retail space that will provide employment opportunities. Two of the 108 dwelling units will be converted into an on-site day-care servicing residents of the Project and the larger neighborhood. This infill, mixed-used development will allow residents of the Project to walk, bike or take transit to commute, shop and meet other needs without reliance on private automobile needs. The retail use along Laguna and Fell Streets, and the raised crosswalk across Hickory Street will activate the intersection and

create a pedestrian-friendly environment. Further, the midblock passage bisecting the development will enhance pedestrian connectivity in the neighborhood.

The existing development in the area surrounding the Project Site is varied in scale and intensity. The Project, more or less, matches the height and bulk of the bulking to its rear, but larger than other buildings in the vicinity. The Project consists of two structures, one larger, up-to-five story building, and a second two-story building containing two-story rowhomes. Though the larger structure has four frontages, the structure is well articulated as a series of different, yet related forms, with varying architectural expression across the site. All portions of the project utilize a rhythm of projections and voids, creating texture and functioning to further break down the building's mass. The low-rise, two-story, townhouse structure fronting Hickory Street further reduces the scale of the overall development and enriches the visual texture of the Project.

The Project is necessary and desirable for, and is compatible with the neighborhood.

- b. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:
 - i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The Project site is a regularly-shaped lot formerly occupied by the Central Freeway that is adequately sized to accommodate the development. In-lieu of providing a Code-complying rear yard, the Project is arranged around a courtyard that establishes a pattern of mid-block open space that is lacking on the subject block, but is established on the block to the south. Existing development in the vicinity varies in size and intensity, though the Project generally matches the scale of the development to the south, and is compatible with the character of the area. The Project is designed with recesses, varying heights and fenestration patterns, and differentiated architectural language to reduce the apparent scale of the Project. The height of the buildings comply with height and bulk restrictions per Sections 260 and 270, and relate to the scale and slope of the existing streetscape. The taller portion of the building steps up with the slope on Fell Street towards Laguna Street, and steps down on Laguna Street towards Hickory Street. The rowhomes on Hickory Street are well below the height limit, allowing ample sunlight into the central courtyard from the southern side of the site. The shape and size of development on the subject property will not be detrimental to persons or adjacent properties in the vicinity. To the contrary, the corner retail space and proposed daycare will positively contribute to the neighborhood.

- c. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Project includes two accessible on-street loading zones at the location of the midblock passages on Fell and Hickory Streets. The primary entry to the site is on Fell Street at a three-story height opening through the building. The midblock passage through the site connects to Hickory Street, creating a continuation of the midblock passage development on the neighboring parcel to the south. Stoops provide entry to individual street-facing units along Fell Street, Laguna Street and rowhomes along Hickory Street. A secondary entrance to the site west of the rowhomes provides access to the family day care units that are accessed through the courtyard.

No off-street parking is proposed for the Project. However, as the area is well serviced by public transit, it is anticipated that the residents will favor travel by means other than private automobile use. There will be 108 Class 1, eight Class 2 and two bicycle parking spaces intended for cargo, for a total of 118 bicycle parking spaces - exceeding Planning Code requirements.

- d. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The Project includes residential and commercial uses that are typical of the Market and Octavia Plan Area and should not introduce operational noises or odors that are excessive, atypical, noxious or offensive for the area. While some temporary increase in noise can be expected during construction, this noise is limited in duration and will be regulated by the San Francisco Noise Ordinance which prohibits excessive noise levels from construction activity and limits the permitted hours of work. The building will not utilize mirrored glass or other highly reflective materials and is therefore not expected to cause offensive amounts of glare.

- e. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The Project provides varied areas of open space distributed throughout the site. Planters at the stoops along Fell Street and landscaped areas that border the entries at Fell and Hickory Streets enhance the streetscape. The Community Garden and the midblock passage that borders the landscaped central courtyard will be open to the community at certain times, and gates at the entries will be kept transparent to create views into the site when the midblock passage is closed to the public. Since underground parking is not proposed, much of the landscaping will be at grade, allowing for lush landscaping and tall trees. Lighting will be adequate for safety and security around and within the block.

- f. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The proposed residential and retail uses generally meet the intent of all applicable provisions of the Planning Code, the Market and Octavia Plan and the General Plan. While the Project meets the general intent of the Planning Code, it does not strictly conform to several aspects of the Code, including rear yard, open space, exposure, off-street loading and obstructions, therefore requiring modifications through the PUD process.

- b. **Planned Unit Development Findings.** The proposed development must meet the criteria applicable to conditional uses as stated in Section 303(c) and elsewhere in this Code. In addition, it shall:

- a. Affirmatively promote applicable objectives and policies of the General Plan;

As described in greater depth under Item #10 below, this project affirmatively promotes applicable objectives and policies of the General Plan;

- b. Provide off-street parking adequate for the occupancy provided;

No off-street parking is required within RTO Districts. The Project does not provide any off-street parking spaces, but ample bicycle parking exceeding Planning Code requirements as described under Item #6k above. Off-street loading along Fell and Hickory Street Frontages, and one accessible parking space is provided along the Laguna Street frontage. This is deemed adequate because area is well serviced by public transit, it is anticipated that the residents will favor travel by means other than private automobile use.

- c. Provide open space usable by the occupants and, where appropriate, by the general public, at least equal to the open spaces required by this Code;

The Project provides common open space only and therefore must provide at least 14,364 square-feet (108 units multiplied by 133 square feet) of usable open space. A total of 15,124 square feet of common open space is provided, exceeding the total amount of open space required by the Planning Code. However, one small portion of the western side of the inner court does not meet the additional standards applicable to inner courts such that the wall created by the building on north side is approximately 14 feet, and that on the south side is 5 feet, taller than the permissible height per Section 135(g)(2). Thus, a modification of open space requirement through the PUD process is required.

In addition to the inner courtyard, midblock passage, and side yard and community garden, a roof deck is also provided. The inner courtyard is separated into an upper and lower court, a function of the elevation changes on-site. The lower court is connected and adjacent to the midblock passage, whereas the upper court also contains a play area for the proposed day care which will occupy two of the residential units. The side yard and community garden is sensitively situated to provide a buffer between the proposed new construction and the adjacent three-story, two-unit residential structure to the east. The community garden abuts as is located behind the rear yard of said three-story residential structure, serving as an extension of the existing midblock open space. All common open spaces meet the minimum 300 square foot area, 15-foot dimensional requirements. Though, as mentioned above, one small portion of the western side of the inner court does not meet the additional standards applicable to inner courts. Thus, a modification of open space requirement through the PUD process is required.

- d. Be limited in dwelling unit density to less than the density that would be allowed by Article 2 of this Code for a district permitting a greater density, so that the Planned Unit Development will not be substantially equivalent to a reclassification of property;

As discussed under Item #6 above, the project exceeds the principally permitted residential dwelling unit density of one unit per 600 square feet of lot area. However, the Project is 100 percent affordable and exceeds criteria established in Section 415 of the Planning Code. Therefore, the Project is exempt from dwelling unit density restrictions per Article 2. Section 209.4 requires Conditional Use Authorization for density exceeding the principally permitted amounts, which is being sought by the Project Sponsor.

- e. In R Districts, include commercial uses only to the extent that such uses are necessary to serve residents of the immediate vicinity, subject to the limitations for NC-1 Districts under this Code, and in RTO Districts include commercial uses only according to the provisions of Section 231 of this Code;

The Project includes only 1,200 square feet of retail at the corner of Laguna and Fell streets. The corner retail space meets all the dimensional requirements established per Section 231, including the requirement that no part of the use extend 50 feet beyond the corner.

- f. Under no circumstances be excepted from any height limit established by Article 2.5 of this Code, unless such exception is explicitly authorized by the terms of this Code. In the absence of such an explicit authorization, exceptions from the provisions of this Code with respect to height shall be confined to minor deviations from the provisions for measurement of height in Sections 260 and 261 of this Code, and no such deviation shall depart from the purposes or intent of those sections;

The Project is situated on a lot characterized by split zoning. The northern half of the lot fronting Fell Street falls within a 50-X Height and Bulk district, whereas the southern half fronting Hickory Street is zoned 40-X. The northeast corner of the building fronting Fell Street is 39 feet – 4 inches and grows to 50-feet heading west towards Laguna Street, complying with the height and bulk allowances permitted by the applicable zoning districts.

The applicable sunlight access plane required by Section 261.1 applies above a height of 43 feet – 9 inches, and also on the portions of the project site located 60-feet or more away from the intersection of Hickory and Laguna Streets. On the south side of the project site fronting Hickory Street, the larger building ranges from approximately 35 feet - 10 inches to 37 feet - 4 inches. The smaller, two-story structure containing rowhome units fronting Hickory Street is approximately 19 feet – 6 inches. Since the height of the proposed buildings never reach a height of 43 feet – 9 inches on the portions of the building where Section 261.1 applies, and is also within the principally permitted height limit, the Project complies with Sections 260, 261.1 and 270.

- g. In NC Districts, be limited in gross floor area to that allowed under the floor area ratio limit permitted for the district in Section 124 and Article 7 of this Code;

The Project is not in an NC District.

- h. In NC Districts, not violate the use limitations by story set forth in Article 7 of this Code; and

The Project is not in an NC District.

- i. In RTO and NCT Districts, include the extension of adjacent alleys or streets onto or through the site, and/or the creation of new publicly-accessible streets or alleys through the site as appropriate, in order to break down the scale of the site, continue the surrounding existing pattern of block size, streets and alleys, and foster beneficial pedestrian and vehicular circulation;

The Project Sponsor has included a raised crosswalk crossing Hickory Street at Laguna Street as part of its proposed plans, in addition to a publically accessible midblock passage through the project site, which lines up with the midblock passage included as part of the development of the parcel to the south.

The Project, more or less, matches the height and bulk of the bulking to its rear, but larger than other buildings in the vicinity. The Project consists of two structures, one larger, up-to-five story building, and a second two-story building containing two-story rowhomes. Though the larger structure has four frontages, the structure is well articulated as a series of different, yet related forms, with varying architectural expression across the site. All portions of the project utilize a rhythm of projections and voids, creating texture and functioning to further break down the building's mass. The low-rise, two-story, townhouse structure fronting Hickory Street further reduces the scale of the overall development and enriches the visual texture of the Project.

- j. Provide street trees as per the requirements of Section 138.1 of the Code; and

A total of 6 trees are required along Laguna Street and 15 trees along Fell Street; the Project Sponsor proposes 4 street trees along Laguna Street and 13 street trees along Fell Street. An in-lieu fee for any tree that cannot be planted will be required, as determined by the Department of Public Works, Bureau of Urban Forestry. Additionally, a publically accessible midblock passage through the project site will be provided, which lines up with the midblock passage included as part of the development of the parcel to the south.

- k. Provide landscaping and permeable surfaces in accordance with Section 132(g) and (h).

Per Section 132(g), 20 percent of the required front setback area must be devoted landscaping. Section 132(h) requires that no less than 50 percent of the required front setback area be devoted to permeable surfaces. According to Sections 132(g) and (h), the Project requires approximately 212 square feet of landscaping and 529 square feet of permeable surfaces. Approximately 430 square feet of landscaping and permeable surfaces is provided in the front setback areas.

As explained under Item #2C above, the adjacent building on Fell Street has a front setback of 7 feet. Therefore, a Code-compliant setback would measure 3.5 feet, or result in an area equal to the area produced by a Code-compliant front setback (1058.8 square feet (3.5 feet times 302.5 feet) in this case). The Project provides setbacks ranging from 0-feet to 7 feet – 6 inches, resulting in an area of 1029.6 square feet - less than the Code-compliant area of 1058.8 square feet.

Accordingly, the Project is compliant with respect to the amount of landscaping required, but falls short of meeting Planning Code requirements with respect to the total front setback area and

amount of space required to be devoted to permeable surfaces. Therefore, modification to front setback requirements through the PUD process is required.

c. **Planned Unit Development Modifications.** The Project Sponsor requests a number of modifications from the requirements of the Planning Code. These modifications are listed below, along with a reference to the relevant discussion for each modification. Conditions have been added such that the Project will comply with applicable provisions of the Planning Code.

- i. *Front Setback:* Item #6C.
- ii. *Rear Yard:* Item #6D.
- iii. *Open Space:* Item #6E
- iv. *Permitted Obstructions:* Item #6F
- v. *Exposure:* Item #6H
- vi. *Off-street Loading:* Item #6K

d. **General Plan Compliance.** The Project is, on balance, consistent with the Objectives and Policies of the General Plan as set forth below.

COMMERCE AND INDUSTRY ELEMENT.
Objectives and Policies

OBJECTIVE 6.

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.4:

Encourage the location of neighborhood shopping areas throughout the city so that essential retail goods and personal services are accessible to all residents.

Policy 6.10:

Promote neighborhood commercial revitalization, including community-based and other economic development efforts where feasible.

The Project replaces a vacant lot with a mixed-use development suitable for the urban context in which it is situated. The Project includes 108 affordable dwelling units. Residents of these units would shop for goods and services in the area, bolstering the viability of the existing businesses. In addition, the Project would provide 1,200 square feet of retail space, the maximum amount permitted per Section 231, that will contribute to the economic vitality of the area, fulfill shopping needs for residents and will activate the streetscape.

HOUSING ELEMENT.
Objectives and Policies

OBJECTIVE 1.

TO PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT DEMAND.

Policy 1.1:

Encourage higher residential density in areas adjacent to downtown, in underutilized commercial and industrial areas proposed for conversion to housing, and in neighborhood commercial districts where higher density will not have harmful effects, especially if the higher density provides a significant number of units that are affordable to lower income households.

Policy 1.3:

Identify opportunities for housing and mixed-use districts near downtown and former industrial portions of the City.

Policy 1.4:

Locate in-fill housing on appropriate sites in established residential neighborhoods.

The Project will add 108 affordable residential units to an area that is well-served by transit, services and retail opportunities. The site is suited for dense, mixed-use development, where residents can commute and satisfy convenience needs without frequent use of a private automobile. The Project Site is located within walking distance of the employment cluster of the Civic Center, and is in an area with abundant transit options that travel throughout the City. The Project includes a mix of studio, one bedroom, two bedroom and three bedroom units. Forty-seven percent of the units contain two or more bedrooms, exceeding the Planning Code requirement of 40 percent.

MARKET AND OCTAVIA PLAN:

Objectives and Policies

OBJECTIVE 1.1:

CREATE A LAND USE PLAN THAT EMBRACES THE MARKET AND OCTAVIA NEIGHBORHOOD'S POTENTIAL AS A MIXED-USE URBAN NEIGHBORHOOD.

Policy 1.1.2:

Concentrate more intense uses and activities in those areas best served by transit and most accessible on foot.

Policy 1.1.3:

Encourage housing and retail infill to support the vitality of the Hayes-Gough, Upper Market and Valencia Neighborhood Commercial Districts.

The Project is situated in an area that is well-served by transit, and has amenities and convenience goods and services within walking distance. The retail space will increase retail opportunities in the area and will be consistent with the small-scale retail uses along Hayes Street to the north.

OBJECTIVE 2.1:

REQUIRE DEVELOPMENT OF MIXED-USE RESIDENTIAL INFILL ON THE FORMER FREEWAY PARCELS.

Policy 2.1.1:

Develop the Central Freeway parcels with mixed-use, mixed-income (especially low income) housing.

The Project proposes a 100 percent affordable, mixed-use project on a Central Freeway lot. The units will be made affordable to households, whose incomes do not exceed 60 percent area median income, exceeding the 120 percent threshold required per Section 415.

OBJECTIVE 2.2:

ENCOURAGE CONSTRUCTION OF RESIDENTIAL INFILL THROUGHOUT THE PLAN AREA.

Policy 2.2.2:

Ensure a mix of unit sizes is built in new development and is maintained in existing housing stock.

Policy 2.2.4:

Encourage new housing above ground-floor commercial uses in new development and in expansion of existing commercial buildings.

The Project is a mixed-use infill development that includes a variety of dwelling unit types. The residential uses at the corner of Fell and Laguna Streets are situated over a retail space, providing convenient access to goods and services for residents of the proposed project and the surrounding neighborhood.

OBJECTIVE 3.1:

ENCOURAGE NEW BUILDINGS THAT CONTRIBUTE TO THE BEAUTY OF THE BUILT ENVIRONMENT AND THE QUALITY OF STREETS AS PUBLIC SPACE.

Policy 3.1.1:

Ensure that new development adheres to principles of good urban design.

The Project would adhere to the following Fundamental Design Principles of the Market and Octavia Area Plan:

- Most new buildings should be built to all property lines facing the public rights-of-way.
- Building facades shall include three-dimensional detailing; these may include bay windows, cornices, belt courses, window moldings, and reveals to create shadows and add interest.
- Building facades that face the public realm should be articulated with a strong rhythm of regular vertical elements.
- High-quality building materials should be used on all visible façades and should include stone, masonry, ceramic tile, wood (as opposed to composite, fiber-cement based

synthetic wood materials), precast concrete, and high-grade traditional "hard coat" stucco (as opposed to "synthetic stucco" that uses foam).

- Ground floor retail use should be directly accessible from the street at the grade of the sidewalk onto which it fronts.
- Residential uses on the ground floor are encouraged on alleys.
- First-floor residential units are encouraged to be at least 3 feet above sidewalk level such that the windowsills of these units are above pedestrian eye level in order to maintain the units' privacy.
- Encourage rooftop gardens as a form of common open space.

The proposed Project would be built to the property line along all frontages, save for areas where the building is setback along the Fell Street frontage, functioning to provide articulation to the building's massing. The frontage along Fell Street is proposed to have a well-defined, active base that includes a retail space at the Laguna Street intersection, complementing the corner retail establishments at other corners of the intersection. The larger building's design includes massing variations throughout the proposed development. Prominent corner bays that are further enhanced with sunshades are proposed at each corner, with the Laguna and Fell Street corner, where the retail space is proposed, differentiated by a wood veneer finish, in contrast to the cement plaster finish of other corners. Bay windows help establish an articulated pattern across the larger building proposed on-site, one that is punctuated by hyphens every 50- 75- feet, expressed as a recessed wall with vertical openings. The series of bay windows and recessed wall-planes break up the building's mass, helping it read as multiple buildings. Further, the building follows a stepping pattern and is tallest at the Laguna and Fell Street intersection. The building decreases in height as it approaches the eastern portion of the project site, better relating to the adjacent smaller, three-story structure and sculpted in such a way to reduce shadow impacts to Patricia's Green, a park falling under the Recreation and Park Department's jurisdiction. The smaller two-story rowhome structure fronting hickory street relates to the larger building with raised entries, and similar materials. However, the window systems and pattern of building articulation are different, designed to be better suited for a smaller two-story structure.

The Project features a roof deck as a form of common open space, as well as a courtyard that will remain publically accessible during normal business hours. The buildings on-site will be finished with a variety of materials, including concrete, wood veneer, corten, aluminum and glass.

COMMERCE AND INDUSTRY

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

The Project will provide substantial benefits to the City, including expanded employment opportunities for City residents at various employment levels. The Project will enable the Jewish Home of San Francisco to provide essential health services to the elderly in modern facilities. The Project will also activate the ground floor of Mission Street, between Avalon and Silver Avenues, enhancing and promoting attractive the street frontage to be pedestrian-oriented and compatible with buildings in the adjacent neighborhoods.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The new residents in the Project will patronize area businesses, bolstering the viability of surrounding commercial establishments. In addition the Project would include a corner retail space to provide goods and services to residents in the area, contribute to the economic vitality of the area and will define and activate the streetscape.

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

The Project will not diminish existing housing stock and will add 108 dwelling units in a manner that enhances the vitality of the neighborhood.

- C. That the City's supply of affordable housing be preserved and enhanced,

The Project meets this policy. The Project does not remove any housing and will provide 108 affordable dwelling units to the City's housing stock.

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

A wide variety of goods and services are available within walking distance of the project site without reliance on private automobile use. In addition, the area is well served by public transit, providing connections to all areas of the City and to the larger regional transportation network.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project will not displace any service or industry establishment. The project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project.

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

The Project meets this policy. The Project will be constructed in compliance with all current building codes to ensure a high level of seismic safety.

- G. That landmarks and historic buildings be preserved.

The Project meets this policy. The Project does not include the demolition or alteration of any identified historic resources.

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

The Project meets this policy. The Project Sponsor prepared a shadow study, since the Project was found to cast shadow on Patricia's Green, an open space falling under the jurisdiction of the Recreation and Park Department. The shadow study found that the Project would result in a 0.07 percent (less than one tenth of one percent) decrease in the theoretically available sunlight to the park. This increase shadow would occur on the southern portion of the park. The Project was unanimously recommended for approval by the Recreation and Park Department Commission at a normally scheduled hearing on December 17, 2015.

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use Authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2015-002837CUA** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated December 15, 2015, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth. These conditions amend and supersede any conditions imposed pursuant to prior conditional use approvals for the site.

The Planning Commission hereby adopts the MMRP attached hereto as Exhibit C and incorporated herein as part of this Motion by this reference thereto. All required mitigation measures contained in the MMRP are included as conditions of approval.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 19544. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission **ADOPTED** the foregoing Motion on January 7, 2016.

Jonas Ionin
Commission Secretary

AYES: Moore, Richards, Antonini, Wu, Fong, Hillis

Motion 19544
Hearing Date: January 7, 2016

CASE NO. 2015-002837CUA
455 Fell Street

NAYS: None

ABSENT: Johnson (recused)

ADOPTED: January 7, 2016

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use pursuant to Planning code sections 303, and 304 to approve a Planned Unit Development with specific modifications to Planning Code regulations as they relate to setbacks, exposure, off-street loading, open space and obstructions to permit the construction of 108 dwelling units and 1,200 square feet of retail, and to allow residential density exceeding one dwelling unit per 600 square feet of lot area within an RTO (residential transit oriented) zoning district and a 40-50-X Height and Bulk district, in general conformance with plans, dated December 15, 2015 and stamped "EXHIBIT B" included in the docket for Case No. 2015-002837CUA and subject to conditions of approval reviewed and approved by the Commission on January 7, 2016 under Motion No 19544. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on January 7, 2016 under Motion No 19544.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 19544 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

3. **Diligent Pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since the effective date, as defined in Condition or Approval No. 19.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

4. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

6. **Mitigation Measures.** Mitigation measures described in the MMRP for the project attached as Exhibit C are necessary to avoid potential significant effects of the proposed project and have been agreed to by the project sponsor.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

DESIGN

7. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

8. **Street Trees.** Pursuant to Planning Code Section 138.1 (formerly 143), the Project Sponsor shall submit a streetscape plan, complying with the Better Streets Plan and in general conformity with the streetscape described in plans dated May 11, 2015, and stamped "Exhibit B" included in the docket for Case No. 2015-002837CUA to the Planning Department prior to Planning approval of the building permit application indicating that street trees, at a ratio of one street tree of an approved species for every 20 feet of street frontage along public or private streets bounding the Project, with any remaining fraction of 10 feet or more of frontage requiring an extra tree, shall be provided, and in general . The Project includes new construction on approximately 302 linear feet of frontage along Fell Street and approximately 120 linear feet of frontage along Laguna Street. Therefore, the Project is required to ensure that 21 street trees along Laguna and Fell Streets exist and/or planted. The exact location, size and species of tree shall be as approved by the Department of Public Works (DPW). In any case in which DPW cannot grant approval for installation of a tree in the public right-of-way, on the basis of inadequate sidewalk width, interference with utilities or other reasons regarding the public welfare. The Project Sponsor will be required to pay an in-lieu fee for the remaining five trees that cannot be planted.

For information about compliance, contact Department of Public Works, Bureau of Urban Forestry at 415-554-6700, www.sf-planning.org

9. **Streetscape Plan.** Pursuant to Planning Code Section 138.1, the Project Sponsor shall submit a pedestrian streetscape improvement plan to the Planning Department for review in consultation with the Department of Public Works and the Department of Parking and Traffic prior to Building Permit issuance. The streetscape improvement plan shall include details regarding the raised crosswalk at the intersection of Laguna and Hickory Streets (crossing Hickory Street), and the bulb-out at the intersection of Fell Street and Laguna Street (on Fell Street).

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

10. **Landscaping.** Pursuant to Planning Code Section 132, the Project Sponsor shall submit a site plan to the Planning Department prior to Planning approval of the building permit application

indicating that 50% of the front setback areas shall be surfaced in permeable materials and further, that 20% of the front setback areas shall be landscaped with approved plant species. The size and specie of plant materials and the nature of the permeable surface shall be as approved by the Department of Public Works.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

11. **Glazing.** Mirrored glass or deeply tinted glass shall not be permitted on the building. Glass orientation and coatings shall be designed to substantially avoid/reduce solar glare on neighboring properties. All glazing shall comply with Planning Code Section 139 and the Standards for Bird-Safe Buildings.

For information about compliance, contact Code Enforcement,, Planning Department at 415-558-6378, www.sf-planning.org

12. **Rooftop Mechanical Equipment.** Pursuant to Planning Code Section 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit application for each building. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.

For information about compliance, contact Code Enforcement, Planning Department at 415-558-6378, www.sf-planning.org

13. **Lighting Plan.** The Project Sponsor shall submit an exterior lighting plan to the Planning Department prior to Planning Department approval of the building / site permit application.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

14. **Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the architectural addenda. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact Code Enforcement, Planning Department at 415-558-6378, www.sf-planning.org.

15. **Noise, Ambient.** Interior occupiable spaces shall be insulated from ambient noise levels. Specifically, in areas identified by the Environmental Protection Element, Map1, "Background Noise Levels," of the General Plan that exceed the thresholds of Article 29 in the Police Code, new developments shall install and maintain glazing rated to a level that insulate interior occupiable areas from Background Noise and comply with Title 24.

For information about compliance, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org

16. **Noise.** Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

17. **Transformer Vault.** The location of individual project PG&E Transformer Vault installations has significant effects to San Francisco streetscapes when improperly located. However, they may not have any impact if they are installed in preferred locations. Therefore, the Planning Department recommends the following preference schedule in locating new transformer vaults, in order of most to least desirable:

1. On-site, in a basement area accessed via a garage or other access point without use of separate doors on a ground floor façade facing a public right-of-way;
2. On-site, in a driveway, underground;
3. On-site, above ground, screened from view, other than a ground floor façade facing a public right-of-way;
4. Public right-of-way, underground, under sidewalks with a minimum width of 12 feet, avoiding effects on streetscape elements, such as street trees; and based on Better Streets Plan guidelines;
5. Public right-of-way, underground; and based on Better Streets Plan guidelines;
6. Public right-of-way, above ground, screened from view; and based on Better Streets Plan guidelines;
7. On-site, in a ground floor façade (the least desirable location).

Unless otherwise specified by the Planning Department, Department of Public Work's Bureau of Street Use and Mapping (DPW BSM) should use this preference schedule for all new transformer vault installation requests.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>

For information about compliance, contact the Code Enforcement, Planning Department at 415-558-6378, www.sf-planning.org

18. **Overhead Wiring.** The Property owner will allow MUNI to install eyebolts in the building adjacent to its electric streetcar line to support its overhead wire system if requested by MUNI or MTA.

For information about compliance, contact the San Francisco Municipal Railway (MUNI), San Francisco Municipal Transit Agency (SFMTA), at 415.701.4500, www.sfmta.org.

PARKING AND TRAFFIC

19. **Bicycle Parking.** Pursuant to Planning Code Sections 155, the Project shall provide no fewer than 102 Class 1 bicycle parking spaces and 8 Class 2 bicycle parking spaces.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

20. **Off-street Loading.** Pursuant to Planning Code Section 152, the Project is required to provide one off-street loading space. However, a modification from Planning Code requirements is being sought through the PUD process. Therefore two on-street loading spaces shall be provided.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
21. **Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation effects during construction of the Project.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

PROVISIONS

22. **First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.
For information about compliance, contact the First Source Hiring Manager at 415-581-2335, www.onestopSF.org
23. **Transportation Sustainability Fee.** The Project is subject to the Transportation Sustainability Fee as applicable.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
24. **Affordable Units.** As currently proposed, the Project will be 100 percent affordable, with 108 dwelling units. In the event that the Project changes and some or all of the units become market-rate, the Project shall comply with the inclusionary housing requirements set forth in Section 415 of the Code. This condition of approval shall constitute the written determination and notice of the inclusionary housing requirement pursuant to the procedures set forth in Section 415.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, <http://sf-moh.org/index.aspx?page=321>
25. **Market Octavia Community Improvements Fund.** Pursuant to Planning Code Section 421, the Project Sponsor shall comply with the Market Octavia Community Improvements Fund provisions through payment of an Impact Fee in full to the Treasurer, or the execution of a Waiver Agreement, or an In-Kind agreement approved as described per Planning Code Section

421 (formerly 326) prior to the issuance by Department of Building Inspection of the construction document for the development project.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

MONITORING - AFTER ENTITLEMENT

25. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

26. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

27. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>

28. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the tenant space and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org/>

29. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org.

For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org.

For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-0123, www.sf-police.org

30. **Construction Emissions Minimization Plan.** Prior to issuance of a building permit to construct the Project and implement the approved use, the Project Sponsor shall produce a Construction Emissions Minimization Plan, which shall estimate of the construction timeline by phase, with a description of each piece of off-road equipment required for every construction phase. The description may include, but is not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For VDECS installed, the description may include: technology type, serial number, make, model, manufacturer, ARB verification number level, and installation date and hour meter reading on installation date. For off-road equipment using alternative fuels, the description shall also specify the type of alternative fuel being used. This Plan shall be made available to the neighbors or interested parties, and a copy of said Plan shall be provided to the Planning Department's Environmental Review Officer to include in the file for Case No. 2015-002837CUA, and be subject to any other requirements identified in the MMRP associated with the Project.

For information about compliance, contact Case Environmental Planner, Planning Department at 415-575-6863, www.sf-planning.org

31. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

32. **Lighting.** All Project lighting shall be directed onto the project site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

MITIGATION MEASURES	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
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ARCHEOLOGICAL RESOURCES				
<p><i>Project Mitigation Measure 1 – Soils Disturbing Activities (Mitigation Measure 5.6.A1 of the Market and Octavia FEIR)</i></p> <p>Pursuant to <i>Mitigation Measure 5.6.A1</i>, any soils-disturbing activities proposed within this area shall be required to submit an addendum to the respective ARD/TP prepared by a qualified archeological consultant with expertise in California prehistoric and urban historical archeology to the Environmental Review Officer (ERO) for review and approval. The addendum to the ARD/TP shall evaluate the potential effects of the project on legally-significant archeological resources with respect to the site- and project-specific information absent in the ARD/TP. The addendum report to the ARD/TP shall have the following content:</p> <ol style="list-style-type: none"> 1. Summary: Description of subsurface effect of the proposed project and of previous soils-disturbing activities; 2. Historical Development: If demographic data for the project site is absent in the discussion in the ARD/TP, the addendum shall include new demographic data regarding former site occupants; 3. Identification of potential archeological resources: Discussion of any identified potential prehistoric or historical archeological resources; 4. Integrity and Significance: Eligibility of identified expected resources for listing to the California Register of Historical Resources (CRHR); Identification of Applicable Research Themes/Questions (in the ARD/TP) that would be addressed by the expected archeological resources that are identified; 5. Impacts of Proposed Project; 6. Potential Soils Hazards: Update discussion for proposed project; 7. Archeological Testing Plan (if archeological testing is determined warranted): the Archeological Testing Plan (ATP) shall include: <ol style="list-style-type: none"> A. Proposed archeological testing strategies and their justification B. Expected archeological resources C. For historic archeological resources <ol style="list-style-type: none"> 1) Historic address or other local information 2) Archeological property type D. For all archeological resources <ol style="list-style-type: none"> 1) Estimate depth below the surface 2) Expected integrity 3) Preliminary assessment of eligibility to the CRHR 	<p>Project sponsor, contractor, Planning Department's archeologist or qualified archaeological consultant, and Planning Department's Environmental Review Officer.</p>	<p>Prior to issuance of any permit for soil-disturbing activities and during construction.</p>	<p>Planning Department Environmental Review Officer (ERO) shall determine further mitigation required, following completion of final addendum to ARD/TP.</p>	<p>Considered complete upon Planning Department review of approval of addendum to ARD/TP or as appropriate approval of Final Archaeological Resources Report (FARR).</p>

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MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

MITIGATION MEASURES	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
E. ATP Map 1) Location of expected archeological resources 2) Location of expected project sub-grade impacts 3) Areas of prior soil disturbance 4) Archeological testing locations by type of testing 5) Base map: 1886/7 Sanborn Fire Insurance Company map				
AIR QUALITY				
<p>Project Mitigation Measure 2 – Construction Air Quality (Mitigation Measure 5.8B of the Market & Octavia FEIR)</p> <p>The project sponsor or the project sponsor's Contractor shall comply with the following:</p> <p>A. Engine Requirements</p> <ol style="list-style-type: none"> 1. All off-road equipment greater than 25 hp and operating for more than 20 total hours over the entire duration of construction activities shall have engines that meet or exceed either U.S. Environmental Protection Agency (USEPA) or California Air Resources Board (ARB) Tier 2 off-road emission standards, and have been retrofitted with an ARB Level 3 Verified Diesel Emissions Control Strategy. Equipment with engines meeting Tier 4 Interim or Tier 4 Final off-road emission standards automatically meet this requirement. 2. Where access to alternative sources of power are available, portable diesel engines shall be prohibited. 3. Diesel engines, whether for off-road or on-road equipment, shall not be left idling for more than two minutes, at any location, except as provided in exceptions to the applicable state regulations regarding idling for off-road and on-road equipment (e.g., traffic conditions, safe operating conditions). The Contractor shall post legible and visible signs in English, Spanish, and Chinese, in designated queuing areas and at the construction site to remind operators of the two minute idling limit. 4. The Contractor shall instruct construction workers and equipment 	Project sponsor/ contractor(s).	Prior to construction activities requiring the use of off-road equipment.	Project sponsor / contractor(s) and the ERO.	Considered complete on submittal of certification statement.

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MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

MITIGATION MEASURES	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed												
<p>operators on the maintenance and tuning of construction equipment, and require that such workers and operators properly maintain and tune equipment in accordance with manufacturer specifications.</p>																
<p>B. Waivers</p> <ol style="list-style-type: none"> The Planning Department's Environmental Review Officer or designee (ERO) may waive the alternative source of power requirement of Subsection (A)(2) if an alternative source of power is limited or infeasible at the project site. If the ERO grants the waiver, the Contractor must submit documentation that the equipment used for onsite power generation meets the requirements of Subsection (A)(1). The ERO may waive the equipment requirements of Subsection (A)(1) if: a particular piece of off-road equipment with an ARB Level 3 VDECS is technically not feasible; the equipment would not produce desired emissions reduction due to expected operating modes; installation of the equipment would create a safety hazard or impaired visibility for the operator; or, there is a compelling emergency need to use off-road equipment that is not retrofitted with an ARB Level 3 VDECS. If the ERO grants the waiver, the Contractor must use the next cleanest piece of off-road equipment, according to Table below. <p>Table – Off-Road Equipment Compliance Step-down Schedule</p> <table border="1" data-bbox="128 1109 793 1263"> <thead> <tr> <th>Compliance Alternative</th> <th>Engine Emission Standard</th> <th>Emissions Control</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Tier 2</td> <td>ARB Level 2 VDECS</td> </tr> <tr> <td>2</td> <td>Tier 2</td> <td>ARB Level 1 VDECS</td> </tr> <tr> <td>3</td> <td>Tier 2</td> <td>Alternative Fuel*</td> </tr> </tbody> </table> <p>How to use the table: If the ERO determines that the equipment requirements cannot be met, then the project sponsor would need to meet Compliance Alternative 1. If the ERO determines that the Contractor cannot supply off-road equipment meeting Compliance Alternative 1, then the Contractor must meet Compliance Alternative 2. If the ERO determines that the Contractor cannot supply off-road equipment meeting Compliance Alternative 2, then the Contractor must meet Compliance Alternative 3. ** Alternative fuels are not a VDECS.</p>	Compliance Alternative	Engine Emission Standard	Emissions Control	1	Tier 2	ARB Level 2 VDECS	2	Tier 2	ARB Level 1 VDECS	3	Tier 2	Alternative Fuel*				
Compliance Alternative	Engine Emission Standard	Emissions Control														
1	Tier 2	ARB Level 2 VDECS														
2	Tier 2	ARB Level 1 VDECS														
3	Tier 2	Alternative Fuel*														

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MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

MITIGATION MEASURES	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>C. <i>Construction Emissions Minimization Plan.</i> Before starting on-site construction activities, the Contractor shall submit a Construction Emissions Minimization Plan (Plan) to the ERO for review and approval. The Plan shall state, in reasonable detail, how the Contractor will meet the requirements of Section A.</p> <ol style="list-style-type: none"> 1. The Plan shall include estimates of the construction timeline by phase, with a description of each piece of off-road equipment required for every construction phase. The description may include, but is not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For VDECS installed, the description may include: technology type, serial number, make, model, manufacturer, ARB verification number level, and installation date and hour meter reading on installation date. For off-road equipment using alternative fuels, the description shall also specify the type of alternative fuel being used. 2. The ERO shall ensure that all applicable requirements of the Plan have been incorporated into the contract specifications. The Plan shall include a certification statement that the Contractor agrees to comply fully with the Plan. 3. The Contractor shall make the Plan available to the public for review on-site during working hours. The Contractor shall post at the construction site a legible and visible sign summarizing the Plan. The sign shall also state that the public may ask to inspect the Plan for the project at any time during working hours and shall explain how to request to inspect the Plan. The Contractor shall post at least one copy of the sign in a visible location on each side of the construction site facing a public right-of-way. 	<p>Project sponsor/ contractor(s).</p>	<p>Prior to issuance of a permit specified in Section 106A.3.2.6 of the Francisco Building Code.</p>	<p>Project sponsor/ contractor(s) and the ERO.</p>	<p>Considered complete on findings by ERO that Plan is complete.</p>

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MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

MITIGATION MEASURES	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><i>D. Monitoring.</i> After start of Construction Activities, the Contractor shall submit quarterly reports to the ERO documenting compliance with the Plan. After completion of construction activities and prior to receiving a final certificate of occupancy, the project sponsor shall submit to the ERO a final report summarizing construction activities, including the start and end dates and duration of each construction phase, and the specific information required in the Plan.</p>	Project sponsor/ contractor(s).	Quarterly	Project sponsor/ contractor(s) and the ERO.	Considered complete on findings by ERO that Plan is being/was implemented.
GEOLOGY				
<p><i>Project Mitigation Measure 3 – Construction-Related Soils (Mitigation Measure 5.11.A of Market & Octavia FEIR)</i></p> <p>Best Management Practices (BMP) erosion control features shall be developed with the following objectives and basic strategy: protect disturbed areas through minimization and duration of exposure; control surface runoff and maintain low runoff velocities; trap sediment onsite; and minimize length and steepness of slopes.</p>	Project sponsor.	During construction.	Project sponsor/DBI.	On-site monitoring by project sponsor and DBI.

1802

**MAYOR'S OFFICE OF HOUSING AND
COMMUNITY DEVELOPMENT
CITY AND COUNTY OF SAN FRANCISCO**



EDWIN M. LEE
MAYOR

OLSON LEE
DIRECTOR

May 9, 2016

Supervisor Breed
City and County of San Francisco
Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

RE: Resolutions Authorizing Application to the California Debt Limit Allocation Committee for Multifamily Housing Revenue Bonds and Option to Ground Lease for 455 Fell Street (Parcel O)

Dear Supervisor Breed,

Attached are the following resolutions for introduction at the Board of Supervisors on May 10, 2016 related to the financing and construction of the affordable family rental project to be located at 455 Fell Street:

1. Resolution authorizing the Mayor's Office of Housing and Community Development to submit a qualified mortgage revenue bond application in the amount of \$50 million; and
2. Resolution authorizing the execution of an Option to Ground Lease 455 Fell Street to 455 Fell, LP (the entity that will develop and own the affordable project) for a term of 75 years, with one 24 year extension.

Project Summary

Mercy Housing California ("Mercy") and San Francisco Housing Development Corporation ("SFHDC") are jointly developing this mixed use affordable housing project that will include 108 affordable family units, ranging in size from one- to three-bedrooms for families earning maximum incomes between \$21,400 and \$55,000, including a set-aside for 22 units for formerly homeless families. The development will be located on the largest remaining Central Freeway site and provides a great opportunity to achieve the vision of a diverse, green, pedestrian-oriented neighborhood.

455 Fell will include approximately 111,121 square feet of gross floor area, including 1,200 square feet of retail space on the ground floor at the corner of Laguna and Fell Streets. Residents will access community rooms, as well as landscaped gardens and play areas from the courtyard.

Two residential units will be designated for family day care provides, and the property will include office space for supportive service providers including SFHDC, Mercy and Episcopal Community Services. In addition to the interior courtyard, the project will include a roof top open space and a community garden with programs to be coordinated by Community Grows.

The project is estimated to cost million approximately \$64 million, and funded by City sources totaling approximately \$14.3 million, HCD Affordable Housing and Sustainable Communities funding, SF Federal Home Loan Bank Affordable Housing funds, 4% tax credits and multifamily revenue bonds.

The proposed development schedule includes a construction closing in early 2017 and an 18-month construction schedule. We appreciate your support of this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Olson Lee", written in a cursive style.

Olson Lee
Director

cc: Tim Dunn, Mercy
Deven Richardson, SFHDC

OPTION TO LEASE AGREEMENT

This Option to Lease Agreement (this "**Agreement**") is entered into as of this ____ day of _____ 2016, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), acting by and through the Mayor's Office of Housing and Community Development ("**MOHCD**"), and 455 Fell, L.P., a California Limited Partnership, and its permitted successors and assigns hereunder (the "**Optionee**"), with reference to the following facts:

RECITALS

A. The City is the fee owner of that certain real property and the improvements thereon, located at 455 Fell Street, San Francisco and more particularly described in Exhibit A attached hereto (the "**Property**").

B. Optionee desires to develop the Property with up to 108 studio, one-, two- and three-bedroom units for low income families (the "**Project**"). In order to develop the Project, Optionee desires to enter into a ground lease with the City in which the City will lease to Optionee the Property subject to certain conditions as provided herein.

C. Optionee intends to develop the Project with tax-exempt bonds, 4% Low Income Housing Tax Credits, State of California Department of Housing and Community Development Affordable Housing and Sustainable Communities funding, San Francisco Federal Home Loan Bank Affordable Housing Program funding, City financing and other sources, if necessary.

D. In order to apply for Project financing, Optionee desires to obtain from the City, and the City desires to grant to Optionee, upon the specific terms and conditions set forth in this Agreement, the exclusive right and option to lease the Property.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

Section 1. Grant of Option. The City grants to Optionee the option to lease the Property and purchase the improvements located thereon for the consideration and under the terms and conditions set forth in this Agreement (the "**Option**").

Section 2. Term of Option: Exercise.

a. Term and Extension of Term. The term of the Option (the "**Term**") shall be for a period commencing on the date of this Agreement and ending June 30, 2017, (the "**Initial Term**") unless extended. So long as the Optionee is not then in default, Optionee may request an extension of the Term for an additional six (6) months (the "**Extended Term**") by giving written notice to the City between the date that is thirty (30) days prior to the expiration of the Initial Term and at any time before the expiration of the Initial Term. The Extended Term shall commence on 12:01 A.M. on the day immediately following the expiration of the Initial Term and shall end on December

31, 2017. All references in this Agreement to the Term shall mean the Initial Term, and if extended as set forth above, the Extended Term. During the Term, Optionee and City staff agree to negotiate in good faith to complete all of the terms and conditions of the ground lease of the Property from the City to Optionee consistent with this Agreement (upon completion of such negotiations, the “**Ground Lease**”). The final terms of the Ground Lease must be agreed to by Optionee, the City’s Director of Property, and the MOHCD Director or her/his designee, in writing, before Optionee’s exercise of the Option. The Term shall end on the date set forth above or, if earlier, on the effective date of the Ground Lease.

b. Exercise of Option. At any time following approval of the Ground Lease by the City’s Director of Property and the MOHCD Director and before the expiration of the Term and so long as the Optionee is not then in default under this agreement or any other agreements with the City, Optionee may exercise the Option by giving written notice to the City (the “**Option Notice**”).

c. Expiration. The Option shall expire at midnight on the last day of the Term. If the expiration of the Term falls on a Saturday, Sunday or legal holiday in the State of California, then the Option may be exercised on the next following business day. Upon termination of the Option and a written request by the City, Optionee shall sign and deliver a quitclaim deed or such other document as may be reasonably required by the City to evidence the termination of the Option.

Section 3. Option Consideration. The Option is granted in consideration of Optionee’s obligation to negotiate in good faith for the Ground Lease and for advancement of the Project. The Option consideration is related to the Option only and in no way relates to Ground Lease payments that will be owed to MOHCD.

Section 4. Ground Lease of the Property. MOHCD staff shall prepare the initial form of ground lease substantially in the form used by MOHCD for projects in which MOHCD is the fee owner of property that will be developed for affordable housing. The Ground Lease shall be in accordance with the following:

- i. Term of Ground Lease. The Ground Lease shall become effective immediately following the full execution by the parties and shall end seventy-five (75) years from the date of construction completion of the Project, provided that the tenant shall have an option to extend the term for an additional twenty-four (24) years for no additional consideration (but rent shall continue during any extended term as set forth below).
- ii. Taxes and Assessments. The tenant shall be responsible for the payment of any and all property taxes and assessments levied against the leasehold estate and the Property during

the term of the Ground Lease subject to any abatement available therefrom.

- iii. Project Use. The Property shall be used during the term of the Ground Lease only for affordable housing, with maximum rent and income levels set at no greater than 60% Area Median Income ("AMI") as determined by the United States Department of Housing and Urban Development for the San Francisco area, adjusted solely for household size, but not high housing cost area, and approved ancillary uses, including retail and community-serving uses. If required by the Project's tax credit investor based on the Project's residual value analysis test, and if approved by the MOHCD Director in his or her reasonable discretion, the Ground Lease may permit increases in the maximum rent and income levels after the 55th year of the Ground Lease term, but such increases shall be limited only to the extent necessary to satisfy the Project's residual value analysis test
- iv. Rent. The tenant shall pay the landlord annual rent in the amount of ten percent (10%) of the land value of the Property (as determined by a MAI appraiser selected by, and at the sole cost of, the tenant, and set forth in the Ground Lease), consisting of \$15,000 in base rent and the remainder in residual rent. Unpaid base rent shall accrue without interest. The residual rent shall be payable only to the extent proceeds are available from the Project after deductions for Project operating expenses, mandatory debt service payments, property management fees, reserve deposits required by Project lenders, deferred developer fees, and asset and partnership management fees in amounts permitted in accordance with the then-current MOHCD policy. Unpaid residual rent shall not accrue. If required by the Project's tax credit investor based on the Project's residual value analysis test, and if approved by the MOHCD Director in his or her reasonable discretion, residual rent shall only be payable after full repayment of any residual receipts Project financing provided by MOHCD. The annual rent shall be adjusted on the fifteenth (15th) anniversary of the expiration of the first full calendar lease year and every fifteen (15) years thereafter, and shall be equal to ten percent (10%) of then appraised value of the land as determined by a MAI appraiser selected by, and at the sole cost of, the tenant. Any such adjustment shall be made to the residual rent and not the base rent.

- v. Construction and Operation of the Project. The tenant shall be responsible, at its sole cost, for construction, operation, and maintenance of the Project during the Ground Lease term.
- vi. Title to Property. The Ground Lease shall provide that the City will own fee title to the land, and the Optionee will own fee title to all improvements constructed or otherwise located on the land, during the Ground Lease term.
- vii. Disposition of Improvements at End of Lease. At the end of the Ground Lease term, fee title to all the improvements shall vest in the City without further action of any party, without any obligation by the City to pay any compensation therefor to the tenant and without the necessity of a deed from the tenant to the City.
- viii. Mortgagee Protections. The Ground Lease shall include standard mortgagee protection provisions.
- ix. Defaults; Right to Cure. The City will provide any notice of any defaults under the Ground Lease to the tenant's limited partners and lenders, and allow any such parties the right to cure a default by the tenant under the Ground Lease. Pursuant to the terms of the Ground Lease, City shall not be entitled to terminate the Ground Lease following any uncured default by the tenant during the fifteen (15) year tax credit compliance period for the Project, except if such default is failure to pay rent.
- x. Encumbrances. The Ground Lease will permit the tenant to encumber its leasehold interest in the Property to secure any loans deemed necessary by the tenant, as approved by MOHCD. Any funds from a loan secured by the Property must be used in or on the development, maintenance, rehabilitation or operation of the Property.

Section 5. Closing.

a. Expenses. All expenses, fees or costs (except attorneys' fees and costs) incurred in connection with the Ground Lease of the Property, including but not limited to city and county documentary transfer tax, conveyance taxes, recording charges (if any), and costs of title insurance shall be borne by the Optionee. Each party shall bear its own attorneys' fees and costs incurred in connection with negotiation and execution of this Agreement and the Ground Lease.

b. Proration of Taxes. Real property taxes on the Property shall be prorated as of the date of closing of the Ground Lease.

c. Title Insurance. The closing of the Ground Lease shall be conditioned on the issuance to the tenant of an ALTA leasehold policy of title insurance, from a title company chosen by the tenant, insuring the tenant's leasehold interest in the Property subject only to reasonable exceptions approved by the tenant.

Section 6. Notices. All notices or other communications made pursuant to this Agreement shall be in writing and shall be deemed properly delivered, given or served to the parties at the following addresses when (i) mailed by certified mail, postage prepaid, return receipt requested; (ii) sent by express delivery service, charges prepaid with a delivery receipt; or (iii) personally delivered when a delivery receipt is obtained:

City: City and County of San Francisco Mayor's Office of Housing and
Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Director

with a copy to: Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property

Optionee: 455 Fell, LP
1360 Mission Street, Suite 300
San Francisco, CA 94103
Attn: President

All notices so delivered, mailed or sent shall be deemed received as of the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the notice was returned as undeliverable. Either party may change its address for the purposes of this paragraph by giving prior written notice of the change to the other party in the manner provided in this Section 6. Any notice required under this Agreement that is sent by a Party shall be sent to, or contemporaneously copied to, all of the other Parties.

Section 7. Assignment of Option. Without the prior written consent of the City, Optionee may assign its rights and obligations under this Agreement to any limited liability company in which Mercy Housing Calwest, Inc. or its corporate affiliate is the managing member or partner, or a limited partnership in which Mercy Housing Calwest, Inc. or its corporate affiliate is a general partner. All other transfers by Optionee shall require the prior written consent of the City.

Section 8. Binding Effect. This Agreement and its terms and conditions shall bind upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns. By approving this Agreement, the City's Board of Supervisors approves the Ground Lease with the substantive terms described in Section 4 without the need for additional action by the Board of Supervisors; provided, if there are

any material changes that are to the detriment of the City, as determined by the MOHCD Director, then such material changes will be subject to Board of Supervisor approval before the Ground Lease becomes effective.

Section 9. Time. Time is of the essence of this Agreement.

Section 10. Further Documents. Upon the reasonable request of the other party, each party will execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, such further instruments and documents as may be reasonably necessary in order to carry out the intent and purpose of this Agreement, including escrow instructions.

Section 11. Commission. Each party to this Agreement represents to the other party that it has not engaged or used the services of any person, firm or corporation that may claim a broker's commission or finder's fee upon execution of this Agreement or the Ground Lease, and each party to this Agreement agrees to hold the other party harmless from any loss, damage, expense or liability, including attorney's fees, resulting from any claim by any person, firm or corporation based upon its having acted as broker or finder on behalf of said indemnifying party.

Section 12. Captions. The captions of the paragraphs of this Agreement are for convenience and reference only, and the words contained in the captions shall in no way be held to explain, modify, amplify or aid in the interpretations, constructions or meaning of the provisions of this Agreement.

Section 13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

Section 14. Entire Agreement; Signatures. This Agreement contains the entire agreement between the parties respecting the matters set forth, and supersedes all prior agreements between the parties respecting the matters set forth.

Section 15. Attorneys' Fees. In any action between Optionee and the City to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover costs of suit and expenses including, without limitation, reasonable attorneys' fees.

Section 16. Sunshine Ordinance. Optionee understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to City hereunder public records subject to public disclosure. Optionee hereby acknowledges that City may disclose any records, information and materials submitted to City in connection with this Agreement.

Section 17. Prohibition Against Making Contributions to City. Through its execution of this Agreement, Optionee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits

any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Optionee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more.

Section 18. Conflicts of Interest. Through its execution of this Agreement, Optionee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Optionee becomes aware of any such fact during the term of this Agreement, Optionee shall immediately notify the City.

Section 19. Effective Date. Notwithstanding anything to the contrary contained herein, this Agreement shall not be effective until the date on which the City's Board of Supervisors and Mayor enact a resolution approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, OPTIONEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION.

[Signatures appear on following page]

IN WITNESS WHEREOF, Optionee and the City have executed this Agreement as of the date first written above.

CITY:

OPTIONEE:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

455 Fell LP, A California Limited Partnership

By: _____
John Updike
Director of Property

By: Mercy Housing Calwest, a California nonprofit public benefit corporation, its managing general partner

By: _____
Its: _____

By: _____
Olson Lee
Director, Mayor's Office of Housing and Community Development

By: SFHDC 455 Fell LLC, a California limited liability company, its general partner

By: San Francisco Housing Development Company, a California nonprofit public benefit corporation, its sole member/manager

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
Its: _____


By: 
Deputy City Attorney

EXHIBIT A

Property Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): Lot 024, Block 0831

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE SOUTHERLY LINE OF FELL STREET AND THE EASTERLY LINE OF LAGUNA STREET; RUNNING THENCE EASTERLY ALONG THE SOUTHERLY LINE OF FELL STREET, 27 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE SOUTHERLY 120 FEET TO THE NORTHERLY LINE OF HICKORY STREET; THENCE WESTERLY ALONG THE NORTHERLY LINE OF HICKORY STREET, 27 FEET AND 6 INCHES TO THE EASTERLY LINE OF LAGUNA STREET; THENCE NORTHERLY ALONG THE EASTERLY LINE OF LAGUNA STREET, 120 FEET TO ITS INTERSECTION WITH THE SOUTHERLY LINE OF FELL STREET AND THE POINT OF BEGINNING.

BEING A PORTION OF WESTERN ADDITION BLOCK NO. 210.

PARCEL TWO:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF FELL STREET, DISTANT THEREON 27 FEET AND 6 INCHES EASTERLY FROM THE EASTERLY LINE OF LAGUNA STREET; AND RUNNING THENCE EASTERLY ALONG SAID LINE OF FELL STREET, 27 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE SOUTHERLY 120 FEET TO THE NORTHERLY LINE OF HICKORY STREET; THENCE AT A RIGHT ANGLE WESTERLY ALONG THE NORTHERLY LINE OF HICKORY STREET, 27 FEET AND 6 INCHES; AND THENCE AT A RIGHT ANGLE NORTHERLY 120 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF WESTERN ADDITION BLOCK NO. 210.

PARCEL THREE:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF FELL STREET, DISTANT THEREON 55 FEET EASTERLY FROM THE EASTERLY LINE OF LAGUNA STREET; RUNNING THENCE EASTERLY AND ALONG SAID LINE OF FELL STREET, 27 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE SOUTHERLY 75 FEET AND 6 INCHES TO A POINT PERPENDICULARLY DISTANT 44 FEET AND 6 INCHES NORTHERLY FROM THE NORTHERLY LINE OF HICKORY STREET; THENCE AT A RIGHT ANGLE WESTERLY 27 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE NORTHERLY 75 FEET AND 6 INCHES TO THE POINT OF BEGINNING.

BEING A PART OF WESTERN ADDITION BLOCK NO. 210.

PARCEL FOUR:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF HICKORY STREET, DISTANT THEREON 55 FEET EASTERLY FROM THE EASTERLY LINE OF LAGUNA STREET; RUNNING THENCE EASTERLY AND ALONG SAID LINE OF HICKORY STREET, 27 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE NORTHERLY 44 FEET AND 6 INCHES TO A POINT PERPENDICULARLY DISTANT 75 FEET AND 6 INCHES SOUTH FROM THE SOUTHERLY LINE OF FELL STREET; THENCE AT A RIGHT ANGLE WESTERLY 27 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE SOUTHERLY 44 FEET AND 6 INCHES TO THE POINT OF BEGINNING.

BEING A PART OF WESTERN ADDITION BLOCK NO. 210.

PARCEL FIVE:

EXHIBIT "A"
Legal Description
(continued)

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF FELL STREET, DISTANT THEREON 82 FEET AND 6 INCHES EASTERLY FROM THE EASTERLY LINE OF LAGUNA STREET; RUNNING THENCE EASTERLY ALONG SAID LINE OF FELL STREET, 27 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE SOUTHERLY 120 FEET TO THE NORTHERLY LINE OF HICKORY STREET; THENCE AT A RIGHT ANGLE WESTERLY ALONG THE SAID NORTHERLY LINE OF HICKORY STREET, 27 FEET AND 6 INCHES; AND THENCE AT A RIGHT ANGLE NORTHERLY 120 FEET TO THE SAID SOUTHERLY LINE OF FELL STREET AND THE POINT OF BEGINNING.

BEING A PORTION OF WESTERN ADDITION BLOCK NO. 210.

PARCEL SIX:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF FELL STREET, DISTANT THEREON 110 FEET EASTERLY FROM THE EASTERLY LINE OF LAGUNA STREET; RUNNING THENCE EASTERLY ALONG SAID LINE OF FELL STREET, 27 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE SOUTHERLY 120 FEET TO THE NORTHERLY LINE OF HICKORY STREET; THENCE AT A RIGHT ANGLE WESTERLY ALONG SAID NORTHERLY LINE OF HICKORY STREET, 27 FEET AND 6 INCHES; AND THENCE AT A RIGHT ANGLE NORTHERLY 120 FEET TO THE POINT OF BEGINNING.

BEING PART OF WESTERN ADDITION BLOCK NO. 210.

PARCEL SEVEN:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF FELL STREET, DISTANT THEREON 137 FEET AND 6 INCHES EASTERLY FROM THE EASTERLY LINE OF LAGUNA STREET; RUNNING THENCE EASTERLY ALONG THE SOUTHERLY LINE OF FELL STREET, 55 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 120 FEET TO THE NORTHERLY LINE OF HICKORY STREET; THENCE WESTERLY ALONG SAID NORTHERLY LINE OF HICKORY STREET, 55 FEET; THENCE AT A RIGHT ANGLE NORTHERLY 120 FEET TO THE SOUTHERLY LINE OF FELL STREET AND THE POINT OF BEGINNING.

BEING A PORTION OF WESTERN ADDITION BLOCK NO. 210.

PARCEL EIGHT:

PARCEL A:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF FELL STREET, DISTANT THEREON 178 FEET AND 9 INCHES WESTERLY FROM THE WESTERLY LINE OF OCTAVIA STREET; RUNNING THENCE WESTERLY ALONG SAID LINE OF FELL STREET, 41 FEET AND 3 INCHES; THENCE AT A RIGHT ANGLE SOUTHERLY 120 FEET TO THE NORTHERLY LINE OF HICKORY STREET; THENCE AT A RIGHT ANGLE EASTERLY ALONG SAID LINE OF HICKORY STREET, 41 FEET AND 3 INCHES; AND THENCE AT A RIGHT ANGLE NORTHERLY 120 FEET TO THE POINT OF BEGINNING.

BEING PORTION OF WESTERN ADDITION BLOCK NO. 210.

PARCEL B:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF FELL STREET, DISTANT THEREON 137 FEET AND 6 INCHES WESTERLY FROM THE WESTERLY LINE OF OCTAVIA STREET; RUNNING THENCE WESTERLY ALONG SAID LINE OF FELL STREET 41 FEET AND 3 INCHES; THENCE AT A RIGHT ANGLE SOUTHERLY

EXHIBIT "A"
Legal Description
(continued)

120 FEET TO THE NORTHERLY LINE OF HICKORY STREET; THENCE AT A RIGHT ANGLE EASTERLY 41 FEET AND 3 INCHES ALONG SAID LINE OF HICKORY STREET; THENCE AT A RIGHT ANGLE NORTHERLY 120 FEET TO THE POINT OF BEGINNING.

BEING PORTION OF WESTERN ADDITION BLOCK NO. 210.

PARCEL NINE:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF FELL STREET, DISTANT THEREON 110 FEET WESTERLY FROM THE WESTERLY LINE OF OCTAVIA STREET; AND RUNNING THENCE WESTERLY ALONG SAID LINE OF FELL STREET, 27 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE SOUTHERLY 120 FEET TO THE NORTHERLY LINE OF HICKORY STREET; THENCE AT A RIGHT ANGLE EASTERLY ALONG SAID LINE OF HICKORY STREET, 27 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE NORTHERLY 120 FEET TO THE POINT OF BEGINNING.

BEING A PART OF WESTERN ADDITION BLOCK NO. 210.

PARCEL TEN:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF HICKORY STREET, DISTANT THEREON 82 FEET AND 6 INCHES WESTERLY FROM THE WESTERLY LINE OF OCTAVIA STREET; RUNNING THENCE WESTERLY ALONG SAID LINE OF HICKORY STREET, 27 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE NORTHERLY 41 FEET; THENCE AT A RIGHT ANGLE EASTERLY 27 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE SOUTHERLY 41 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF WESTERN ADDITION BLOCK NO. 210.

ALSO SHOWN AS PARCEL 'O' ON THAT SURVEY MAP ENTITLED "FINAL MAP NO. 7639A" WHICH MAP RECORDED MAY 9, 2014, BOOK EE OF SURVEY MAPS, PAGE(S) 170-176, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO.

NOTE: THE DESCRIPTION CONTAINED HEREIN IS BASED UPON INFORMATION SUBMITTED TO THIS COMPANY FOR THE PURPOSE OF THIS REPORT; IT IS NOT BASED UPON A SURVEY. SAID DESCRIPTION DOES NOT LOCATE THE LAND BY REFERENCE TO MONUMENTS OF RECORD AND IS NOT SUFFICIENT FOR TITLE INSURANCE PURPOSES. LINES AND MONUMENTS THEREIN REFERRED TO MUST BE LOCATED BY A CORRECT SURVEY, CONSIDERATION BEING GIVEN TO DESCRIPTIONS OF ADJOINING LANDS NOT INTENDED TO BE INCLUDED WITHIN THE DEVELOPMENT AREA. ANY FINAL REPORT OR POLICY IS DEPENDENT UPON SUCH A PROPER DESCRIPTION BEING FURNISHED AND WILL BE SUBJECT TO ANY MATTERS DISCLOSED BY THE TITLE SEARCH OF ANY ADDITIONAL LAND DISCLOSED BY SUCH DESCRIPTION.

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Breed

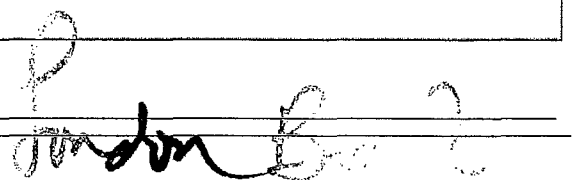
Subject:

Option to Ground Lease in the amount of \$0 – 455 Fell, L.P.]

The text is listed below or attached:

Resolution authorizing the execution and performance of an Option to Ground Lease in connection with the parcel located at 455 Fell Street (Block 831, Lot 24) (the "Property") in the amount of \$0 which expires on June 30, 2017, with an extension option of six months until December 31, 2017, between the City and County of San Francisco and 455 Fell, L.P., a California limited partnership.

Signature of Sponsoring Supervisor:



For Clerk's Use Only:

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
 (S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: 455 Fell Street LP, a California limited partnership	
<p><i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i></p> <p>See attached information regarding Mercy Housing Calwest, managing general partner of 455 Fell Street LP, a California limited partnership</p>	
Contractor address: C/O Mercy Housing California, 1360 Mission Street, Suite 300 SF, CA 94103	
Date that contract was approved:	Amount of contracts: \$0
Describe the nature of the contract that was approved: Option to Ground Lease 455 Fell Street (Central Freeway Parcel O) for the development of 108 affordable family apartment units.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

 Signature of City Elective Officer (if submitted by City elective officer)

 Date Signed

 Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

 Date Signed

Mercy Housing Calwest

(1) members of the contractor's board of directors;

Valerie Agostino, Vice President
Melissa Clayton, Vice President
Stephen Daues, Vice President
Jennifer Dolin, Vice President
Jane Graf, Vice President
Barbara Gualco, Vice President
Ed Holder, Vice President
Sheela Jivan, Vice President
Bruce Saab, Vice President
Steve Spears, Vice President
Joe Rosenblum, Secretary
Amy Bayley, Assistant Secretary

(2) the contractor's chief executive officer, chief financial officer and chief operating officer

Doug Shoemaker, President
Vince Dodds, Treasurer

(3) any person who has an ownership of 20 percent or more in the contractor

N.A.

(4) any subcontractor listed in the bid or contract

N.A.

(5) any political committee sponsored or controlled by the contractor.

N.A.