File No. 101161 Committee Item No. 2
Board Item No. 4

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Economic Development **Date** September 20, 2010

Board of Supervisors Meeting **Date** September 28, 2010

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Completed by: Alisa Somera **Date** September 17, 2010
Completed by: Alisa Somera **Date** September 22, 2010

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

[Construction Agreement for 1150 Ocean Avenue]

Resolution approving an agreement and authorizing the Director of Planning to execute the agreement on behalf of the City and County of San Francisco in order to ensure the construction on-site of 26 inclusionary units in the mixed-use development proposed at 1150 Ocean Avenue (Lot No. 003 in Assessor's Block No. 3180).

WHEREAS, Resolution 36-10 enacted interim zoning controls that established procedures and requirements for the City to enter into an agreement with a private developer to memorialize the provision of on-site inclusionary rental units by the developer and to acknowledge, as to the inclusionary units only, an exception to the Costa-Hawkins Rental Housing Act's limitations on rent restrictions on the basis of certain concessions and incentives provided by the City; and

WHEREAS, City and Developer negotiated an agreement consistent with Resolution No. 36-10 (the "Agreement"); and

WHEREAS, A copy of the Agreement is on file with the Clerk of the Board of Supervisors in File No. 101161, which is hereby declared to be a part of this resolution as if set forth fully herein ("Agreement"); and

WHEREAS, The Mayor's Office of Housing has reviewed the Agreement and recommends its approval; and

WHEREAS, Avalon Ocean Avenue, L.P., the developer of 1150 Ocean Avenue, has agreed to the terms and conditions of the Agreement in File No. 101161 and to provide 26 inclusionary units on-site at the 1150 Ocean Avenue mixed-use development: and

WHEREAS, The Board of Supervisors has reviewed the Agreement and finds that it is consistent with and furthers the purpose of Resolution 36-10; and

WHEREAS, The Board of Supervisors finds that the City would not be willing to waive the Affordable Housing Fee in Section 415 et seq. absent the developer's representations in the Agreement, including the provision of on-site affordable units and the fact that, due to assistance in the form of concessions and incentives described in Government Code Section 65915 et seq. provided to the developer by the City, the affordable units fit within the exception to the Costa Hawkins Rental Housing Act set forth in Civil Code Section 1954.52(b); and

WHEREAS, Pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, the significant environmental impacts associated with the Balboa Park Station Area Plan (on a program level) and with the Project in particular were described and analyzed, and alternatives and mitigation measures that could avoid or reduce those impacts were discussed in the Final Environmental Impact Report certified by the Planning Commission on December 4, 2008 in Motion No. 17774 (the "FEIR"). The Planning Commission adopted a statement of overriding considerations for approval of the Balboa Park Station Area Plan on December 4, 2008 in Motion No. 17776, and the Planning Commission adopted additional CEQA findings specific to the Project on May 21, 2009 in Motion No. 17885. The information in the FEIR was considered by all entities with review and approval authority over the Project prior to the approval of the Project, including by this Board of Supervisors in approving this Agreement. The relevant CEQA documents, including the findings in Motions No. 17774 and 17776 can be found in Board of Supervisors File No. 101161 and are on file with the Clerk of the Board and are incorporated herein by reference; and

WHEREAS, The Planning Director has the authority to enforce and implement the Planning Code, which includes but is not limited to Section 415, et seq. (Housing Requirements for Residential and Live/Work Development Projects); now, therefore, be it

RESOLVED, That the Board of Supervisors hereby approves the Agreement for 1150 Ocean Avenue on file with the Clerk of the Board of Supervisors in File No. 101161 and authorizes the Planning Director to execute the Agreement on behalf of the City and County of San Francisco.

AGREEMENT TO PROVIDE ON-SITE AFFORDABLE HOUSING UNITS BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND AVALON OCEAN AVENUE, L.P. RELATIVE TO THE DEVELOPMENT KNOWN AS 1150 OCEAN AVENUE

THIS AGREEMENT TO PROVIDE ON-SITE AFFORDABLE HOUSING UNITS ("Agreement") dated for reference purposes only as of this ___ day of _____ 2010, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision of the State of California (the "City"), acting by and through its Planning Department, and AVALON OCEAN AVENUE, L.P., a Delaware limited partnership ("Developer") with respect to the project approved for 1150 Ocean Avenue (the "Project"). City and Developer are also sometimes referred to individually as a "Party" and together as the "Parties."

RECITALS

This Agreement is made with reference to the following facts:

A. Code Authorization. Chapter 4.3 of the California Government Code directs public agencies to grant concession and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Rental Housing Act (California Civil Code Sections 1954.50 *et seq.*, hereafter "Costa-Hawkins Act") imposes limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public agency in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (Section 1954.52(b)). Pursuant to Civil Code Section 1954.52(b), the City's Board of Supervisors has enacted Resolution No. 36-10 adopting interim controls to establish procedures and requirements for entering into an inclusionary units agreement with a private developer to memorialize the concessions and incentives granted to the developer and to provide an exception to the Costa-Hawkins Act for the inclusionary units included in the developer's project.

B. Property Subject to this Agreement. The property that is the subject of this Agreement consists of the real property located at 1150 Ocean Avenue, Lot 003 in Assessor's Block 3180 (hereinafter "Property"). The Property is more particularly described in Exhibit A attached hereto. The Land is owned in fee by Developer.

C. Development Proposal; Intent of the Parties. The Developer proposes to construct a large-scale mixed residential and commercial project on the Property, consisting of the development of approximately 173 residential dwelling units and approximately 29,500 gross square feet of ground floor retail space within two 55-foot-tall buildings (one five story and one four story) (the "Project"). City's Planning Commission approved the Project in its Motion No. 17885, dated May 21, 2009 (the "Project Approvals"). The dwelling units that are the subject of this Agreement are the Project's on-site inclusionary units representing fifteen percent (15%) of the Project's dwelling units, which based on the current Project Approvals, would total 26 inclusionary units (the "Inclusionary Units"). The dwelling units in the Project that are not Inclusionary Units, representing eighty-five percent (85%) of the Project's dwelling units, which based on the current Project Approvals would total 147 units, are referred to herein as the "Market Rate Units". This Agreement is not intended to impose restrictions on the

Market Rate Units or any portions of the Project other than the Inclusionary Units. The Parties acknowledge that this Agreement is entered into in consideration of the respective burdens and benefits of the Parties contained in this Agreement and in reliance on their agreements, representations and warranties.

D. Affordable Housing Program. Pursuant to Resolution No. 36-10 approved by City's Board of Supervisors on February 2, 2010 , and signed by the Mayor on February 11, 2010, the City currently requires developers of any housing project consisting of five or more units to pay an Affordable Housing Fee, as defined therein. The Affordable Housing Program provides that developers may be eligible to meet the requirements of the program through the alternative means of entering into an agreement with the City and County of San Francisco pursuant to Chapter 4.3 of the California Government Code for concessions and incentives, pursuant to which the developer covenants to provide affordable on-site units as an alternative to payment of the Affordable Housing Fee to satisfy the requirements of the Affordable Housing Program and in consideration of the City's concessions and incentives.

E. Developer's Election to Provide On-Site Units. Developer has elected to enter into this Agreement to provide the Inclusionary Units in lieu of payment of the Affordable Housing Fee in satisfaction of its obligation under the Affordable Housing Program and to provide for an exception to the rent restrictions of the Costa-Hawkins Act for the Inclusionary Units only.

F. Compliance with All Legal Requirements. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in such a way as to fully comply with the California Environmental Quality Act (Public Resources Code Section 21000 et seq., "CEQA"), Chapter 4.3 of the California Government Code, the Costa-Hawkins Act, the San Francisco Planning Code, and all other applicable laws and regulations.

G. Project's Compliance with CEQA. Pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, the significant environmental impacts associated with the Balboa Park Station Area Plan (on a program level) and with the Project in particular were described and analyzed, and alternatives and mitigation measures that could avoid or reduce those impacts were discussed in the Final Environmental Impact Report certified by the Planning Commission on December 4, 2008 in Motion No. 17774 (the "FEIR"). The Planning Commission adopted a statement of overriding considerations for approval of the Balboa Park Station Area Plan on December 4, 2008 in Motion No. 17776, and the Planning Commission adopted additional CEQA findings specific to the Project on May 21, 2009 in Motion No. 17885. The information in the FEIR was considered by all entities with review and approval authority over the Project prior to the approval of the Project.

H. CEQA and General Plan Findings. There have been no substantial changes in the Project which will require major revisions of the FEIR, no substantial changes have occurred with respect to the circumstances under which the Project is undertaken which will require major revisions of the FEIR, no new information of substantial importance shows that the project will have one or more significant effects not discussed in the FEIR, no mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, such that no subsequent or supplemental environmental review is necessary prior to execution of this Agreement. This Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan and any applicable area or specific plan, including the Balboa Park Station Area Plan, and the

Priority Policies enumerated in Planning Code Section 101.1, as set forth in Planning Commission Motion No. 17885.

AGREEMENT

The Parties acknowledge the receipt and sufficiency of good and valuable consideration and agree as follows:

1. GENERAL PROVISIONS

1.1 Incorporation of Recitals and Exhibits. The preamble paragraph, Recitals, and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set forth in full.

2. CITY'S CONCESSIONS AND INCENTIVES FOR THE INCLUSIONARY UNITS

2.1 Concessions and Incentives. The Developer has received the following concessions and incentives for the production of the Inclusionary Units on-site.

2.1.1 Rezoning. On April 17, 2009, the City rezoned the Property from a NC-2 district to the Ocean Avenue NCT district, pursuant to Ordinance No. 59-09, to provide a concession to the Developer. Prior to the rezoning, there was a density limit on the Property permitting a maximum of 133 dwelling units. The rezoning to Ocean Avenue NCT eliminated any dwelling unit density limit on the Property (except as regulated by the applicable height limit and setback requirements), providing a density bonus of approximately 40 units for the Project.

2.1.2 Project Approvals. On May 21, 2009, the City's Planning Commission approved the Project Approvals, granting conditional use authorization and granting exceptions for the Project, including rear yard, open space dimensions, permitted obstructions within required open areas and contiguous commercial frontage exceptions, permitting approximately 173 units (40 more units than allowable under the prior NC-2 zoning) and approximately 27,500 gross square feet of commercial space, including a formula retail grocery store.

2.1.3 Balboa Park Impact Fee In-Kind Agreement. Pursuant to Planning Code Section 331 (since renumbered Section 431), City and Developer entered into an In Kind Agreement, effective as of August 19, 2009, pursuant to which Developer shall implement the Brighton Avenue Sidewalk Easement and the Lee Avenue Extension, as those terms are defined in the In-Kind Agreement, in lieu of paying the Balboa Park Impact Fee otherwise applicable to the Project.

2.1.4 Waiver of Affordable Housing Fee. City hereby determines that the Developer has satisfied the requirements of the Affordable Housing Program by covenanting to provide the Inclusionary Units on-site, as provided in Section 3.1, and accordingly hereby waives the obligation of the Developer to pay the Affordable Housing Fee.

2.2 Costa-Hawkins Act Inapplicable to Inclusionary Units Only.

2.2.1 Inclusionary Units. The parties acknowledge that, under Section 1954.52(b) of the Costa-Hawkins Act, the Inclusionary Units are not subject to the Costa

Hawkins Act. Through this Agreement, Developer hereby enters into an agreement with a public entity in consideration for forms of concessions and assistance specified in California Government Code Sections 65915 et seq. The concessions and assistance are comprised of, but not limited to, the concessions and incentives set forth in Section 2.1. In the alternative, as a material part of the consideration for entering into this Agreement, Developer hereby expressly waives any and all rights it may have, now and in the future, as to the Inclusionary Units, and only the Inclusionary Units, under the Costa Hawkins Act with respect to the establishment of the initial and all subsequent rental rates as long as such units are subject to the restrictions of the Affordable Housing Program.

2.2.2 Market Rate Units. Developer expressly does not hereby waive any rights under the Costa-Hawkins Act as to the Market Rate Units, and the Parties agree that this Agreement does not alter in any manner the way that the Costa-Hawkins Act or any other law, including the City's Rent Stabilization and Arbitration Ordinance (Chapter 37 of the San Francisco Administrative Code) apply to the Market Rate Units.

2.3 Rescission of Rezoning or Project Approvals. In the event the City rescinds the rezoning of the Property to impose a dwelling unit density limit of less than 173 units or rescinds the Project Approvals prior to issuance of a site or building permit for the Project, Developer may terminate this Agreement.

3. COVENANTS OF DEVELOPER

3.1 On-Site Inclusionary Affordable Units. In consideration of the concessions and incentives set forth in Section 2.1 and in accordance with the terms and conditions set forth in the Affordable Housing Program and the Project Approvals, upon Developer obtaining its first certificate of occupancy for each of the two phases of the residential component of the Project, Developer shall provide the Inclusionary Units on-site as required by the Project Approvals, in lieu of payment of the Affordable Housing Fee. Developer may provide the Inclusionary Units in phases, provided not less than fifteen percent (15%) of the first phase's completed dwelling units are on-site Inclusionary Units, and Developer shall provide a number of units equivalent to fifteen percent (15%) of the aggregate number of dwelling units in the Project less the Inclusionary Units in the first phase as on-site Inclusionary Units in the second phase. For example, based on the contemplated total of 173 units comprising the Project, a total of 26 Inclusionary Units would be required in the aggregate for the entire Project in both phases, such that if Developer elects to provide 16 Inclusionary Units in the 86-unit first phase, then 10 Inclusionary Units would be required in the 87-unit second phase, for an aggregate total of 26 on-site Inclusionary Units in lieu of payment of the Affordable Housing Fee.

3.2 Developer's Waiver of Rights Under the Costa-Hawkins Act Only as to the Inclusionary Units. The Parties acknowledge that under the Costa-Hawkins Act, the owner of newly constructed residential real property may establish the initial and all subsequent rental rates for dwelling units in the property without regard to the City's Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the San Francisco Administrative Code). The Parties also understand and agree that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the Inclusionary Units because this Agreement falls within an express exception to the Costa-Hawkins Act as a contract with a public entity in consideration for a direct financial contribution and other forms of assistance specified in Chapter 4.3 (commencing with section 65915) of Division 1 of Title 7 of the California Government Code. Should the Inclusionary Units be deemed subject to the Costa-Hawkins Act, as a material part of the consideration for entering into this Agreement, Developer, on behalf

of itself and all its successors and assigns, hereby expressly waives, now and forever, any and all rights it may have under the Costa-Hawkins Act with respect only to the Inclusionary Units (but only the Inclusionary Units and not as to the Market Rate Units) to be constructed by Developer pursuant to its covenant set forth in Section 3.1 of this Agreement, including a waiver by Developer of any right to bring a legal action against City seeking application of the Costa-Hawkins Act to the Inclusionary Units, and for so long as the Inclusionary Units are subject to restriction on rental rates pursuant to the Affordable Housing Program. The Parties understand and agree that the City would not be willing to enter into this Agreement without the waivers set forth in this Section 3.2.

3.3 Developer's Waiver of Right to Seek Waiver of Affordable Housing Program. Developer specifically agrees to be bound by all of the provisions of the Affordable Housing Program applicable to on-site inclusionary units with respect to the Inclusionary Units. Developer waives its right to seek a waiver of the provisions of the Affordable Housing Program applicable to the Inclusionary Units.

3.4 No Obligation to Construct. By entering into this Agreement, Developer is not assuming any obligation to construct the Project, and the covenants of Developer hereunder become operative only in the event Developer elects to proceed with construction of the Project.

4. MUTUAL OBLIGATIONS

4.1 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Project Approvals.

4.2 Other Necessary Acts. Each Party shall execute and deliver to the other all further instruments and documents as may be reasonably necessary to carry out this Agreement, the Project Approvals, and Applicable Law in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

5. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS.

5.1 Interest of Developer. Developer represents that collectively it is the legal and equitable fee owners of the Project Site, that it has the power and authority to bind all other persons with legal or equitable interest in the Inclusionary Units to the terms of this Agreement, and that all other persons holding legal or equitable interest in the Inclusionary Units are to be bound by this Agreement. Developer is a limited partnership, duly organized and validly existing and in good standing under the laws of the State of Delaware. Developer has all requisite power and authority to own property and conduct business as presently conducted. Developer has made all filings and is in good standing in the State of California.

5.2 No Conflict With Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with the Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are

no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

5.3 Priority of Agreement. Developer warrants and represents that there is no prior lien or encumbrance against the Project Site which, upon foreclosure, would be free and clear of the obligations set forth in this Agreement.

5.4 No Inability to Perform; Valid Execution. Developer warrants and represents that it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

5.5 Conflict of Interest. Through its execution of this Agreement, the Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

5.6 Notification of Limitations on Contributions. Through execution of this Agreement, the Developer acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

5.7 Nondiscrimination. In the performance of this Agreement, Developer agrees not to discriminate on the basis of the fact or perception of a person's, race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes, against any City employee, employee of or applicant for employment with the Developer, or against any bidder or contractor for public works or improvements, or for a franchise, concession or lease of property, or for goods or services or supplies to be purchased by the Developer. A similar provision shall be included in all subordinate agreements let, awarded, negotiated or entered into by the Developer for the purpose of implementing this Agreement.

6. AMENDMENT; TERMINATION

6.1 Amendment or Termination. Except as provided in Sections 6.2 (Automatic Termination) and 8.4 (Remedies for Default), this Agreement may only be amended or terminated with the mutual written consent of the Parties.

6.1.1 Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, or the approval of a Subsequent Approval, shall require an amendment to this Agreement. Upon approval, any such matter shall be deemed to be incorporated automatically into the Project and this Agreement (subject to any conditions set forth in the amendment or Subsequent Approval). Notwithstanding the foregoing, in the event of any direct conflict between the terms of this Agreement and a Subsequent Approval, or between this Agreement and any amendment to a Project Approval or Subsequent Approval, then the terms of this Agreement shall prevail and any amendment to this Agreement shall be accomplished as set forth in Section 6.1 above.

6.2 Automatic Termination. This Agreement shall automatically terminate in the event that the Inclusionary Units are no longer subject to regulation as to the rental rates of the Inclusionary Units and/or the income level of households eligible to rent the Inclusionary Units under the Affordable Housing Program, or successor program.

7. TRANSFER OR ASSIGNMENT; RELEASE; RIGHTS OF MORTGAGEES; CONSTRUCTIVE NOTICE

7.1 Agreement Runs With The Land. Developer may assign or transfer its duties and obligations under this Agreement to another entity ("Transferee"). As provided in Section 9.2, this Agreement runs with the land and any Transferee will be bound by all of the terms and conditions of this Agreement.

7.2 Rights of Developer. The provisions in this Section 7 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any mortgage, deed of trust, or other device securing financing with respect to the Project Site or Project, (iii) granting a leasehold interest in all or any portion of the Project Site, or (iv) transferring all or a portion of the Project Site pursuant to a sale, transfer pursuant to foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a mortgage. None of the terms, covenants, conditions, or restrictions of this Agreement or the other Project Approvals shall be deemed waived by City by reason of the rights given to the Developer pursuant to this Section 7.2.

7.3 Developer's Responsibility for Performance. If Developer transfers or assigns all or any portion of the Project Site or any interest therein to any other person or entity ("Transferee"), Developer shall continue to be responsible for performing the obligations under this Agreement as to the transferred property interest until such time as there is delivered to the City a legally binding Assignment and Assumption Agreement. The City is entitled to enforce each and every such obligation assumed by the Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert any defense against the City's enforcement of performance of such obligation that is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the transfer or assignment, the Assignment and Assumption

Agreement, the purchase and sale agreement, or any other agreement or transaction between the Developer and the Transferee.

7.4 Release Upon Transfer or Assignment. Upon the Developer's transfer or assignment of all or a portion of the Project Site or any interest therein, including the Developer's rights and interests under this Agreement, the Developer shall be released from any obligations under this Agreement with respect to the portion of the Project Site so transferred; provided, however, that (i) the Developer is not then in default under this Agreement and (ii) the Transferee executes and delivers to the City the legally binding Assignment and Assumption Agreement. Following any transfer, in accordance with the terms of this Section 7, a default under this Agreement by the Transferee shall not constitute a default by the Developer under this Agreement and shall have no effect upon the Developer's rights under this Agreement as to the remaining portions of the Project Site owned by the Developer. Further, a default under this Agreement by the Developer as to any portion of the Project Site not transferred shall not constitute a default by the Transferee and shall not affect any of Transferee's rights under this Agreement.

7.5 Rights of Mortgagees; Not Obligated to Construct; Right to Cure Default.

7.5.1 Notwithstanding anything to the contrary contained in this Agreement (including without limitation those provisions that are or are intended to be covenants running with the land), a mortgagee, including any mortgagee who obtains title to the Project Site or any portion thereof as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action, ("Mortgagee") shall not be obligated under this Agreement to construct or complete the Inclusionary Units required by this Agreement or to guarantee their construction or completion solely because the Mortgagee holds a mortgage or other interest in the Project Site or this Agreement. The foregoing provisions shall not be applicable to any other party who, after such foreclosure, conveyance, or other action in lieu thereof, or other remedial action, obtains title to the Project Site or a portion thereof from or through the Mortgagee or any other purchaser at a foreclosure sale other than the Mortgagee itself. A breach of any obligation secured by any mortgage or other lien against the mortgaged interest or a foreclosure under any mortgage or other lien shall not by itself defeat, diminish, render invalid or unenforceable, or otherwise impair the obligations or rights of the Developer under this Agreement.

7.5.2 Subject to the provisions of the first sentence of Section 7.5.1, any person, including a Mortgagee, who acquires title to all or any portion of the mortgaged property by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise shall succeed to all of the rights and obligations of the Developer under this Agreement and shall take title subject to all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote any portion of the Project Site to any uses, or to construct any improvements, other than the uses and improvements provided for or authorized by the Project Approvals and this Agreement.

7.5.3 If City receives a written notice from a Mortgagee or from Developer requesting a copy of any Notice of Default delivered to Developer and specifying the address for service thereof, then City shall deliver to such Mortgagee at such Mortgagee's cost (or Developer's cost), concurrently with service thereon to Developer, any Notice of Default delivered to Developer under this Agreement. In accordance with Section 2924 of the California Civil Code, City hereby requests that a copy of any notice of default and a copy of any notice of sale under any mortgage or deed

of trust be mailed to City at the address shown on the first page of this Agreement for recording.

7.5.4 A Mortgagee shall have the right, at its option, to cure any default or breach by the Developer under this Agreement within the same time period as Developer has to remedy or cause to be remedied any default or breach, plus an additional period of (i) thirty (30) calendar days to cure a default or breach by the Developer to pay any sum of money required to be paid hereunder and (ii) ninety (90) days to cure or commence to cure a non-monetary default or breach and thereafter to pursue such cure diligently to completion. Mortgagee may add the cost of such cure to the indebtedness or other obligation evidenced by its mortgage, provided that if the breach or default is with respect to the construction of the improvements on the Project Site, nothing contained in this Section or elsewhere in this Agreement shall be deemed to permit or authorize such Mortgagee, either before or after foreclosure or action in lieu thereof or other remedial measure, to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation to the City, by written agreement reasonably satisfactory to the City, to complete in the manner provided in this Agreement the improvements on the Project Site or the part thereof to which the lien or title of such Mortgagee relates.

7.5.5 If at any time there is more than one mortgage constituting a lien on any portion of the Project Site, the lien of the Mortgagee prior in lien to all others on that portion of the mortgaged property shall be vested with the rights under this Section 7.5 to the exclusion of the holder of any junior mortgage; provided that if the holder of the senior mortgage notifies the City that it elects not to exercise the rights sets forth in this Section 7.5, then each holder of a mortgage junior in lien in the order of priority of their respective liens shall have the right to exercise those rights to the exclusion of junior lien holders. Neither any failure by the senior Mortgagee to exercise its rights under this Agreement nor any delay in the response of a Mortgagee to any notice by the City shall extend Developer's or any Mortgagee's rights under this Section 7.5. For purposes of this Section 7.5, in the absence of an order of a court of competent jurisdiction that is served on the City, a then current title report of a title company licensed to do business in the State of California and having an office in the City setting forth the order of priority of lien of the mortgages shall be reasonably relied upon by the City as evidence of priority.

7.6 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Project Site is and shall be constructively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Project Site.

8. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION

8.1 Enforcement. The only parties to this Agreement are the City and the Developer. Except as provided in Section 8.2 below, this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

8.2 Default. For purposes of this Agreement, the following shall constitute a default under this Agreement: the failure to perform or fulfill any other material term, provision, obligation, or covenant hereunder and the continuation of such failure for a

period of thirty (30) calendar days following a written notice of default and demand for compliance; provided, however, if a cure cannot reasonable be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter, but in no event later than one hundred twenty (120) days.

8.3 Notice of Default. Prior to the initiation of any action for relief specified in Section 8.5 below, the Party claiming default shall deliver to the other Party a written notice of default. The notice of default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the notice of default, then that Party, within twenty-one (21) calendar days of receipt of the notice of default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that a default has not occurred. The Parties shall meet to discuss resolution of the alleged default. If, after good faith negotiation, the Parties fail to resolve the alleged default within thirty (30) calendar days, then the Party alleging a default may (i) institute legal proceedings pursuant to Section 8.5 to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section 8.5. The Parties may mutually agree to extend the time periods set forth in this Section.

8.4 Remedies for Default. In the event of a default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity. In addition, the non-defaulting Party may terminate this Agreement subject to the provisions of this Section 8 by sending a Notice of Intent to Terminate to the other Party setting forth the basis for the termination. The Agreement will be considered terminated effective upon receipt of a Notice of Termination. The Party receiving the Notice of Termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable.

8.5 No Waiver. Failure or delay in giving notice of default shall not constitute a waiver of default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies; nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

9. MISCELLANEOUS PROVISIONS

9.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, constitute the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

9.2 Binding Covenants; Run With the Land. From and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties, and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Regardless of whether the procedures in Section 7 are followed, all provisions of this Agreement shall be enforceable during the term hereof as equitable servitudes and constitute covenants and

benefits running with the land pursuant to applicable law, including but not limited to California Civil Code Section 1468.

9.3 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and such City and County shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

9.4 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Project Approvals shall be deemed to refer to the Agreement or the Project Approval as it may be amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.

9.5 Project Is a Private Undertaking; No Joint Venture or Partnership.

9.5.1 The development proposed to be undertaken by Developer on the Project Site is a private development, except for that portion to be devoted to public improvements to be constructed by the Developer in accordance with the Project Approvals. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. The Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of the Developer contained in this Agreement or in the Project Approvals.

9.5.2 Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and the Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. The Developer is not a state or governmental actor with respect to any activity conducted by the Developer hereunder.

9.6 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

9.7 Time of the Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties under this Agreement.

9.8 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon written notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or

communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Susan Cleveland-Knowles, Dep. City Attorney

To Developer:

AvalonBay Communities, Inc.
185 Berry Street, Suite 3500
San Francisco, CA 94107
Attn: Meg Spriggs

with a copy to:

Steven L. Vettel
Farella Braun + Martel LLP
235 Montgomery Street
San Francisco CA 94104

9.9 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

9.10 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages then to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

9.11 Tropical Hardwood and Virgin Redwood. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product.

9.12 Sunshine. The Developer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure.

Exhibits

A. Description of Project Site

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY

CITY AND COUNTY OF SAN FRANCISCO
a municipal corporation

By _____
John Rahaim
Director of Planning

Approved as to form:
Dennis J. Herrera, City Attorney

By _____
Susan Cleveland-Knowles
Deputy City Attorney

DEVELOPER

AVALON OCEAN AVENUE, L.P.,
a Delaware limited partnership

By: California Multiple Financing, Inc.,
a Maryland corporation,
its General Partner

By: _____
Name: Stephen W. Wilson
Title: Executive Vice President

SAN FRANCISCO
PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- ☑ Inclusionary Housing (Sec. 315)
- ☐ Jobs Housing Linkage Program (Sec. 313)
- ☐ Downtown Park Fee (Sec. 139)
- ☑ First Source Hiring (Admin. Code)
- ☐ Child Care Requirement (Sec. 314)
- ☐ Other

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Planning Commission Motion No. 17885

HEARING DATE: MAY 21, 2009

Date:	May 7, 2008
Case No.:	**2006.0884CEU**
Project Address:	**1150 OCEAN AVENUE**
Zoning:	Ocean Avenue NC-T (Neighborhood Commercial, Transit) 55-X Height and Bulk District
Block/Lot:	3180/003
Project Sponsor:	Meg Spriggs AvalonBay Communities, Inc. 185 Berry Street, Suite 3500 San Francisco, CA 94107
Staff Contact:	Michael Smith – (415) 558.6322 michael.e.smith@sfgov.org

ADOPTING CEQA FINDINGS AND FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 737.11, 737.21, 703.4, AND 737.22, OF THE PLANNING CODE FOR DEVELOPMENT OF A LOT LARGER THAN 9,999 SQUARE FEET, FOR DEVELOPMENT OF A NON-RESIDENTIAL USE LARGER THAN 3,999 SQUARE FEET, FOR A FORMULA RETAIL GROCERY STORE, INCLUDING OFF-SALE LIQUOR, BEER AND WINE SALES, FOR UP TO 1 PARKING SPACE PER 250 SQUARE FEET OF GROCERY STORE SPACE IN EXCESS OF 20,000 SQUARE FEET, AND TO ALLOW A PLANNED UNIT DEVELOPMENT PER PLANNING CODE SECTION 304, WITH SPECIAL EXCEPTIONS FROM PLANNING CODE SECTIONS 134 (REAR YARD); 135 (OPEN SPACE DIMENSIONS); 136 AND 136.1 (PERMITTED OBSTRUCTIONS WITHIN REQUIRED OPEN AREAS); AND 145.4(d)(3) (FOR A NONRESIDENTIAL USE TO OCCUPY MORE THAN 75 CONTIGUOUS LINEAR FEET ALONG OCEAN AVENUE) FOR A PROPERTY WITHIN THE OCEAN AVENUE NC-T (NEIGHBORHOOD COMMERCIAL TRANSIT) DISTRICT AND A 55-X HEIGHT AND BULK DISTRICT. INCLUDED IN THE PROPOSAL IS THE DEMOLITION OF A COMMERCIAL BUILDING AND SURFACE PARKING LOT, AND THE CONSTRUCTION OF TWO NEW MIXED-USE, 55-FOOT-TALL BUILDINGS (ONE FIVE-STORY AND ONE FOUR-STORY) TOTALING APPROXIMATELY 318,300 GROSS SQUARE FEET (GSF) OVER A 237-SPACE SUBTERRANEAN AND AT-GRADE PARKING STRUCTURE; AND ADOPTING FINDINGS AND A MITIGATION MONITORING AND REPORTING PROGRAM UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT. THE

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SAN FRANCISCO

CITY PLANNING COMMISSION

MOTION NO. 17774

CERTIFYING A FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED BALBOA PARK STATION AREA PLAN. THE PLAN AREA GENERALLY INCLUDES THE AREA SURROUNDING THE BALBOA PARK STATION, AND ALONG GENEVA, OCEAN, AND SAN JOSE AVENUES.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case File No. 2004.1059E – Balboa Park Station Area Plan (hereinafter "Area Plan" or "Project") based upon the following findings:

1) The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Sections 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Sections 15000 *et seq.*, (hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").

   a. The Citywide Group of the Department filed for environmental evaluation on October 8, 2004, and the Major Environmental Analysis section of the Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on July 29, 2006.

   b. Notice of Preparation of an EIR was filed with the State Secretary of Resources via the State Clearinghouse on July 29, 2006.

   c. On September 21, 2007, the Department published the Draft Environmental Impact Report ("DEIR") and provided public notice in a newspaper of general circulation of the availability of the document for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.

   d. On September 21, 2007, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, and to government agencies, the latter both directly and through the State Clearinghouse.

e. Notices of Availability of the DEIR and of the date and time of the public hearings were posted on the Planning Department's website and also in various locations in the project area by Department staff on September 21, 2007.

2) The Commission held a duly advertised public hearing on the DEIR on October 25, 2007, at which time opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on November 5, 2007.

3) The Department prepared responses to comments on environmental issues received at the public hearing and in writing on the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, corrected errors in the DEIR, and prepared impact analysis for proposed revisions to the Area Plan. This material was presented in a Comments and Responses document, published on October 30, 2008, that was distributed to the Commission and to all parties who commented on the DEIR, and was available to others upon request at Department offices and web site.

4) A Final Environmental Impact Report ("FEIR") has been prepared by the Department, consisting of the DEIR, all background studies and materials, any consultations and comments received during the review process, any additional information that became available, and the Summary of Comments and Responses all as required by law.

5) Project environmental files have been made available for review by the Commission and the public. These files are available for public review at the Department offices at 1650 Mission Street, Suite 400, and are part of the record before the Commission.

6) On December 4, 2008, the Commission reviewed and considered the FEIR and hereby does find that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.

7) The Planning Commission hereby does find that the FEIR concerning Case File 2004.1059E – Balboa Park Station Area Plan reflects the independent judgment and analysis of the City and County of San Francisco and is adequate, accurate, and objective. The Commission also finds that since publication of the DEIR there has been no significant new information or other factors that would require recirculation of the document pursuant to CEQA Guidelines Section 15088.5. Information to support this conclusion is found in the FEIR, which includes the Comments and Responses, and in Department staff analysis. In furtherance of the above findings, the Planning Commission hereby does CERTIFY THE

COMPLETION of said Final Environmental Impact Report in compliance with CEQA, the CEQA Guidelines, and Chapter 31.

The Commission, in certifying the completion of the FEIR, hereby does find that the proposed project described in the FEIR would have the following significant unavoidable environmental impacts, which could not be mitigated to a level of non-significance:

a. Traffic impacts at three intersections: (1) Ocean Avenue/Junipero Serra Boulevard, (2) Ocean Avenue/I-280 Northbound On-Ramp, and (3) Ocean Avenue/San Jose Avenue;

b. Traffic and transit impacts at two project intersections: (1) Ocean Avenue/ Geneva Avenue/Phelan Avenue, and (2) Geneva Avenue/I-280 Northbound and Southbound Ramps;

c. Transit operations impacts on the Muni K-Ingleside Metro line; and

d. Cumulative impacts to a potential historic district along Ocean Avenue.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission on December 4, 2008.

Linda Avery
Planning Commission Secretary

AYES:	Olague, Antonini, Borden, Lee, Miguel, Moore
NOES:	None
ABSENT:	None
EXCUSED:	Sugaya

ACTION: Certification of the Balboa Park Station Area Plan FEIR

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SAN FRANCISCO

CITY PLANNING COMMISSION

MOTION NO. 17775

ADOPTING ENVIRONMENTAL FINDINGS (AND A STATEMENT OF OVERRIDING CONSIDERATIONS) UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND STATE GUIDELINES IN CONNECTION WITH THE ADOPTION OF THE BALBOA PARK STATION AREA PLAN AND RELATED ACTIONS NECESSARY TO IMPLEMENT SUCH PLANS. THE PLAN AREA GENERALLY INCLUDES THE AREA SURROUNDING THE BALBOA PARK STATION, AND ALONG GENEVA, OCEAN, AND SAN JOSE AVENUES.

Whereas, the Planning Department, the Lead Agency responsible for the implementation of the California Environmental Quality Act ("CEQA") has undertaken a planning and environmental review process for the proposed Balboa Park Station Area Plan ("Area Plan" or "Project") and provided for appropriate public hearings before the Planning Commission.

Whereas, The San Francisco Planning Department is seeking to implement the Balboa Park Station Area Plan. The Plan aims to improve upon the existing land use pattern, improve transit facilities and services, create balanced parking policies, provide new housing and increase opportunities for affordable housing, enhance streets through public realm improvements, retain and reuse the area's historic properties, and create opportunities to integrate art into the community.

Whereas, the Planning Department initiated a public planning process and, with help from the community, developed a vision for the Balboa Park area as described in "The Balboa Park Station Area Plan: Draft for Public Review." The Balboa Park Area Plan formalizes this community vision through objectives, policies, and implementing actions. The Plan addresses land use, transporation, parking, housing, streets and open space, built form, historic preservation, and the arts. The Plan includes a Community Improvements Program Document, which guides the implementation of the Plan's goals.

Whereas, the Balboa Park Station Area Plan proposes two new zoning districts in the area of San Francisco generally located in south central San Francisco as described in the preamble, including the following: Ocean Avenue Neighborhood Commercial Transit District, and the Neighborhood Commercial Transit Cluster District.

Whereas, the above-mentioned use districts would eliminate the existing density cap and minimum parking requirement as described in detail in the *Balboa Park Station Area Plan Initiation Package*, dated November 6, 2008, transmitted to the City Planning

Commission and made available to the general public on November 6, 2008. These use districts would replace existing Neighborhood Commercial Districts within the Project Area.

Whereas, the Planning Commission will consider—in conjunction with the proposed new use districts—adoption of General Plan amendments, including new and/or amended goals, objectives, and policies as part of the Balboa Park Station Area Plan. These include, but are not limited to, zoning map amendments, a community benefits fee program, and other applicable zoning changes.

Whereas, the actions listed in Attachment A hereto ("Actions") are part of a series of considerations in connection with the adoption of the Balboa Park Station Area Plan and various implementation actions ("Project"), as more particularly described in Attachment A hereto.

Whereas, the Planning Department determined that an Environmental Impact Report ("EIR") was required for the proposed Balboa Park Station Area Plan, and provided public notice of that determination by publication in a newspaper of general circulation on July 29, 2006.

Whereas, the Planning Department on September 21, 2007, published the Draft Environmental Impact Report ("DEIR"). The DEIR was circulated for public review in accordance with the California Environmental Quality Act, California Public Resources Code section 21000 *et seq.* ("CEQA"), the State CEQA Guidelines, 14 California Code of Regulations, Section 15000 *et seq.*, ("CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"). The Planning Commission held a public hearing on the DEIR on October 25, 2007.

Whereas, the Planning Department prepared responses to comments on the DEIR and published the Comments and Responses document on October 30, 2008, which together with the DEIR, background studies and materials, and additional information that became available, constitute the Final Environmental Impact Report ("FEIR").

Whereas, the Planning Commission, on December 4, 2008, by Motion No. 17774, reviewed and considered the FEIR and found that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed complied with the provisions of CEQA, the CEQA Guidelines, and Chapter 31.

Whereas, the Planning Commission by Motion No. 17774, also certified the FEIR and found that the FEIR was adequate, accurate, and objective, reflected the independent judgment of the Planning Commission and that the Comments and Responses document contains no significant revisions to the DEIR that would have required recirculation under CEQA Guidelines Section 15088.5, and adopted findings of significant impacts associated with the Project and certified the completion of the FEIR for the Project in compliance with CEQA and the CEQA Guidelines.

Whereas, the Planning Department prepared proposed Findings, as required by CEQA, regarding the alternatives, mitigation measures, and significant environmental impacts analyzed in the FEIR and overriding considerations for approving the Project, including all of the actions listed in Attachment A hereto, and a proposed mitigation monitoring and reporting program, attached as Exhibit 1 to Attachment A, which material was made available to the public and this Planning Commission for the Planning Commission's review, consideration, and actions.

THEREFORE BE IT RESOLVED, that the Planning Commission has reviewed and considered the FEIR and the actions associated with the Balboa Park Station Area Plan Rezoning and hereby adopts the Project Findings attached hereto as Attachment A including a statement of overriding considerations, and the Mitigation Monitoring and Reporting Program.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of December 4, 2008.

Linda Avery
Commission Secretary

AYES: Commissioners Antonini, Borden, Moore, Sugaya
NOES:
ABSENT: Commissioners Lee, Miquel, Olague
EXCUSED:

ACTION: Adoption of CEQA Findings