

**NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE**

**RECORDING REQUESTED BY:** )

**And When Recorded Mail To:** )

**Name:** Andrew Wiegel )  
Wiegel Law Group )

**Address:** 414 Gough Street )  
Suite 1 )

**City:** San Francisco )

**California 94102** )

CONFIRMED COPY of document recorded

09/06/2012, 2012J498832

RECORDED WITH THE COUNTY OF SAN FRANCISCO  
COUNTY CLERK  
SAN FRANCISCO, CALIFORNIA

**Space Above This Line For Recorder's Use**

I (We) 1650 Broadway LLC the owner(s) of that certain real property situated in the City and County of San Francisco, State of California, more particularly described as follows (or see attached sheet marked Exhibit A on which property is more fully described):

Attached as Exhibit A

Being Assessor's Block 0570, Lots 010 & 011, commonly known as 1622-1662 BROADWAY (AKA 1650 BROADWAY), hereby give notice that there are special restrictions on the use of said property under Part II, Chapter II of the San Francisco Municipal Code (Planning Code).

Said restrictions consist of conditions attached to Conditional Use Application No. 2008.0862C, authorized by the Planning Commission of the City and County of San Francisco on March 12, 2009 as set forth in Planning Commission Motion No. 17840, to allow for new construction of a seven-story, 34-unit residential building with 49 parking spaces in an RM-3 (Residential, Mixed, Medium Density) District and a 80-A Height and Bulk District.

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### The restrictions and conditions of which notice is hereby given are:

1. This authorization is for a Conditional Use Authorization under Planning Code Sections 253 and 303 to allow new construction of a seven-story, 34-unit residential building with 49 parking spaces within two basement levels with the RM-3 (Residential, Mixed, Moderate Density) District and an 80-A Height and Bulk District, in general conformance with plans filed with the Application as received on January 29, 2009 and stamped "EXHIBIT B" included in the docket for Case No. 2008.0862C, reviewed and approved by the Commission on March 12, 2009.

### Design and Construction

2. Final design, materials, glazing, color, texture, and detailing shall be reviewed and approved by the Planning Department prior to the approval of any building permit application.
3. Highly reflective spandrel glass, mirror glass, or deeply tinted glass shall not be permitted. Only clear glass shall be used at all levels.
4. The zinc siding and roofing material proposed at the upper levels of the project shall be of a light color.
5. 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.
6. The garage door shall be a maximum width of 14 feet. The curb cut shall be a maximum width of 12 feet including curb returns.
7. All proposed street trees shall be 24-inch box sized minimum.
8. The seventh (top) floor (as illustrated on Exhibit B), may be increased an additional 100 square feet maximum to allow for architectural articulation/shaping along the exterior façade(s). The additional area (up to 100 sf) shall be documented on the seventh floor plan submitted as part of the building permit application.
9. Construction hours for interior and exterior construction work shall be limited to Monday through Friday between the hours of 7 AM and 8 PM. No weekend construction (interior and exterior) shall be permitted.

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### Affordable Dwelling Units

10. Under Section 315 of the Planning Code, the project is subject to the Inclusionary Housing requirement. The number of below-market-rate (BMR) units required depends upon whether the affordable units are being provided on-site, off-site, or through payment of in-lieu fees or the project applicant may choose a combination of two or three of the options. The project applicant shall make a final determination prior to issuance of the site/building permit for the approved project.
  - a. If this requirement is being met on-site, the Applicant shall designate a total of 12 (twelve) percent of the dwelling units as affordable [Below Market Rate (hereinafter "BMR")] units to be constructed as part of the Project. This equals four (4) of the thirty-four (34) dwelling units currently proposed.
  - b. If this requirement is being met off-site, the Applicant shall designate a total of 17 (seventeen) percent of the dwelling units as affordable [Below Market Rate (hereinafter "BMR")] units to be constructed as part of the Project. This equals six (6) off-site units.
  - c. Payment of an in-lieu fee which shall be determined according to the procedures set forth in Section 315.6 of the Planning Code. The project applicant can pay an in lieu fee to satisfy the requirements of Inclusionary Housing requirement. The in lieu fee shall be paid to the Treasurer for use by the Mayor's Office of Housing for the purpose of constructing on an alternative site. The amount of the fee shall take into account the number of units required by the project applicant to meet the off-site housing development and the affordability gap as identified in the "Jobs Housing Nexus Analysis: prepared by Keyser Marston Associates, Inc. in June 1997 for the Maximum Annual Rent or Maximum Purchase Price for the equivalent unit sizes.
  - d. Compliance through a combination of the above methods per Planning Code Section 315.4(e)3. Project sponsor can provide any combination of construction of on-site units as provided in 315.4, off-site units as provided in Section 315.5, or payment of an in-lieu fee as provide in Section 315.6, provided that the project sponsor constructs or pays the fee at the appropriate percentage or fee level required for that option.
  - e. If applicable, BMR units shall be designated on the building plans prior to approval of any building permit. BMR units shall (1.) reflect the unit size mix of the market rate units, (2.) shall be constructed and marketed concurrently with the construction and sale of the market rate units, and (3.) shall be of comparable quality and materials as the market rate units in the project. The project proposes thirty-four (34) dwelling units which are planned to be ten (10) one-bedroom units, ten (10) two-bedroom units, ten (10) two-bedrooms-plus-den units and four (4) three-bedroom units. The subject on-site BMR units shall be distributed in unit sizes as follows if thirty-four (34) units are built on the site as proposed: one (1) one-bedroom unit, one (1) two-bedroom unit, one (1) two-

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bedrooms-plus-den unit and one (1) three-bedroom unit distributed throughout the structure with one unit per floor and equal to the market rate units in quality of construction and finish materials.

- f. All BMR rental units shall be rented or sold to qualifying households, as defined in the terms of the Affordable Housing Monitoring Procedures Manual (hereinafter "Procedures Manual") published and adopted by Resolution No. 13405 on September 10, 1992 by the Planning Commission, and as set forth in the Inclusionary Affordable Housing Program legislation and Section 315.8 (a) of the Planning Code.
- g. If the units in the building are made available as rental units, the BMR unit shall be rented to qualifying households, as defined in the Affordable Housing Monitoring Procedures Manual (hereinafter "Procedures Manual") published and adopted by Resolution 13405 on September 10, 1992 by the Planning Commission, whose gross annual income, adjusted for household size, does not exceed sixty (60) percent of the median income for the San Francisco Principal Metropolitan Statistical Area (PMSA). The percentage of median income specified herein shall be the maximum income for qualifying households and the basis for base rent for BMR units. Base rent for such units, together with the utility allowance as described in the Procedures Manual, shall not exceed thirty (30) percent of sixty (60) percent of such median income adjusted annually for permitted rent increases as described in the Procedures Manual, for a period of fifty (50) years from the date of initial rental of the BMR unit. The owner of the BMR unit may apply to the City Planning Commission to modify this condition to permit conversion of a BMR rental unit to an affordable condominium ownership unit pursuant to the requirements of the Procedures Manual, provided that such unit shall be governed by the sale and resale procedures outlined in the Procedures Manual.
- h. If the units in the building are offered for sale, the BMR unit shall be sold to first time home buyer households, as defined in the Procedures Manual, whose gross annual income, adjusted for household size, does not exceed one hundred (100) percent of the median income for the San Francisco Principal Metropolitan Statistical Area (PMSA). The initial sales price of such units shall be calculated according to the Procedures Manual based on such percentage of median income. This restriction shall apply for a fifty (50) year period from the date of the initial sale of the BMR unit.
- i. The Applicant shall administer the marketing and reporting procedures, including the payment of administrative fees to the monitoring agency if such fees are authorized by ordinance, according to the procedures established in the Procedures Manual or as otherwise provided by law.
- j. If the units are provided for sale, the sale and resale of the BMR unit shall satisfy the marketing, sales, reporting and monitoring procedures, including the payment of administrative fees to the monitoring agency if such a fee is authorized by ordinance, according to the procedures established in the Procedures Manual.

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- k. The definitions, procedures and requirements for BMR units are set forth in the Procedures Manual. Terms used in these Conditions of Approval and not otherwise defined shall have the meanings set forth in the Procedures Manual.
- l. The definitions, procedures and requirements for BMR units set forth in the Procedures Manual, are incorporated herein as Conditions of Approval. Terms used in these Conditions of Approval and not otherwise defined shall have the meanings set forth in the Procedures Manual.
- m. Prior to issuance of any building permit for the project (including any building permit issued for any partial phase of the project), the Project Sponsor shall have designated the BMR units in accordance with Items a, b and e above;
- n. Prior to issuance of the Building Permit, the Project Sponsor shall record a Notice of Special Restriction on the property that records a copy of this approval and identifies the BMR units satisfying the requirements of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to the Mayor's Office of Housing or its successor (MOH), the monitoring agency for the BMR unit.

### Mitigation Measures

- 11. The "Mitigation Monitoring and Reporting Program" and "Improvement Measures Implementation Program" identified in the Mitigated Negative Declaration (MND), Case No. 2005.0893E for the project shall be incorporated as Conditions of Approval for this Conditional Use Authorization, Case No. 2008.0862C and are attached hereto as "EXHIBIT 1" and "EXHIBIT 2." In the event discrepancies occur between the attached exhibits and the final MND, the more stringent measures shall apply.

### Planning Code Compliance

- 12. The Project Sponsor shall appoint a community liaison to deal with issues and other related matters of concern to nearby residents. The Applicant shall report the name and telephone number of this officer to the Zoning Administrator for reference, and for inclusion in the Case Docket. Should implementation of this Project result in complaints from neighborhood residents, which are not resolved by the Project Sponsor and are subsequently reported to the Zoning Administrator and found to be in violation of the Planning Code an/or the specific Conditions of Approval for the Project as set forth in EXHIBIT A of this motion, the Zoning Administrator shall report such complaints to the Planning Commission which may thereafter hold a public hearing on the matter in accordance with the hearing notification and conduct procedures as set forth in Sections 174, 306.3 and 306.4 of the Code to consider revocation or modification of this Conditional Use authorization.

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13. Violation of the conditions contained in this Motion or of any other provisions of the Planning Code may be subject to abatement procedures and fines up to \$500 a day in accordance with Planning Code Section 176.
14. Should monitoring of the Conditions of Approval contained in Exhibit A of this Motion be required, the Project Sponsor or successors shall pay fees as established in Planning Code Section 351(e)(1).

### Planning Commission Recommendations

15. The project sponsor is encouraged to work with the owner to reduce or address impacts on the adjacent property to the east (Lot 009) due to the construction impacts of the project. Such construction impacts include, but are not limited to: tie back into the adjacent foundation, property line windows and any other Fire and Building Code issues related to the project being proposed to the shared property line.
16. The project sponsor is encouraged to explore the feasibility of providing two on-site car share spaces as part of the total approved parking count. If car share is not provided on-site, the project sponsor is encouraged to explore providing two off-site car share spaces within the immediate vicinity of the project.

### Recordation

17. Prior to the issuance of the Building Permit 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 premises (Assessor's 2083, Lot 001), which notice shall state that construction has been authorized by and is subject to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied.
18. The Project Sponsor shall photocopy the Notice of Special Restrictions onto the coversheet of the plan sets submitted with the Building Permit Application for this project.
19. The authorization and right vested by virtue of this action shall be deemed void and canceled if, within 3 years of the date of this Motion, a site permit or building permit for the Project has not been secured by Project Sponsor. This authorization may be extended at the discretion of the Zoning Administrator only if the failure to issue a permit by the Department of Building Inspection is delayed by a city, state, or federal agency or by appeal of the issuance of such permit.

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The use of said property contrary to these special restrictions shall constitute a violation of the Planning Code, and no release, modification or elimination of these restrictions shall be valid unless notice thereof is recorded on the Land Records by the Zoning Administrator of the City and County of San Francisco; except that in the event that the zoning standards above are modified so as to be less restrictive and the uses therein restricted are thereby permitted and in conformity with the provisions of the Planning Code, this document would no longer be in effect and would be null and void.

Dated: 9/6/12 at San Francisco, California

1650 Broadway LLC  
By: [Signature], President  
(Owner's Signature)

\_\_\_\_\_  
(Agent's Signature)

This signature(s) must be acknowledged by a notary public before recordation; add Notary Public Certification and Official Notarial Seal.

GFC:pg\NWTeam\wp51\2008\CA\2008.0862C - 1622-1662 Broadway (aka 1650 Broadway - NSR

EXHIBIT "A"

PROPERTY DESCRIPTION

The land referred to in this Report is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

PARCEL I:

BEGINNING at a point on the Northerly line of Broadway, distant thereon 162 feet and 9 inches Westerly from the Westerly line of Van Ness Avenue; running thence Westerly along the said Northerly line of Broadway 36 feet and 8 inches; thence at a right angle Northerly 137 feet and 6 inches; thence at a right angle Easterly 1 foot and 5- $\frac{3}{4}$  inches; thence at a right angle Northerly 8 feet and 4 inches; thence at a right angle Easterly 33 feet and 3 inches; thence at a right angle Southerly 8 feet and 4 inches; thence at a right angle Easterly 1 foot and 11- $\frac{1}{4}$  inches; and thence at a right angle Southerly 137 feet and 6 inches to the point of beginning.

BEING a portion of Western Addition Block No. 94.

Assessor's Lot 10, Block 0570

PARCEL II:

BEGINNING at a point on the Northerly line of Broadway, distant thereon 124 feet and 11 inches Easterly from the Easterly line of Franklin Street; running thence Easterly along said line of Broadway 60 feet and 5 inches; thence at a right angle Northerly 137 feet and 6 inches; thence at a right angle Westerly 60 feet and 5 inches; thence at a right angle Southerly 137 feet and 6 inches to the point of beginning.

BEING a portion of Western Addition Block No. 94.

Assessor's Lot 011, Block 0570



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
 County of San Francisco }

On September 6, 2012 before me, Fatimah S. Sikon, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Ernest J. McNabb  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Notice of Special Restrictions Under the Planning Code

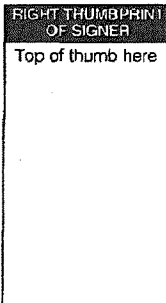
Document Date: September 6, 2012 Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

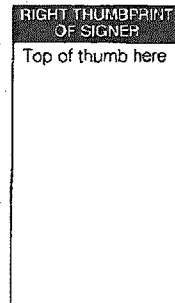
Signer's Name: Ernest J. McNabb Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): President
- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: himself

- Corporate Officer — Title(s): \_\_\_\_\_
- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

