

## SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS ("Agreement") is made as of May 5, 2014 by and between TENANTS & OWNERS DEVELOPMENT CORPORATION, a nonprofit corporation, YERBA BUENA CONSORTIUM LLC, a California limited liability company as (collectively the "Petitioners"), as Petitioners in *Yerba Buena Consortium, LLP and Tenants and Owners Development Corporation v. City and County of San Francisco et al.*, (Sacramento Superior Court Case No. 34-2013-80001611) and the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic established pursuant to the California Community Redevelopment Law ("Agency"), the CITY AND COUNTY OF SAN FRANCISCO ("City"), Real Party in Interest 706 MISSION CO. LLC ("706 Mission"), and Real Party in Interest THE MEXICAN MUSEUM (Real Parties collectively with the City and Agency, the "Respondents"). Together, the parties to this Agreement may be referred to as "Parties," or in the singular a "Party."

### RECITALS

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

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

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

D. On May 15, 2013, the Historic Preservation Commission approved a Major Permit to Alter for the Project by Motion No. 0197. By the same Motion, it also adopted CEQA Findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program. Petitioners appealed and on July 23, 2013, the Board of Supervisors denied Petitioners' appeal by Motion No. 13-0096.

E. On May 23, 2013, the Planning Commission granted a Section 309 Determination of Compliance and Request for Exceptions by Motion No 18894, increased the Absolute Cumulative Limit for new shadow on Union Square by Resolution No. 18876 and allocated this increase to the Project by Motion No. 18877, and adopted CEQA Findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program by Motion No. 18875.

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

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

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

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

I. On July 19, 2013, the Successor Agency filed a Notice of Determination ("NOD") regarding Resolution No. 32-2013, and the Oversight Board filed its NOD regarding Resolution No. 8-2013 on July 24, 2013. On August 2, 2013 and August 12, 2013, the Planning Department filed NODs relating to the City's actions.

J. On August 19, 2013, Petitioners filed a Petition for Writ of Mandamus in Sacramento Superior Court, Case No. 34-2013-80001611, alleging that the City and Successor Agency's approval of the Project violated CEQA ("Petition").

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

#### AGREEMENT

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

##### 1. OBLIGATIONS OF THE CITY

###### A. **Skateboard and Bicycle Riding on Sidewalk Prohibited Signs.**

Within sixty days of the Effective Date of this Agreement, the City shall install "Skateboard and Bicycle Riding Prohibited on Sidewalk" signs at the following locations: 4th Street at Jessie, 4th Street at Mission, 4th Street at Minna, 4th Street at Folsom, 4th Street at Howard, 3rd Street at Jessie, 3rd Street at Mission, 3rd Street at Minna, 3rd Street at Folsom, 3rd Street at Howard, and Mission Street at Yerba Buena Lane.

###### B. **Widen Sidewalk at 4th Street and Mission.**

The City shall widen the northwest sidewalk at 4th Street and Mission by filling in the right hand turn lane at that location. The area to be widened is approximately one hundred and

twenty-five feet long and seven feet wide. The widening will be performed to restore the width of the sidewalk for use by pedestrians.

The Department of Public Works ("DPW") will initiate the project within two months of Petitioners' dismissal of the Petition. DPW anticipates the project taking approximately three months to design and six months to construct.

**C. Crosswalk at Folsom and Mabini.**

The City shall forthwith evaluate a permanent signalized crosswalk at Folsom and Mabini. Within 60 days of completing evaluation of the crosswalk, the City shall explore and evaluate potential sources for funding the crosswalk and signal, including the SOMA Stabilization Fund, Rincon Hill Community Improvement Fund, and/or other appropriate funds, and shall request funds from an appropriate source. Once funding is received, the City shall proceed with the crosswalk construction.

**D. Sidewalk Management Workgroup and Plan.**

The City, acting through the DPW Director or his designee, shall initiate a Sidewalk Management Workgroup, consisting of representatives from City agencies—including Municipal Transportation Agency, the Planning Department, and DPW—and stakeholders in the Yerba Buena area to be selected by the City with input of Petitioners, Real Parties, and the Successor Agency. DPW shall convene and the Workgroup shall meet within sixty days of Petitioners' dismissal of the Petition.

The Workgroup will be tasked with considering sidewalk use issues in the area and potential policies or rules to optimize pedestrian capacity and safety. The Workgroup shall consider issues including, but not limited to, sidewalk cafe tables, merchant advertising, streetscape amenities, loading zones (taxi, cargo, and transit), and issues arising from overlapping agency jurisdiction.

The Workgroup shall collaboratively draft a Sidewalk Management Plan memorializing their recommended rules or policies no later than eighteen months after the first Workgroup meeting.

**E. Special Notice for Sidewalk Table Permits.**

The City, acting through DPW, shall provide Petitioners with special notice of any sidewalk table permit applications within the Yerba Buena Area—stretching from 2nd Street to 4th Street and Mission to Folsom. Special notice shall consist of notifying Petitioners by email at [johne@todco.org](mailto:johne@todco.org) that an application has been received and is in process within 48 hours of DPW receiving an application.

**2. OBLIGATIONS OF 706 MISSION**

**A. Payment to City.**

Provided Petitioners are not in default under this Agreement, 706 Mission agrees to donate to the City of San Francisco, for its use at its discretion in the discharge of its obligations set forth in Section 1 above, the lump sum of \$200,000.00 payable within 5 days of the Effective Date of this Agreement.

**B. Payment of Petitioners' Attorneys' Fees.**

Provided Petitioners are not in default under this Agreement, 706 Mission agrees to reimburse Petitioners their reasonable attorneys' fees and costs incurred in the prosecution of this action in the total amount of \$69,000 payable to the Brandt-Hawley Law Group Trust Account within 5 days of the Effective Date of this Agreement.

**3. OBLIGATIONS OF PETITIONERS**

**A. Release.**

As of the Effective Date, except for the obligations created by or arising from this Agreement, the Petitioners, on behalf of themselves and each of their successors, heirs, assigns, agents, employees, representatives, partners, officers, directors, shareholders, members, managers, trustees, beneficiaries, and persons and entities holding beneficial interests, do hereby release and absolutely and forever discharge the Respondents and their respective successors, heirs, assigns, agents, employees, representatives, partners, officers, directors, shareholders, members, managers, trustees, beneficiaries, and persons and entities holding beneficial interests, from any and all claims, demands, causes of action, whether or not now known, suspected or claimed, which they ever had, now have, claim to have had, or may have had against each other as of the Effective Date of this Agreement arising out of, relating to and/or in connection with the Project that is the subject of the Petition.

Accordingly, the Petitioners hereby waive the provision of California Civil Code section 1542, which provides as follows:

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

**B. Dismissal with Prejudice.**

Within three days after 706 Mission delivers the payments required in paragraph 2 A and B, above, the Petitioners shall dismiss the Petition in its entirety with prejudice. The Petitioners shall provide the City, Agency, and Real Parties with documentation from the court evidencing compliance with this provision.

**C. Non-Opposition.**

Petitioners shall not themselves take, and shall not aid, encourage, assist or collaborate with (monetarily or otherwise) any other party in taking any action directed at the Project, or any further required approvals for the Project, including any amendments to the approvals that do not materially alter the Project's impacts on pedestrian safety or use, that would: (1) impair the development and use of the Project or the Property; (2) delay, change the process for issuance of, or otherwise interfere with, any Project approvals or amendments to the approvals; or (3) increase the costs of processing, development, construction or operation, or adversely affect the timing of the development and build-out, of the Project or the Property.

#### 4. GENERAL PROVISIONS

##### A. **Effective Date.**

The date, following execution by Petitioners and Real Parties, by which both the Agency and City have approved this Agreement is the "Effective Date."

##### B. **No Admissions of Liability.**

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

##### C. **Waiver.**

Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to either Party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a part of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

##### D. **Entire Agreement.**

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

##### E. **Headings.**

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

##### F. **Applicable Law.**

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

##### G. **Jurisdiction.**

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

##### H. **Attorneys' Fees.**

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

##### I. **Binding on Successors.**

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

**J. Joint and Several Obligations.**

The obligations of Petitioners shall be joint and several.

**K. No Third Party Beneficiaries.**

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

**L. Informed Decision.**

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

**M. Agreement as Defense.**

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

**N. Cooperation/Further Assurances.**

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

**O. Joint Preparation.**

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

**P. Warranty of Authority.**

The Parties, and each of them, represent and warrant to the other Parties hereto that the individual signatories to this Agreement have authority to execute this Agreement and to release claims as outlined by this Agreement, on behalf of themselves and the entities on whose behalf they purport to act.

**Q. No Prior Assignments.**

The Parties hereto represent and warrant that they have not heretofore assigned or transferred or purported to assign or transfer, to any other person, entity, association, corporation,

or firm whatsoever, any claim, debt, liability, demand, obligation, expense, action or causes of action herein released.

**R. Counterparts.**

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

**S. Notices.**

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

**PETITIONERS:**

John Elberling  
TODCO  
203 Fourth Street  
San Francisco, CA 94103

**CITY:**

San Francisco City Attorney's Office  
Attention: Land Use  
1 Dr. Carlton B. Goodlett Place, Room 234  
San Francisco, CA 94102  
Telephone No.: 415-554-4700

**SUCCESSOR AGENCY**

James B. Morales  
Interim General Counsel  
Successor Agency to the San Francisco Redevelopment Agency  
One South Van Ness Avenue  
Fifth Floor  
San Francisco CA 94103

**706 MISSION:**

c/o  
Andrew Sabey  
Cox, Castle & Nicholson LLP  
555 California Street, 10<sup>th</sup> Floor  
San Francisco, CA 94104  
Fax (415) 262-5199

**THE MEXICAN MUSEUM:**

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


With a copy to:

Victor Marquez  
General Counsel  
Marquez Law Group  
20 California Street, 7<sup>th</sup> Floor  
San Francisco, CA 94111

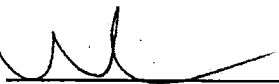
IN WITNESS THEREOF, the undersigned have executed this SETTLEMENT AGREEMENT  
as of the dates hereafter appearing

**PETITIONERS:**


**Tenants and Owners Development Corporation**

By:   
\_\_\_\_\_  
**John Elberling**  
**President**

**Yerba Buena Consortium LLC**

By:   
\_\_\_\_\_  
**John Elberling**  
**Manager**

**APPROVED AS TO FORM:**

By   
\_\_\_\_\_  
**Susan Brandt-Hawley**

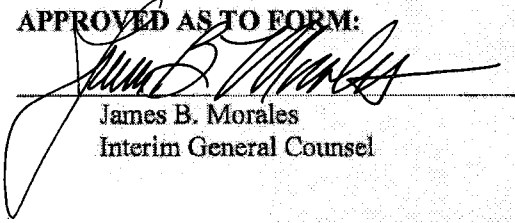


**SUCCESSOR AGENCY:**

By

  
\_\_\_\_\_  
Tiffany Bohler  
Executive Director

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
James B. Morales  
Interim General Counsel

**CITY and COUNTY OF SAN FRANCISCO:**

By

\_\_\_\_\_  
Mohammed Nuru  
Director of Public Works

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robb Kapla  
Deputy City Attorney

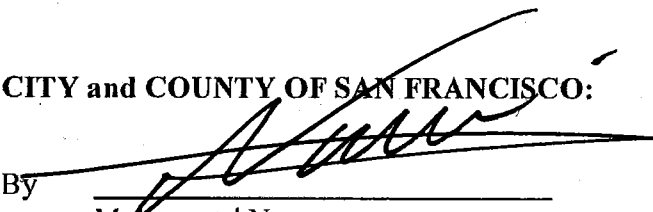
**SUCCESSOR AGENCY:**

By \_\_\_\_\_  
Tiffany Bohee  
Executive Director


**APPROVED AS TO FORM:**

\_\_\_\_\_  
James B. Morales  
Interim General Counsel

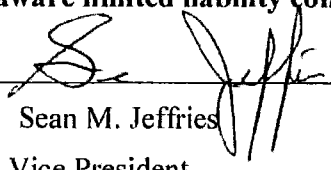
**CITY and COUNTY OF SAN FRANCISCO:**

By \_\_\_\_\_  
  
Mohammed Nuru  
Director of Public Works

**APPROVED AS TO FORM:**

\_\_\_\_\_  
  
Robb Kapla  
Deputy City Attorney

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

By:   
Sean M. Jeffries

Title: Vice President

**THE MEXICAN MUSEUM:**

By: \_\_\_\_\_

Name: Andrew M. Kluger

Title: Chair of the Board of Directors

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

By: \_\_\_\_\_

Sean M. Jeffries

Title: Vice President

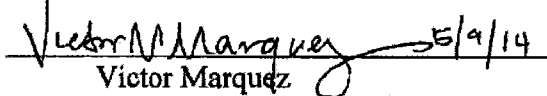
**THE MEXICAN MUSEUM:**

By: 

Name: Andrew M. Kluger

Title: Chair of the Board of Directors

**APPROVED AS TO FORM:**

 5/9/14  
Victor Marquez  
General Counsel