

File No. 111167 Committee Item No. 1
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date November 7, 2011

Board of Supervisors Meeting Date _____

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form (for hearings)
<input type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

OTHER (Use back side if additional space is needed)

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Agreement to Rent Units</u>
* <input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Planning Commission Resolution No. 10444</u>
<input type="checkbox"/>	<input type="checkbox"/>	_____
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Completed by: Alisa Miller Date November 4, 2011
Completed by: _____ Date _____

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

1 [Agreement - Eastern Neighborhoods Rental Incentive Option - 720 and 740 Illinois Street and
2 2121 Third Street]

3 **Resolution approving an agreement and authorizing the Director of Planning to execute**
4 **the agreement on behalf of the City and County of San Francisco in order to implement**
5 **the Eastern Neighborhoods Rental Incentive option under San Francisco Planning**
6 **Code Section 419.5(b) for the residential development proposed at 720 and 740 Illinois**
7 **Street and 2121 Third Street (Lot Nos. 002 & 006 in Assessor's Block No. 4045).**

8
9 WHEREAS, San Francisco Planning Code Section 419.5(b) provides procedures and
10 requirements for the City to enter into an agreement with a private developer to reduce a
11 project's inclusionary housing requirement by 3% and to provide a \$1.00 per gross square
12 foot fee waiver from the applicable Eastern Neighborhoods Public Benefit Fee in exchange for
13 the developer providing the project's dwelling units as rental units for 30 years; and

14 WHEREAS, City and Developer negotiated an agreement consistent with San
15 Francisco Planning Code Section 419.5(b) (the "Agreement"); and

16 WHEREAS, A copy of the Agreement is on file with the Clerk of the Board of
17 Supervisors in File No. 111167, which is hereby declared to be a part of this resolution as if
18 set forth fully herein; and

19 WHEREAS, The Planning Department has reviewed the Agreement and recommends
20 its approval consistent with Planning Commission Motion No. 18444 approved on September
21 15, 2011; and

22 WHEREAS, David Sternberg, the developer of 720 and 740 Illinois Street and 2121
23 Third Street has agreed to the terms and conditions of the Agreement in File No. 111167 and
24 to provide all dwelling units at the 720 and 740 Illinois Street and 2121 Third Street residential
25 development as rental units for 30 years; and

1 WHEREAS, The Board of Supervisors has reviewed the Agreement and finds that it is
2 consistent with and furthers the purpose of the San Francisco Planning Code; and,

3 WHEREAS, The Board of Supervisors finds that the City would not be willing to enter
4 into the Agreement, waive 3% of the on-site inclusionary housing requirement and \$1 per
5 gross square foot of the Eastern Neighborhoods Public Benefit Fee without the understanding
6 and agreement that the Ellis Act does not apply to the Units as a result of the exemption set
7 forth in Government Code Sec. 7060.1(a); and

8 WHEREAS, Pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the San
9 Francisco Administrative Code, the significant environmental impacts associated with the
10 Eastern Neighborhoods Area Plan (on a program level) and with the Project in particular were
11 described and analyzed, and alternatives and mitigation measures that could avoid or reduce
12 those impacts were discussed in the Final Environmental Impact Report certified by the
13 Planning Commission on August 7, 2008 in Motion No. 17659 (the "FEIR"). The Planning
14 Commission adopted a statement of overriding considerations for approval of the Eastern
15 Neighborhoods Area Plan on August 7, 2008 in Motion No. 17661, and the Planning
16 Commission adopted additional CEQA findings specific to the Project on September 15, 2011
17 in Motion No. 18444. The information in the FEIR was considered by all entities with review
18 and approval authority over the Project prior to the approval of the Project, including by this
19 Board of Supervisors in approving this Agreement. The relevant CEQA documents, including
20 the findings in Motions No. 17659 and 17661 can be found in Board of Supervisors File No.
21 081152 and are on file with the Clerk of the Board and are incorporated herein by reference;
22 and

23 WHEREAS, The Planning Director has the authority to enforce and implement the
24 Planning Code, which includes but is not limited to Section 419, et seq. (Housing
25 Requirements for Residential Development Projects in the UMU Zoning Districts of the

1 Eastern Neighborhoods and the Land Dedication Alternative in the Mission NCT District);
2 now, therefore, be it

3 RESOLVED, That the Board of Supervisors hereby approves the Agreement for 720
4 and 740 Illinois Street and 2121 Third Street on file with the Clerk of the Board of Supervisors
5 in File No. 111167 and authorizes the Planning Director to execute the Agreement on behalf
6 of the City and County of San Francisco.

FREE RECORDING PURSUANT TO
GOVERNMENT CODE SECTION 27383
RECORDING REQUESTED BY:

The City and County of San Francisco

WHEN RECORDED, MAIL TO:

San Francisco Planning Department
1650 Mission Street
San Francisco, California 94102
Attn: Director

SPACE ABOVE FOR RECORDER'S USE ONLY

AGREEMENT TO RENT UNITS

by and among

David Sternberg, an individual;

Richard K. Pooler, Inc., a California corporation;

and

**The City and County of San Francisco, a municipal corporation, acting by and through its
Planning Department**

AGREEMENT TO RENT UNITS

THIS AGREEMENT TO RENT UNITS ("Agreement") dated for reference purposes only as of this ____ day of October, 2011, is by and among the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision of the State of California, acting by and through its Planning Department (the "City"), David Sternberg, an individual ("Developer"), and Richard K. Pooler, Inc., a California corporation ("Owner"), with respect to the project approved for 720 & 740 Illinois Street and 2121 3rd Street (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. The Ellis Act (California Government Code Sections 7060 et seq., hereafter "Ellis Act") prohibits public entities from compelling owners of real property to lease their property or continue to offer it for lease, with exceptions, including an exception for dwelling units where the public entity enters into an agreement with the developer to provide rental housing in exchange for a direct financial contribution (Gov't Code Sec. 7060.1(a)). Pursuant to Government Code Section 7060.1(a), the City's Board of Supervisors has enacted as part of the Planning Code Housing Requirements for Residential Development Projects in the Urban Mixed Used ("UMU") Zoning Districts of the Eastern Neighborhoods, Sections 419 et seq. procedures and requirements for entering into an agreement with a private developer to provide an exception to the Ellis Act in order to require the provision of rental housing for a continuous 30 year period for all units included in the developer's project in exchange for certain financial contributions.

B. Property Subject to this Agreement. The property that is the subject of this Agreement consists of the real property located at 720 & 740 Illinois Street and 2121 3rd Street, Lots 2 and 6 in Assessor's Block 4045 (hereinafter "Property"). The Property is more particularly described in Exhibit A attached hereto. The Property is located in the UMU Zoning District of the Eastern Neighborhoods district. As of the date of this Agreement, the Property is owned in fee by the Owner. Prior to commencement of construction of the Project (as defined below), Owner intends to convey its interest to the Developer or its successor or assignee.

C. Development Proposal; Intent of the Parties. The Developer proposes to construct a large-scale residential project on the Property. The San Francisco Planning Commission approved the project in its Motion No. 18444 dated September 15, 2011 (the "Project Approval"), consisting of the development of approximately 106 residential dwelling units (the "Units") within a six story building (the "Project"). The Units will consist of on-site inclusionary units representing seventeen percent (17%) of the Project's total dwelling units, which based on the current Project, would be 18 dwelling units (the "Inclusionary Units"), and market rate units representing eighty three percent (83%) of the Project's dwelling units, which based on the current Project plans would be 88 dwelling units (the "Market Rate Units"). This Agreement is intended to impose restrictions on all of the 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. Inclusionary Affordable Housing Program. The Inclusionary Affordable Housing Program, San Francisco Planning Code Section 415 et seq. (the "Affordable Housing Program") provides that 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. In addition, under Planning Code Section 419.5(b), for projects within the UMU Zoning District of the Eastern Neighborhoods district, developers are provided certain financial benefits in exchange for an agreement to provide the on-site units as rental housing for not less than thirty (30) years from the issuance of the certificate of occupancy for the project.

E. Developer's Election to Provide On-Site Units as Rental Housing. As part of the Project Approval, the Developer agreed to comply with the Affordable Housing Program by providing units on-site and to provide the Inclusionary Units in lieu of payment of the Affordable Housing Fee. Accordingly, Developer, Owner and City entered into that certain Agreement to Provide On-Site Affordable Housing Units dated September __, 2011. Pursuant to Planning Code Section 419.5(b), Developer also voluntarily elected to enter into this Agreement to provide all of the Units as rental housing for not less than 30 years from the issuance of the certificate of occupancy for the Project in exchange for the financial incentives contained herein.

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"), the Ellis 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 Section 15183, and Chapter 31 of the San Francisco Administrative Code, a Certificate of Determination, Exemption from Environmental Review ("CDEER") was issued by the Environmental Review Officer ("ERO") on November 9, 2010 (Case No. 2010.0094E) which determined that a previous version of the Project would not have any new significant or peculiar effects on the environment not previously identified in the Final Environmental Impact Report for the Eastern Neighborhoods Rezoning and Area Plans ("EN FEIR"), nor would any environmental impacts be substantially greater than described in the EN FEIR, no mitigation measures previously found infeasible were determined to be feasible, nor were any new mitigation measures or alternatives identified but rejected by the Developer. On February 3, 2011, the ERO issued a second CDEER, which expressly superseded the first CDEER, and which also determined the Project would (a) not have any new significant or peculiar effects on the environment not previously identified in the EN FEIR, (b) environmental impacts would not be substantially greater than described in the EN FEIR, (c) no mitigation measures previously found infeasible were determined to be feasible and (d) nor were any new mitigation measures or alternatives identified but rejected by the Developer. Therefore, as concluded by the second CDEER, the Project is exempt from environmental review under Section 15183 and Section 21083.3 of the California Public Resources Code.

H. CEQA and General Plan Findings. There have been no substantial changes in the Project which makes the Project ineligible for a Community Plan Exemption or that requires a new CDEER to be prepared and certified, no substantial changes have occurred with respect to the circumstances under which the Project is undertaken which makes the Project ineligible for a Community Plan Exemption or that requires a new CDEER to be prepared and certified, no new information of substantial importance shows that the Project will have one or more significant effects not discussed in the CDEER, 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, and the Priority Policies enumerated in Planning Code Section 101.1, as set forth in Planning Commission Motion No.17120.

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 FINANCIAL INCENTIVES FOR THE PROJECT.

2.1 Direct Financial Contribution. Pursuant to Planning Code Section 419.5(b), and subject to the rescission provisions in Section 3.4 below, the City agrees to provide the following direct financial contributions for the Developer's voluntary agreement to provide all of the Units as rental housing for not less than the Required Rental Term (as defined herein):

(i) a three percent (3%) reduction in the Project's on-site inclusionary housing requirement from 20% to 17%, which based on the current Project, would result in a total of 18 Inclusionary Units rather than 21 Inclusionary Units. Using the City's current Affordable Housing Fee calculations, the reduction of three Inclusionary Units represents a cost savings to the Project of approximately \$799,715; and

(ii) a \$1 per gross square foot reduction in the Eastern Neighborhoods Public Benefit Fee that must be paid to the City pursuant to the Planning Code, which based on the current Project, represents a cost savings to the Project of approximately \$96,025.

2.2 Rescission of Project Approvals. The Developer has secured entitlements for the Project. In the event the City rescinds the Project Approvals prior to commencement of construction for the Project, Developer may terminate this Agreement, and, if the Agreement has been recorded against Owner's fee interest in the Property, the City agrees to take any action required of it to remove the Agreement from the title of the Property.

3. COVENANTS OF DEVELOPER IN EXCHANGE FOR CITY'S FINANCIAL CONTRIBUTIONS TO THE PROJECT.

3.1 Rental Units. In consideration of the City's financial contributions 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 of the residential component of the Project, Developer shall provide all of the Units on-site as rental units for a period of thirty (30) years following the issuance of said certificate of occupancy (the "Required Rental Term"). The Project Approvals do not address whether the Project may be constructed in phases, and at this point Developer does not anticipate phasing the Project development. If in the future Developer seeks to develop the Project in phases, and the Planning Department determines that development of the Project in phases is in general conformance with the Project Approvals, then nothing in this Agreement shall prevent Developer from developing the Project, and providing the Units, in phases, provided the requisite percentage of Inclusionary Units must be developed in each phase and provided that all Units be rental units.

3.2 Ellis Act Does Not Apply to the Project. Through this Agreement, Developer hereby enters into an agreement with a public entity in consideration for the direct financial contributions set forth in Section 2.1 above. Developer agrees and acknowledges that the contributions set forth in Section 2.1 of this Agreement result in identifiable and actual cost reductions to the Project, in the form of reduced Project development costs and increased Project revenues. Accordingly, the Parties acknowledge that, under Section 7060.1(a) of the Ellis Act, the Units are not subject to the Ellis Act during the Required Rental Term. City would not be willing to enter into this Agreement and waive 3% of the on-site Affordable Housing Requirement and \$1 per gross square foot of the Eastern Neighborhoods Public Benefit Fee without the understanding and agreement that the Ellis Act does not apply to the Units as a result of the exemption set forth in Gov't Code Sec. 7060.1(a).

3.3 Developer's Waiver of Rights Under the Ellis Act. The Parties acknowledge that the Ellis Act prohibits public entities from compelling owners of real property to lease their property or continue to offer it for lease. The Parties also understand and agree that the Ellis Act does not and in no way shall limit or otherwise affect the rental requirement set forth herein because this Agreement falls within an express exception to the Ellis Act as a contract with a public entity in consideration for a direct financial contribution. However, should the exception be deemed to not apply to the Project and as a result the Project is deemed to be subject to the Ellis Act, then as a material part of the consideration for this Agreement, Developer, on behalf of itself and all successors and assigns to this Agreement, hereby expressly waives, now and forever, any and all rights it may have under the Ellis Act with respect to the Units consistent with Section 3.1 of this Agreement. Without limiting the forgoing, Developer, on behalf of itself and all successors and assigns to this Agreement, agrees not to bring any legal or other action against City seeking application of the Ellis Act to the Units for so long as the Units are subject to the rental requirement under this Agreement and Planning Code Section 419.5(b). The Parties understand and agree that the City would not be willing to enter into this Agreement without the waivers and agreements set forth in this Section 3.3. The Parties also acknowledge and agree that in the event the waiver set forth in this Section 3.3 is deemed invalid, the severability provision set forth in Section 9.9 below shall apply to this Section and the remaining provisions of this Agreement shall continue in full force and effect.

3.4 Rescission of Financial Contributions. In the event that at any time during the Required Rental Term the Project is deemed subject to the Ellis Act despite the financial contributions and voluntary waivers set forth herein, the financial contributions set forth in Section 2.1 of this Agreement shall no longer apply to the Project, and the Project shall automatically be subject to the 20% inclusionary on-site percentage requirements (instead of 17%) and the full fee amounts for the Eastern Neighborhoods Public Benefit Fee. In such an event, Developer shall be required to take all acts necessary to promptly come into compliance with such requirements, including but not limited to paying any additional fees required to City, including interest and penalties if applicable.

3.5 Project CC&R's. In the event that Developer creates Covenants, Conditions and Restrictions ("CC&R's") for the Project, Developer shall include a provision in such CC&Rs requiring that all Units remain rental housing for the Required Rental Term.

3.6 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, the Affordable Housing Program and applicable law in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

4.3 Effect of Future Changes to Affordable Housing Program. The City hereby acknowledges and agrees that, in the event that the City adopts changes to the Affordable Housing Program after the date this Agreement is executed by both Parties, nothing in this Agreement shall be construed to limit or prohibit any rights Developer may have to modify Project requirements with respect to the Inclusionary Units to the extent permitted by such changes to the Affordable Housing Program.

5. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS.

5.1 Interest of Developer. Developer represents that it is negotiating with Owner for the conveyance of a fee or leasehold interest in the Property to Developer or its successor or assignee, and that before commencement of construction of the Project, either Developer or its successor or assignee will own a fee or leasehold interest in the Property which allows it to construct the Project. Developer hereby agrees that in the event Developer sells, assigns, transfers or otherwise conveys its interest in the Project Approvals before obtaining a fee or leasehold interest in the Property, Developer will only do so after execution of an assignment and assumption of its rights, duties and obligations under this Agreement to such person or entity in the form attached hereto as **Exhibit B**. Without limiting the provisions set forth in Sections 7.1 and 9.2, the Parties understand and agree that the Project Approvals are dependent on this Agreement, and any person or entity that wishes to

rely on the Project Approvals to develop some or all of the Project on the Property shall assume Developer's rights and obligations under this Agreement, either pursuant to an assignment and assumption as set forth in this Section or as a successor owner of the Property under Sections 7.1 and 9.2. Accordingly, the Project Approvals will have no validity or effect if this Agreement is terminated for any reason or if Developer or its successor or assignee asserts that it is not subject to the requirements of this Agreement for any reason. Developer represents that, at the time of commencement of construction of the Project, it, or its successor or assignee to this Agreement, will have the power and authority to bind all other persons with legal or equitable interest in the Units to the terms of this Agreement, and that all other persons holding legal or equitable interest in the Units are to be bound by this Agreement.

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 Property 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 six (6) 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 8.3 (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 Project approval, or the approval of a subsequent Project 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 Project approval). Notwithstanding the foregoing, in the event of any direct conflict between the terms of this Agreement and a subsequent Project approval, or between this Agreement and any amendment to a Project Approval or subsequent Project 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 upon expiration of the Required Rental Term.

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

7.1 Agreement Runs With The Land. City acknowledges that Developer may assign or transfer its rights, duties and obligations under the Project Approvals and this Agreement and/or convey any interest it owns in the Property to another person or entity. Any assignee or successor to

Developer's rights to the Project Approvals and/or Property shall be referred to herein as a "Transferee". Any Transferee may also subsequently assign or transfer its rights, duties and obligations under this Agreement and/or convey any interest it owns in the Property to another person or entity, subject to the provisions herein. 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. Owner acknowledges that the Project Approvals are dependent on this Agreement, and that any party that wishes to develop some or all of the Project on the Property must assume all of Developer's rights and obligations under this Agreement. Without limiting the foregoing, Owner hereby covenants and agrees that Owner will be deemed a Transferee for the purposes of this Agreement in the event Developer never obtains a fee or leasehold interest in the Property, even absent an execution of an assignment of this Agreement, and shall therefore be subject to and bound by the all rights, duties, obligations and terms of this Agreement, including but not limited to the waivers set forth in this Agreement. Owner further agrees to notify any successor owner of the Property or successor developer of the Project of the requirements of this Agreement. Similarly, in the event Developer sells, assigns, transfers or otherwise conveys its interest in the Project Approvals to another developer before obtaining a fee or leasehold interest in the Property, such developer shall be deemed a Transferee, even absent an execution of an assignment of this Agreement in accordance with Section 5.1 above. In any event, any entity that relies on the Project Approvals to construct some or all of the Project will be deemed a Transferee for the purposes 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 or similar agreements to facilitate development of the Property, (ii) encumbering the Property or any portion of the improvements thereon by any mortgage, deed of trust, or other device securing financing with respect to the Property or Project, (iii) granting one or more leasehold interests in all or any portion of the Property, or (iv) transferring all or a portion of the Property 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. Furthermore, although the Developer voluntarily agrees to operate the Project on a rental basis through the Required Rental Term, nothing in this Agreement shall prevent Developer from later selling all or part of the Project as condominium units once the Required Rental Term expires, provided that such sale is permitted by, and complies with, all applicable City and State laws including, but not limited to that, with respect to the Inclusionary Units, those shall only be sold pursuant to the City Procedures for sale of inclusionary units under the Affordable Housing Program.

7.3 Developer's Responsibility for Performance. If Developer transfers or assigns its interests in the Property or this Agreement to a Transferee, Developer shall continue to be responsible for performing the obligations under this Agreement until the date of transfer. Following the date of transfer, the City shall have the right to enforce each and every such obligation of Developer under this Agreement directly against the Transferee as if the Transferee were an original signatory to this Agreement. A Transferee shall have no defense based upon Developer's prior breach of any duty or obligation under this Agreement, or based upon Developer's breach of under any other agreement between the Developer and the Transferee.

7.4 Release Upon Transfer or Assignment. Upon the Developer's transfer or assignment of its interests in the Property, including the Developer's rights and interests under this Agreement, the Developer shall be released from any future obligations under this Agreement, provided Developer shall not be released from any obligations that arose or accrued before the date of transfer.

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 Property 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 Units required by this Agreement or to guarantee their construction or completion solely because the Mortgagee holds a mortgage or other interest in the Property 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 Property 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 Property 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.

7.5.5 If at any time there is more than one mortgage constituting a lien on any lawfully subdivided portion of the Property, 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. Nothing in this Agreement shall impair the foreclosure rights of any mortgagee.

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 Property 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 Property.

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

8.1 Enforcement. The only parties to this Agreement are the City, the Developer and Owner. 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 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 reasonably 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 Remedies for Default. In the event of an uncured 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.

8.4 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 Property, 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 Property is a private development. 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 Property, 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:

David Sternberg
1331 Harrison Street
San Francisco, CA 94103

with a copy to:

John Kevlin, Esq.

Reuben & Junius, LLP
One Bush Street, Suite 600
San Francisco, CA 94104

To Owner:

Richard K. Pooler, Inc.
c/o Richard K. Pooler
PO Box 1086
Danville, CA 94526

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 them 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.

9.13 Effective Date. This Agreement will become effective on the date that the last Party duly executes and delivers this Agreement.

Exhibits

- A. Description of Property
- B. Assignment and Assumption Agreement

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

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

By: _____
John Rahaim
Director of Planning

By: _____
Susan Cleveland-Knowles
Deputy City Attorney

DEVELOPER

By: _____
David Sternberg

OWNER

RICHARD K. POOLER, INC.

By: _____
Richard K. Pooler
President

Dated: _____, 2011

ALL SIGNATURES TO BE NOTARIZED



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

☒ Affordable Housing (Sec. 415)

☐ Jobs Housing Linkage Program (Sec. 413)

☐ Downtown Park Fee (Sec. 412)

☒ First Source Hiring (Admin. Code)

☐ Child Care Requirement (Sec. 414)

☒ Other (EN Impact Fee – Sec. 423)

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion No. 18444

HEARING DATE: SEPTEMBER 15, 2011

Date: September 8, 2011
Case No.: 2010.0094X
Project Address: 740 Illinois and 2121 3rd Streets
Zoning: UMU (Urban Mixed Use) Zoning District
68-X Height and Bulk District
Block/Lots: 4045 / 002 & 006
Project Sponsor: David Sternberg
Sternberg Benjamin Architects
1331 Harrison Street
San Francisco, CA 94103
Staff Contact: Ben Fu – (415) 558-6613
ben.fu@sfgov.org

ADOPTING FINDINGS RELATING TO LARGE PROJECT AUTHORIZATION PURSUANT TO PLANNING CODE SECTION 329 TO ALLOW THE CONSTRUCTION OF A SIX-STORY, APPROXIMATELY 106-UNIT RESIDENTIAL BUILDING WITH OFF-STREET PARKING FOR UP TO 80 SPACES, AND TO ALLOW EXCEPTIONS FOR REAR YARD, GROUND FLOOR ACTIVE USES AND DWELLING UNIT EXPOSURE. THE SUBJECT PROPERTY IS LOCATED WITHIN THE UMU (URBAN MIXED USE) ZONING DISTRICT WITHIN A 68-X HEIGHT AND BULK DESIGNATION.

PREAMBLE

On May 20, 2010, Sternberg Benjamin Architects filed an application with the Planning Department (hereinafter "Department") for Large Project Authorization under Planning Code Section 329 to allow construction of a new six-story, 68-foot buildings consisting of approximately 106 dwelling units, 80 off-street parking spaces and exceptions for rear yard, dwelling unit exposure and ground floor active uses, within the UMU (Urban Mixed Use) Zoning District and a 68-X Height and Bulk District.

On February 3, 2011, the Project was determined to be exempt from the California Environmental Quality Act ("CEQA") Guidelines per Section 15183 and California Public Resources Code

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

City Elective Officer Information <i>(Please print clearly)</i>	
Name of City elective officer(s): Members, San Francisco Board of Supervisors	City elective office(s) held: Members, San Francisco Board of Supervisors
Contractor Information <i>(Please print clearly)</i>	
Name of Contractor: David Sternberg, an individual, and Richard K. Pooler, Inc., a California Corporation	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.	
Principals: David Sternberg Mitchell P. Benjamin Richard K. Pooler	
Contractor address: 1331 Harrison Street San Francisco, CA 94103	
Date that contract was approved: Planning Comm. on 9/15	Amount of contract: Potential value based on rental price
Describe the nature of the contract that was approved: Agreement implementing the Eastern Neighborhoods Rental Incentive option under San Francisco Planning Code Section 419.5(b) for the residential development proposed at 720 and 740 Illinois Street and 2121 Third Street (Lot Nos. 002 & 006 in Assessor's Block No. 4045).	
Comments:	

This contract was approved by (check applicable)

☐ The City elective officer(s) identified on this form☒ A board on which the City elective officer(s) serves San Francisco Board of Supervisors

Print Name of Board

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

Print Name of Board

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

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

Date Signed

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

Date Signed