

File No. 120928

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date September 24, 2012

Board of Supervisors Meeting Date _____

Cmte Board

- | | | |
|-------------------------------------|--------------------------|--|
| ☐ | ☐ | Motion |
| ☐ | ☐ | Resolution |
| ☒ | ☐ | Ordinance |
| ☒ | ☐ | Legislative Digest |
| ☐ | ☐ | Budget and Legislative Analyst Report |
| ☐ | ☐ | Legislative Analyst Report |
| ☐ | ☐ | Youth Commission Report |
| ☒ | ☐ | Introduction Form |
| ☐ | ☐ | Department/Agency Cover Letter and/or Report |
| ☐ | ☐ | MOU |
| ☐ | ☐ | Grant Information Form |
| ☐ | ☐ | Grant Budget |
| ☐ | ☐ | Subcontract Budget |
| ☐ | ☐ | Contract/Agreement |
| ☒ | ☐ | Form 126 – Ethics Commission |
| ☐ | ☐ | Award Letter |
| ☐ | ☐ | Application |
| ☐ | ☐ | Public Correspondence |

OTHER (Use back side if additional space is needed)

- | | | |
|-------------------------------------|--------------------------|--|
| ☒ | ☐ | Agreement for Sale of Real Estate |
| ☒ | ☐ | Planning Commission Motion Nos. 16871, 16880, 17414, 17415 |
| ☒ | ☐ | General Plan Referral Letter, dtd 11/14/11 |
| ☒ | ☐ | DPW Order No. 179,775 |
| ☒ | ☐ | DPW SUR Map No. 2011-002 |
| ☐ | ☐ | _____ |
| ☐ | ☐ | _____ |
| ☐ | ☐ | _____ |
| ☐ | ☐ | _____ |
| ☐ | ☐ | _____ |

Completed by: Alisa Miller Date September 20, 2012

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.

[Summary Vacation of Public Service Easement; Approval of Sale of Easement Interest - 1407-1435 Market Street]

Ordinance ordering the summary vacation of public service easement and approving sale for \$77,000 of City's interest in vacated easement over property located at 1407-1435 Market Street; adopting findings pursuant to the California Streets and Highways Code Sections 8330 et seq.; adopting findings pursuant to the California Environmental Quality Act; adopting findings that the vacation and sale are in conformity with the City's General Plan and Eight Priority Policies of City Planning Code Section 101.1; and authorizing official acts in furtherance of this Ordinance.

Note: Additions are single-underline italics Times New Roman;
deletions are ~~strikethrough italics Times New Roman~~.
Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings. The Board of Supervisors of the City and County of San Francisco hereby finds, determines, and declares as follows:

A. The City and Tenth and Market LLC, a California limited liability company, ("T&M") have negotiated an Agreement for Sale of Real Property (the "Purchase and Sale Agreement") under which the City agrees to sell to T&M City's interest in a public service easement that commences at the western end of Jessie Street and continues on and under an adjacent parcel of real property owned by T&M located at 1407-1435 Market Street (Lot 041 in Assessor's Block 3507) in the City and County of San Francisco (the "Property"). Based on a recent appraisal of the Property, the Director of Property has determined that the \$77,000 purchase price to be paid by T&M is reasonably equivalent to the Property's fair market value. As set forth in the Purchase and Sale Agreement, any such vacation by the City of such public service easement and any consequent sale are subject to approval by the

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1 Board of Supervisors at its sole discretion. The Purchase and Sale Agreement and other real
2 estate transactional documents are on file with the Clerk of the Board of Supervisors in
3 File No. 120928 and are incorporated herein by reference.

4 B. The Department of Public Works has advised the City's Real Estate Division that
5 there are no in-place public utility facilities that are in use that would be affected by vacation
6 because the only utility within the easement to be vacated is an unused section of sewer line
7 that will be purchased by T&M pursuant to the Purchase and Sale Agreement.

8 C. Section 8334 of the California Streets and Highways Code provides that the
9 legislative body of a local agency may summarily vacate an excess right-of-way of a street,
10 highway, or public easement under certain circumstances. In particular, Section 8334
11 provides that the legislative body of a local agency may summarily vacate a street when a
12 portion of a street lies within the property under one ownership and does not continue through
13 such ownership or end touching property of another. In this instance, the portion of the public
14 service easement to be vacated is located wholly on and under the Property, as such
15 easement extends from the western edge of Jessie Street that runs westerly from 10th Street
16 and terminates at the eastern edge of the Property. In addition, Section 8334.5 of the
17 California Streets and Highways Code allows for a summary vacation only if there are no
18 in-place utility facilities that are in use and would be affected by the vacation.

19 D. The residential and ground floor retail project currently under construction by
20 T&M on the Property ("T&M's Project") was approved by the City Planning Commission under
21 City Planning Case No. 2006.0584KXCV. A Final Environmental Impact Report (the "Final
22 EIR") for the Tenth/Market/Mission Streets Mixed Use Project was certified by the City
23 Planning Commission by Motion No. 16871, adopted October 14, 2004 under the original
24 Case No. 2003.0262 EIXCVRSZT, and an Addendum was thereafter prepared on March 8,
25

1 2007 in connection with Case No. 2006.0584. Subsequently, additional addenda were
2 prepared in 2009 and 2012 to evaluate the affordable housing project proposed on an
3 adjacent site which originally was part of an overall site development analyzed in the Final
4 EIR but which is not part of T&M's project. These addenda are contained in and available for
5 review in Planning Department Case File Nos. 2003.0262E and 2011.1043E, respectively.
6 The Final EIR and Addendum are collectively referred to herein as the "FEIR".

7 E. The vacation and sale of the public service easement was not contemplated by
8 T&M or the City when T&M's Project was approved for construction and T&M's request for the
9 vacation and sale of the easement has arisen during implementation of the project.

10 F. The Planning Commission adopted findings pursuant to the California
11 Environmental Quality Act in Motion No. 16880, adopted October 28, 2004, as subsequently
12 modified in Motion Nos. 17414 and 17415, adopted April 5, 2007, which findings are referred
13 to herein as the "CEQA Findings." Mitigation measures were adopted as conditions of
14 approval. Copies of the FEIR and Planning Commission Motion Nos. 16871, 16880,
15 17414 and 17415 are on file with the Clerk of the Board of Supervisors in File No. 120928,
16 and the CEQA Findings are incorporated herein by reference.

17 G. The Director of Planning, by letter dated November 14, 2011 (amended
18 February 13, 2012) (the "General Plan Consistency Determination"), Case No. 2011.1261R,
19 found that the easement vacation is, on balance, in conformance with the City's General Plan
20 and is consistent with the Eight Priority Planning Policies of Planning Code Section 101.1.
21 The General Plan Consistency Determination is on file with the Clerk of the Board of
22 Supervisors in File No. 120928.

23 H. In DPW Order No. 179,775, dated November 17, 2011 the Director of Public
24 Works determined that a summary vacation is appropriate in this instance and recommended
25

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1 such action to the Board of Supervisors. This Order is on file with the Clerk of the Board of
2 Supervisors under File No. 120928 and is incorporated herein by reference.

3 I. The San Francisco Public Utilities Commission (the "SFPUC") by Resolution
4 No. 12-0132 adopted July 24, 2012 recommended approval of the sale and vacation of the
5 portion of the public service easement, and authorized the General Manager of the SFPUC,
6 subject to the Board approval of vacation and sale of such easement, to execute an
7 agreement for the sale and purchase of such easement with T&M.

8 J. Pursuant to the Streets and Highways Code Section 892, the Board hereby finds
9 and determines that the portion of the public service easement to be vacated hereunder, as
10 shown in DPW SUR Map No. 2011-002, (the "Vacated Property") runs from the end of a dead
11 end street, is wholly located on and under private property, and therefore has no use for a
12 nonmotorized transportation facility. A copy of such map is on file with the Clerk of the Board
13 of Supervisors in File No. 120928 and is incorporated herein by reference.

14 Section 2. The public conveyance and necessity require that no easements or other
15 rights be reserved for any public utility facilities and that any rights based upon any such
16 public utility facilities shall be extinguished automatically upon the effectiveness of the
17 vacation hereunder.

18 Section 3. The Board finds and determines that the Vacated Property is
19 unnecessary for present or prospective public use and that the public interest and
20 convenience require that the vacation be done as declared in this Ordinance, provided that
21 the Vacated Property is sold as contemplated by and set forth in the Purchase and Sale
22 Agreement and thereafter developed.

23 Section 4. The Board of Supervisors hereby finds that the summary vacation and
24 sale of the Vacated Property is, on balance, in conformity with the General Plan and
25

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1 consistent with the Eight Priority Policies of Planning Code Section 101.1 for the reasons set
2 forth in the General Plan Consistency Determination.

3 Section 5. The Board of Supervisors has reviewed and considered the FEIR and the
4 record as a whole, and finds that the FEIR is adequate for its use as the decision-making
5 body for the actions taken herein. The Board finds that the easement vacation and transfer of
6 interest in the easement to Buyer is a non physical activity and does not represent a change
7 in the Project that would require additional environmental review. There is no change in the
8 circumstances under which the Project is being undertaken that would require major revisions
9 to the FEIR due to the involvement of new significant environmental impacts or an increase in
10 the severity of previously identified significant impacts, and there is no new information of
11 substantial importance that would change the conclusions set forth in the FEIR. The Board
12 hereby incorporates the CEQA Findings by reference as though fully set forth in this
13 Ordinance.

14 Section 6. In accordance with the recommendation of the Director of Public Works
15 and the Director of Property, the Board of Supervisors hereby approves the Purchase and
16 Sale Agreement and the proposed purchase and sale transaction and authorizes and
17 approves the execution by the Director of Property of the Purchase and Sale Agreement in
18 substantially the form presented to the Board in City's name and on its behalf and any other
19 such documents that are necessary or advisable to effectuate the purpose and intent of this
20 Ordinance, and hereby authorizes the Director of Property to complete the contemplated
21 purchase and sale transaction.

22 Section 7. Additions, Amendments, and Modifications. The Board of Supervisors
23 authorizes the Director of Property to enter into any additions, amendments, or other
24 modifications to the Purchase and Sale Agreement and any other documents or instruments
25 in connection with the Purchase and Sale Agreement that the Director of Property determines

1 are in City's best interests, do not materially decrease City's benefits with respect to the
2 proposed purchase and sale transaction, do not materially increase the consideration or
3 expense to be paid by City pursuant to the Purchase and Sale Agreement or City's obligations
4 or liabilities in connection with the Purchase and Sale Agreement or the proposed purchase
5 and sale transaction, and are necessary and advisable to complete the proposed purchase
6 and sale transaction and effectuate the purpose and intent of this Ordinance, such
7 determination to be conclusively evidenced by the execution and delivery by the Director of
8 Property of any such additions, amendments, or other modifications.

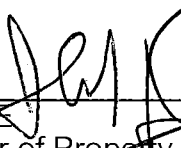
9 Section 8. Approval and Ratification of Prior Actions. All actions prior to the
10 adoption of this Ordinance by City's officers with respect to the Purchase and Sale Agreement
11 and the proposed purchase and sale transaction are hereby approved, confirmed, and ratified.

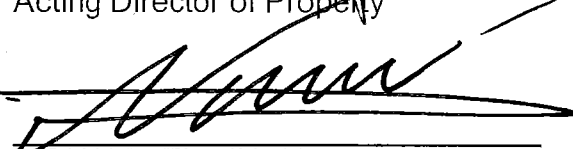
12 Section 9. Pursuant to California Streets and Highways Code Sections 8330 et seq.
13 (Public Streets, Highways, and Service Easement Vacation Law, Summary Vacation) and
14 Section 787 of the San Francisco Public Works Code, the Board orders the summary vacation
15 of the Vacated Property immediately prior to the sale of the Vacated Property to T&M. The
16 Clerk of the Board of Supervisors and the Director of Property shall be authorized, and the
17 Clerk shall be directed, to record or cause to be recorded in the Official Records of the City
18 and County of San Francisco a certified copy of this Ordinance ordering such vacation as
19 provided in Section 8335(a) of the California Streets and Highways Code at the Closing (as
20 defined in the Purchase and Sale Agreement), and thereupon such vacation shall be effective
21 without any further action by the Board of Supervisors. Immediately following the recordation
22 of this Ordinance, the Director of Property is authorized to record the Deed, as defined in and
23 in accordance with the Purchase and Sale Agreement. In the event that the Closing does not
24 occur for any reason, then this Ordinance shall be null and void and shall not be recorded.

1 Section 10. The Clerk of the Board, Director of Property, and Director of Public Works
2 are hereby authorized and directed to take any and all actions that they or the City Attorney
3 may deem necessary or advisable in order to effectuate the purpose and intent of this
4 Ordinance.

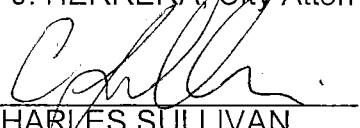
5 Section 11. Effective Date. This Ordinance shall become effective 30 days from the
6 date of passage.
7
8

9 RECOMMENDED:

10
11 
12 JOHN UPDIKE
Acting Director of Property

13 
14 MOHAMMED NURU
15 Director of Public Works
16
17
18

19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By: 
22 CHARLES SULLIVAN
Deputy City Attorney
23
24
25

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BOARD OF SUPERVISORS

LEGISLATIVE DIGEST

[Summary Vacation of Public Service Easement; Approval of Sale of Easement Interest - 1407-1435 Market Street]

Ordinance ordering the summary vacation of public service easement and approving sale for \$77,000 of City's interest in vacated easement over property located at 1407-1435 Market Street; adopting findings pursuant to the California Streets and Highways Code Sections 8330 et seq.; adopting findings pursuant to the California Environmental Quality Act; adopting findings that the vacation and sale are in conformity with the City's General Plan and Eight Priority Policies of City Planning Code Section 101.1; and authorizing official acts in furtherance of this Ordinance.

Existing Law

California Streets and Highways Code sections 8300 et seq. A summary street vacation, which is an expedited procedure as contrasted with a standard street vacation, is permitted when certain conditions are satisfied under State law.

Amendments to Current Law

This legislation would vacate an approximately 34-foot-long unused public service easement (the "Vacated Property") that commences at the western end of Jessie Street and continues on and under an adjacent parcel of real property. This Ordinance would also approve the sale of the Vacated Property, make environmental findings, and findings that the legislation is consistent with the General Plan and the priority policy findings of the Planning Code Section 101.1.

Background

This Ordinance will approve the vacation and sale of the Vacated Property pursuant to a proposed Agreement for Sale of Real Property (the "Agreement") to be entered into between the City and Tenth and Market LLC, a California limited liability company, ("T&M"). The Vacated Property consists of an approximately 34-foot-long unused public service easement formerly used for sewer purposes that commences at the western end of Jessie Street and continues on and under an adjacent parcel of real property owned by T&M located at 1407-1435 Market Street (Lot 041 in Assessor's Block 3507) in the City and County of San Francisco (the "T&M Property"). The T&M Property is currently being developed by T&M for use as a large-scale mixed residential and commercial project.

AGREEMENT FOR SALE OF REAL ESTATE

by and between

CITY AND COUNTY OF SAN FRANCISCO,
as Seller

and

TENTH AND MARKET LLC,
as Buyer

For the sale and purchase of

Public Service easement at 1407-1435 Market Street (Lot 041 in Assessor's Block 3507),
San Francisco, California

June 4, 2012

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EXHIBIT A	REAL PROPERTY DESCRIPTION
EXHIBIT B	QUITCLAIM DEED

AGREEMENT FOR SALE OF REAL ESTATE

(Public Service Easement under property located at
1407-1435 Market Street (Lot 041 in Assessor's Block 3507), San Francisco)

THIS AGREEMENT FOR SALE OF REAL ESTATE (this "**Agreement**") dated, for reference purposes only, as of June 4, 2012, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Seller**"), and TENTH AND MARKET LLC, a Delaware limited liability corporation ("**Buyer**").

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. Pursuant to an Easement Deed dated February 24, 1960 and recorded February 26, 1960 in the official records of the City and County of San Francisco in Book A91 at page 887 (the "**Easement Deed**"), City owns a public service easement (the "**Property**") that commences at the westerly end of the public street commonly known as Jessie Street and continues on and under an adjacent parcel of real property located at 1407-1435 Market Street (Lot 041 in Assessor's Block 3507) in the City and County of San Francisco ("**Buyer's Adjoining Property**"), which is owned by Buyer. The Property is described in Section 1 below.

B. Pursuant to the Easement Deed, (i) the Easement was granted for the express purposes of conveying to City a right of way for use in the construction, reconstruction, maintenance, operation, repair, and/or removal of a sewer and related appurtenances, and (ii) the owners of the Property have reserved rights to use such right of way for any purposes not inconsistent with City's use, but may not place any trees or structures of any kind or character upon such right of way without City's written consent.

C. Since the date the Property was granted to City, (i) City has discontinued use of the sewer line placed in the easement and has no further use for the Property, and (ii) Buyer has acquired Buyer's Adjoining Property and is currently developing and constructing a large-scale mixed residential and commercial project (the "**Project**") on Buyer's Adjoining Property that will consist of approximately 754 residential dwelling units, and approximately 19,000 gross square feet of retail space. Project construction is currently underway.

D. Buyer has requested that City vacate the public service easement associated in the Property and convey all of City's right, title, and interest in the Property to Buyer so that Buyer may proceed with its construction of the Project.

E. The San Francisco Public Utilities Commission ("**SFPUC**") has recommended that the public service easement associated with the Property be vacated and the sale of the Property pursuant to SFPUC Resolution No. _____.

F. Buyer is the only potential purchaser of the Property and is willing to pay its estimated fair market value.

G. Buyer desires to purchase the Property and City is willing to sell the Property, subject to approval by City's Board of Supervisors and Mayor, on the terms and conditions set forth hereinbelow.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Buyer hereby agree as follows:

1. SALE AND PURCHASE

1.1 Property Included in Sale

Subject to the terms, covenants and conditions set forth herein, City agrees to sell to Buyer, and Buyer agrees to purchase from City, City's interest in the Property, to wit the public service easement that crosses real property located at 1407-1435 Market Street (Lot 041 in Assessor's Block 3507), San Francisco, State of California, and more particularly described in Exhibit A attached hereto.

2. PURCHASE PRICE

The purchase price for the Property is Seventy-seven Thousand Dollars (\$77,000) (the "**Purchase Price**"). Buyer shall pay the Purchase Price within five (5) business days after the date this Agreement is executed by the parties hereto, Buyer shall deposit in escrow with Chicago Title Company located at 455 Market St, Suite 2100, San Francisco 94105 (the "**Title Company**"), the sum of Five Thousand Dollars (\$5,000) as an earnest money deposit (the "**Purchase Price**"). The Purchase Price shall be held in an interest-bearing account, and all interest thereon shall be deemed a part of the Purchase Price. Upon the consummation of the purchase and sale contemplated hereunder (the "**Closing**"), the Purchase Price shall be paid to City. All sums payable hereunder shall be paid in immediately available funds of lawful money of the United States of America.

3. TITLE

3.1 Conditions of Title

At the Closing City shall quitclaim interest in and to the Property to Buyer by quitclaim deed in the form of Exhibit C attached hereto (the "**Deed**"). Title to the Property shall be subject to (a) liens of local real estate taxes and assessments, (b) all existing exceptions and encumbrances, whether or not disclosed by a current preliminary title report or the public records or any other documents reviewed by Buyer pursuant to Section 5.1 hereof, and any other exceptions to title which would be disclosed by an accurate and thorough investigation, survey, or inspection of the Property, (c) all items of which Buyer has actual or constructive notice or knowledge. All of the foregoing exceptions to title shall be referred to collectively as the "**Conditions of Title**."

3.2 Buyer's Responsibility for Investigation of Title and Title Insurance

Buyer understands and agrees that the right, title, and interest in the Property shall not exceed that vested in City, and City is under no obligation to furnish any policy of title insurance

in connection with this transaction. Buyer recognizes that any fences or other physical monument of the Property's boundary lines may not correspond to the legal description of the Property. City shall not be responsible for any discrepancies in the parcel area or location of the property lines or any other matters which an accurate survey or inspection might reveal. It is Buyer's sole responsibility to obtain a survey from an independent surveyor, if desired. Further, Buyer acknowledges that (i) it is Buyer's sole responsibility to obtain a preliminary title report and/or a policy of title insurance from a title company with respect to the Property, if desired, (ii) the parties have agreed City will not provide, and shall have no obligation to obtain or provide, any such policy of title insurance an/or preliminary title report, and (iii) Buyer assumes the risk of, and, once City has quitclaimed to Buyer all of its right, title, and interest in the Property as provided in this Agreement, City shall not be responsible for any defect in title or any condition, restriction, covenant, or other interest that may impinge, detract from, or affect title to the Property.

4. "AS-IS" PURCHASE; RELEASE OF CITY

4.1 Buyer's Independent Investigation

Buyer represents and warrants to City that Buyer has performed a diligent and thorough inspection and investigation of each and every aspect of the Property, either independently or through agents of Buyer's choosing, including, without limitation, the following matters (collectively, the "**Property Conditions**"):

(a) All matters relating to title including, without limitation, the existence, quality, nature, and adequacy of City's interest in the Property and the existence of physically open and legally sufficient access to the Property.

(b) The zoning and other legal status of the Property, including, without limitation, the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, and private or public covenants, conditions, and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements, and building and fire codes.

(c) The quality, nature, adequacy, and physical condition of the Property, including, but not limited to, the structural elements, foundation, roof, interior, landscaping, parking facilities, and the electrical, mechanical, HVAC, plumbing, sewage, and utility systems, facilities, and appliance, and all other physical and functional aspects of the Property.

(d) The quality, nature, adequacy, and physical, geological, and environmental condition of the Property (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the Property or any other real property in the vicinity of the Property. As used in this Agreement, "**Hazardous Material**" shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, is now or hereafter deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

(e) The suitability of the Property for Buyer's intended uses. Buyer represents and warrants that its intended use of the Property is for construction in connection with the Project.

(f) The economics and development potential, if any, of the Property.

(g) All other matters of material significance affecting the Property.

4.2 Hazardous Substance Disclosure

California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials. Accordingly, Buyer is hereby advised that occupation of the Property may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. By execution of this Agreement, Buyer acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

4.3 Entry and Indemnity

Buyer shall maintain, and shall require that its Agents maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Buyer and its Agents, arising out of any entry or inspection of the Property in connection with the transaction contemplated hereby, and Buyer shall provide City with evidence of such insurance coverage upon request from City.

To the fullest extent permitted under law, Buyer shall indemnify, defend, and hold harmless City, its Agents, and each of them, from and against any liabilities, costs, damages, losses, liens, claims, and expenses (including, without limitation, reasonable fees of attorneys, experts and consultants and related costs) arising out of or relating to any entry on, under or about the Property by Buyer, its Agents, contractors, and subcontractors in performing the inspections, testings, or inquiries provided for in this Agreement, whether prior to the date of this Agreement or during the term hereof, including, without limitation, any injuries or deaths to any persons (including, without limitation, Buyer's Agents) and damage to any property, from any cause whatsoever. The foregoing indemnity shall survive beyond the Closing, or, if the sale is not consummated, beyond the termination of this Agreement.

4.4 "As-Is" Purchase

BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND BUYER IS PURCHASING CITY'S INTEREST IN THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS. BUYER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, ITS SUITABILITY FOR BUYER'S INTENDED USES, OR ANY OF THE PROPERTY CONDITIONS. CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, OR OTHER CONDITIONS OF THE PROPERTY, NOR DOES IT ASSUME ANY

RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY STATUTE, ORDINANCE, OR REGULATION. IT IS BUYER'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING, AND OTHER REGULATIONS RELATING TO THE PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

4.5 Release of City

As part of its agreement to purchase the Property in its "As-Is With All Faults" condition, Buyer, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City, its officers, employees, agents, contractors, and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) Buyer's and its Agents and customer's past, present and future use of the Property, (ii) the physical, geological, or environmental condition of the Property, including, without limitation, any Hazardous Material in, on, under, above, or about the Property, and (iii) any federal, state, local, or administrative law, rule, regulation, order, or requirement applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**", also commonly known as the "Superfund" law), as amended by Superfund Amendments and Reauthorization Act of 1986 ("**SARA**") (42 U.S.C. Sections 9601-9657), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (collectively, "**RCRA**") (42 U.S.C. Sections 6901-6987), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (collectively the "**Clean Water Act**") (33 U.S.C. Section 1251 et seq.), the Toxic Substances Control Act ("**TSCA**") (15 U.S.C. Sections 2601-2629), Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Law (commonly known as the "**California Superfund**" law) (California Health and Safety Code Sections 25300-25395), Hazardous Waste Control Act (California Health and Safety Code Section 25100 et seq.), Hazardous Materials Release Response Plans and Inventory Law (commonly known as the "**Business Plan Law**") (California Health and Safety Code Section 25500 et seq.), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "**Proposition 65**") (California Health and Safety Code Section 25249.5 et seq.).

In connection with the foregoing release, Buyer expressly waives the benefits of Section 1542 of the California Civil Code, 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 TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, BUYER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT BUYER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: BUYER'S AUTHORIZED REPRESENTATIVE: _____

5. CONDITIONS PRECEDENT

5.1 Buyer's Conditions Precedent: NONE

5.2 City's Condition Precedent

The following are conditions precedent to City's obligation to sell the Property to Buyer ("City's Conditions Precedent"):

(a) Buyer shall have performed all of its obligations hereunder and all of Buyer's representations and warranties shall be true and correct.

(b) An Ordinance approving and authorizing (i) the vacation of the public service easement associated with the Property and (ii) the transactions contemplated hereby and finding that the public interest or necessity demands, or will not be inconvenienced by the sale of the Property, shall have been adopted by the City's Board of Supervisors and Mayor, in their respective sole and absolute discretion, and duly enacted on or before September 30, 2012.

5.3 Failure of City's Conditions Precedent

Each of City's Conditions Precedent are intended solely for the benefit of City. If either of City's Conditions Precedent are not satisfied as provided above, City may, at its option, terminate this Agreement. Upon any such termination, neither party shall have any further rights or obligations hereunder except as provided in Sections 4.2 [Entry and Indemnity], 8.2 [Brokers], or 9.4 [Authority of Buyer] or as otherwise expressly provided herein.

6. ESCROW AND CLOSING

6.1 Escrow

On the date the parties hereto execute this Agreement, Buyer and City shall deposit an executed counterpart of this Agreement with the Title Company, and this instrument shall serve as the instructions to the Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. City and Buyer agree to execute such supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

6.2 Closing Date

The Closing hereunder shall be held, and delivery of all items to be made at the Closing under the terms of this Agreement shall be made, at the offices of the Title Company on (i) the date which is forty-five (45) days after enactment of the Board of Supervisor's ordinance referred to in Section 5.2(b) above, or if such date is not a business day, then upon the next ensuing business day, before 1:00 p.m. San Francisco time or (ii) such earlier date and time as Buyer and City may mutually agree upon in writing] (the "**Closing Date**"). Such date and time may not be extended without the prior written approval of both City and Buyer.

6.3 Deposit of Documents

(a) At or before the Closing, City shall deposit into escrow the duly executed and acknowledged Deed conveying the Real Property to Buyer subject to the Conditions of Title.

(b) At or before the Closing, Buyer shall deposit into escrow the funds necessary to close this transaction;

(c) City and Buyer shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof..

7. RISK OF LOSS

7.1 Condemnation

City shall give Buyer notice of the commencement of condemnation proceedings affecting, any portion of the Property. In the event that all or any portion of the Property is condemned prior to the Closing, then Buyer may, at its option to be exercised within ten (10) days of City's notice of the commencement of condemnation proceedings, either terminate this Agreement or consummate the purchase for the full Purchase Price as required by the terms hereof. If Buyer elects to terminate this Agreement or fails to give City notice within such ten (10)-day period that Buyer will proceed with the purchase, then this Agreement shall terminate at the end of such ten (10)-day period, the Title Company shall return the Purchase Price to Buyer, and neither party shall have any further rights or obligations hereunder except as provided in Sections 4.2 [Entry and Indemnity], 8.2 [Brokers], or otherwise expressly provided herein. If Buyer elects to proceed with the purchase of the Property, then upon the Closing, Buyer shall receive a credit against the Purchase Price payable hereunder equal to the amount of any condemnation awards actually collected by City as a result of any such damage or destruction or condemnation. If the awards have not been collected as of the Closing, then City shall assign such awards to Buyer, except to the extent needed to reimburse City for sums expended to collect such proceeds, and Buyer shall not receive any credit against the Purchase Price with respect to such proceeds or awards.

7.2 Self-Insurance

Notwithstanding anything to the contrary above, Buyer acknowledges that City self-insures and shall not be obligated to purchase any third-party comprehensive liability insurance or property insurance.

8. EXPENSES

8.1 Expenses

Buyer shall pay any transfer taxes applicable to the sale, personal property taxes, escrow fees, and recording charges and any other costs and charges of the escrow for the sale.

8.2 Brokers

The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any person brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Buyer or City, then the party through whom such person makes a claim shall defend the other party from such claim, and shall indemnify the indemnified party from, and hold the indemnified party against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the indemnified party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the purchase and sale is not consummated for any reason, any termination of this Agreement.

9. LIQUIDATED DAMAGES

IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED DUE TO THE FAILURE OF ANY CONDITION PRECEDENT OR CITY'S DEFAULT HEREUNDER AND BUYER IS NOT THEN IN DEFAULT, THEN THE TITLE COMPANY SHALL RETURN THE PURCHASE PRICE TOGETHER WITH ACCRUED INTEREST THEREON TO BUYER. IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER HEREUNDER AND CITY IS NOT THEN IN DEFAULT, THEN THE TITLE COMPANY SHALL DELIVER THE PURCHASE PRICE TOGETHER WITH ACCRUED INTEREST THEREON TO CITY, AND CITY SHALL BE ENTITLED TO RETAIN SUCH SUM AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT CITY'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE AS SPECIFIED IN THE PRECEDING SENTENCE, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE PURCHASE PRICE TOGETHER WITH ACCRUED INTEREST THEREON IS A REASONABLE ESTIMATE OF THE DAMAGES THAT CITY WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS

REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: CITY: _____ BUYER: _____

10. GENERAL PROVISIONS

10.1 Notices

Any notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

CITY:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property
Re: Jessie Street Easement

with a copy to:

Richard Handel
Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Re: Jessie Street Easement

BUYER:

Tenth and Market LLC
c/o Crescent Heights
2200 Biscayne Boulevard
Miami, FL 33137
Attn: Sharon Christenbury

with a copy to:

Steve Atkinson, Esq.
McKenna Long & Aldridge LLP
121 Spear Street, Suite 200
San Francisco, CA 94105-1582

or such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed given when actually delivered if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

10.2 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, legal representatives, administrators and assigns. Buyer's rights and obligations hereunder shall not be assignable without the prior written consent of City; provided, however, even if City approves any such proposed assignment, in no event shall Buyer be released of any of its obligations hereunder.

10.3 Amendments

This Agreement may be amended or modified only by a written instrument signed by the Buyer and City.

10.4 Authority of Buyer

Buyer represents and warrants to City that Buyer is a Delaware limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware. Buyer further represents and warrants to City that this Agreement and all documents executed by Buyer which are to be delivered to City at Closing: (a) are or at the time of Closing will be duly authorized, executed and delivered by Buyer; (b) are or at the time of Closing will be legal, valid, and binding obligations of Buyer; and (c) do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is a party or to which Buyer is subject. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties and any and all other representations and warranties of Buyer contained herein or in other agreements or documents executed by Buyer in connection herewith, shall survive the Closing Date.

10.5 Buyer's Representations and Warranties

Buyer makes the following representations as of the date of this Agreement and at all times throughout this Agreement:

(a) Buyer is a California limited liability company duly organized and validly existing and in good standing under the laws of the jurisdiction in which it was formed. Buyer has duly authorized by all necessary action the execution, delivery and performance of this Agreement. Buyer has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof.

(b) Buyer represents and warrants to City that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Buyer has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(c) No document or instrument furnished or to be furnished by the Buyer to the City in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

10.6 Governing Law

This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code.

10.7 Merger of Prior Agreements

This Agreement, together with the exhibits hereto, contain any and all representations, warranties and covenants made by Buyer and City and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the exhibits hereto.

10.8 Parties and Their Agents

The term "**Buyer**" as used herein shall include the plural as well as the singular. If Buyer consists of more than one (1) individual or entity, then the obligations under this Agreement imposed on Buyer shall be joint and several. As used herein, the term "**Agents**" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party.

10.9 Interpretation of Agreement

The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

10.10 Attorneys' Fees

If either party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in

law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

10.11 Time of Essence

Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

10.12 No Merger

The obligations contained herein shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled.

10.13 Non-Liability of City Officials, Employees and Agents

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Buyer, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Buyer, its successors and assigns, or for any obligation of City under this Agreement.

10.14 Conflicts of Interest

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

10.15 Notification of Limitations on Contributions

Through its execution of this Agreement, Buyer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Buyer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Buyer further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Buyer's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than

20 percent in Buyer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Buyer. Additionally, Buyer acknowledges that Buyer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Buyer further agrees to provide to City the name of the each person, entity or committee described above.

10.16 Sunshine Ordinance

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

10.17 Tropical Hardwood and Virgin Redwood Ban

The City and County of San Francisco 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 except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

10.18 MacBride Principles - Northern Ireland

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 companies to do business with corporations that abide by the MacBride Principles. Buyer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

10.19 No Recording

Neither this Agreement nor any memorandum or short form thereof may be recorded by Buyer.

10.20 Effective Date

As used herein, the term "**Effective Date**" shall mean the date on which the City's Board of Supervisors and Mayor enact an ordinance approving and authorizing this Agreement and the transactions contemplated hereby, following execution and delivery of this Agreement by both parties.

10.21 Acceptance by Buyer

This Agreement shall be null and void unless it is accepted by Buyer and two (2) fully executed copies hereof are returned to City on or before 5:00 p.m. San Francisco time on June 30, 2012.

10.22 Counterparts

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

10.23 Cooperative Drafting.

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL AN ORDINANCE OR RESOLUTION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH AN ORDINANCE OR RESOLUTION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION, OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH ORDINANCE OR RESOLUTION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

The parties have duly executed this Agreement as of the respective dates written below.

CITY:

BUYER:

CITY AND COUNTY OF
SAN FRANCISCO, a municipal corporation

TENTH AND MARKET LLC, a Delaware
limited liability company

By: _____
JOHN UPDIKE
Director of Property

By: _____
[NAME]

Its: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
[NAME]

By: _____
[NAME OF DEPUTY]
Deputy City Attorney

Its: _____

EXHIBIT A

REAL PROPERTY DESCRIPTION

All that certain real property located in the City and County of San Francisco, State of California, described as follows:

BEGINNING at a point on the southwesterly terminal line of Jessie Street as established by Resolution No. 18,133, adopted August 19, 1957 by City's Board of Supervisors, (which terminal line is distant 115 feet southwesterly along the northwesterly line of Jessie Street from the southwesterly line of 10th Street), distant along said terminal line 12.50 feet southeasterly from the northwesterly line of Jessie Street and thence running southeasterly along said terminal line of Jessie Street 10 feet; thence at a right angle southwesterly 34 feet; thence at a right angle northwesterly 10 feet; thence at a right angle northeasterly 34 feet to the point of beginning.

Being a portion of former Jessie Street.

EXHIBIT B

QUITCLAIM DEED

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

John Updike
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

MAIL TAX STATEMENTS TO:

Tenth and Market LLC
c/o Crescent Heights
2200 Biscayne Boulevard
Miami, FL 33137

Documentary Transfer Tax of \$ _____,
based on full value of the property conveyed

(Space above this line reserved for Recorder's use only)

QUITCLAIM DEED

[(Assessor's Parcel No.: Lot 041, Block 3507)]

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), pursuant to Ordinance No. _____, adopted by the Board of Supervisors on _____, 2012 and approved by the Mayor on _____, 2012, hereby RELEASES, REMISES, AND QUITCLAIMS to TENTH AND MARKET LLC, a Delaware limited liability company, any and all right, title, and interest City may have in and to the real property located in the City and County of San Francisco, State of California, described on the attached **Exhibit A**, which is made a part hereof.

Executed as of this _____ day of _____, 2012.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
JOHN UPDIKE
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Richard Handel
Deputy City Attorney

DESCRIPTION CHECKED/APPROVED:

By: _____
[NAME]
City Engineer

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and
for said State, personally appeared _____, 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 _____ (Seal)

EXHIBIT A TO QUITCLAIM DEED

All that certain real property located in the City and County of San Francisco, State of California, described as follows:

BEGINNING at a point on the southwesterly terminal line of Jessie Street as established by Resolution No. 18,133, adopted August 19, 1957 by City's Board of Supervisors, (which terminal line is distant 115 feet southwesterly along the northwesterly line of Jessie Street from the southwesterly line of 10th Street), distant along said terminal line 12.50 feet southeasterly from the northwesterly line of Jessie Street and thence running southeasterly along said terminal line of Jessie Street 10 feet; thence at a right angle southwesterly 34 feet; thence at a right angle northwesterly 10 feet; thence at a right angle northeasterly 34 feet to the point of beginning.

Being a portion of former Jessie Street.

October 14, 2004

File No: 2003.0262E
Tenth/Market/Mission Streets Mixed-Use Project
Assessor's Block 3507, Lot 039

SAN FRANCISCO
CITY PLANNING COMMISSION
MOTION NO. 16871

**ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL
ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED TENTH /
MARKET / MISSION STREETS MIXED-USE PROJECT**

MOVED, That the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as case file No. 2003.0262E, Tenth/Market/Mission Streets Mixed-Use Project (hereinafter "Project") based upon the following findings:

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

a. The Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on November 15, 2003.

b. On May 15, 2004, the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.

c. Notices of Availability of the DEIR and of the date and time of the public hearing were posted near the project site on May 15, 2004.

d. On May 15, 2004, copies of the DEIR were delivered to the State Clearinghouse for distribution to government agencies. On May 15, 2004, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies.

e. Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on May 15, 2004.

2) The Commission held a duly advertised public hearing on said DEIR on June 17, 2004 at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on June 28, 2004.

3) The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 45-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a "Draft Summary of Comments and Responses," published on September 30, 2004, was distributed to the Commission and to all parties who commented on the DEIR, and was available to others upon request at Department offices.

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

5) Project Environmental Impact Report files have been made available for review by the Commission and the public. These files are available for public review by appointment at the Department offices at 1660 Mission Street, and are part of the record before the Commission.

6) On October 14, 2004, the Commission reviewed and considered the FEIR and hereby does find that the contents of said report and the procedures through which the FEIR was prepared, publicized and reviewed comply with the provisions of CEQA, the CEQA guidelines and Chapter 31 of the San Francisco Administrative Code.

7) The Planning Commission hereby does find that the FEIR concerning File No. 2003.0262E: Tenth/Market/Mission Streets Mixed-Use Project reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Summary of Comments and Responses contains no significant revisions to the DEIR, and hereby does CERTIFY THE COMPLETION of said Final Environmental Impact Report in compliance with CEQA and the CEQA Guidelines.

8) The Commission, in certifying the completion of said FEIR, hereby does find that the proposed project described and evaluated in the EIR would result in the following unavoidable significant impacts:

(a) A project-related traffic impact at Mission Street / South Van Ness Avenue, if mitigation is not implemented by the San Francisco Department of Parking and Traffic;

(b) A significant contribution to cumulative traffic impacts at Mission Street / South Van Ness Avenue, if mitigation is not implemented by the San Francisco Department of Parking and Traffic; and

(c) A project-related transit impact on MUNI operations on the Third Street corridor and Mission Street corridor.

CITY PLANNING COMMISSION

File No: 2003.0262E

Tenth/Market/Mission Streets Mixed-Use Project

Assessor's Block 3507, Lot 039

Motion No. 16871

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I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of October 14, 2004.

Linda Avery
Commission Secretary

AYES: Antonini, Hughes, S. Lee, W. Lee

NOES: None

ABSENT: Bradford Bell, Olague

ADOPTED: October 14, 2004

10/28/04

PLANNING COMMISSION

Case No. 2003.0262EIXCVMRTZ
Tenth and Market Mixed-Use Project
1401-1435 Market Street
Assessor's Block 3507, Lot 039

SAN FRANCISCO

PLANNING COMMISSION

MOTION NO. 16880

ADOPTING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, INCLUDING A STATEMENT OF OVERRIDING CONSIDERATIONS, FOR THE TENTH/MARKET/MISSION STREETS MIXED USE PROJECT THAT WOULD CONSIST OF (1) A RESIDENTIAL BUILDING WITH UP TO 200 AFFORDABLE DWELLING UNITS FOR SENIOR CITIZENS, (2) A RESIDENTIAL BUILDING WITH UP TO 250 MARKET RATE UNITS, AND GROUND FLOOR RETAIL USES, PLUS A POTENTIAL CITY OFFICE BUILDING AND RELATED ACTIONS, LOCATED ON BLOCK 3507, LOT 39, THE EASTERN HALF OF THE BLOCK BOUNDED BY MARKET, TENTH, MISSION AND ELEVENTH STREETS IN THE CIVIC CENTER AREA OF THE CITY.

Preamble

Citizens Housing Corporation and Tenderloin Neighborhood Development Corporation (the "Owners") are the owners of the property located on the eastern half of the block bounded by Market, Tenth, Mission and Eleventh Streets, also known as Lot 39 in Assessor's block 3507 (the "Property"). The Owners, together with their joint venture partner, Myers Development Company (the "Applicants") have applied for several applications that would authorize the construction of a mixed-use project consisting of 6,750 gsf of retail uses, up to approximately 200 dwelling units of senior affordable housing, and up to approximately 250 units of additional housing (the "Project"). The Applicants also applied for a component of the Project that would have included approximately 513,250 gsf of municipal office uses, and additional retail uses. Applicants are not seeking approval of this component at this time.

The proposed Project was reviewed pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code Sections 21000 et. seq. On May 15, 2004, the San Francisco Planning Department ("Department") published a draft environmental impact report ("DEIR") for the Project. On June 17, 2004, the Planning Commission ("Commission") held a duly noticed public hearing to take comments on the DEIR. The DEIR identified significant impacts related to traffic and transportation. On September 30, 2004, the Department issued a document entitled "Response to Comments" in which the Department responded to each written and oral comment received from the public during the comment period.

On October 28, 2004, the Commission, having reviewed the DEIR and Responses to Comments, held a duly noticed public hearing and certified these documents as the Final EIR for the Project.

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The Commission has reviewed and considered the information in the Final EIR in accordance with the requirements of CEQA, the State CEQA Guidelines (Title 14 California Code of Regulations Sections 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code.

Findings

Having reviewed all the materials identified in the recitals above, and having heard oral testimony and arguments, this Commission finds, concludes and determines as follows:

1. The above Preamble is accurate and also constitutes findings of this Commission.
2. **Approvals/Project Description.** The Project described on the FEIR consists of a series of approvals that together define the terms under which the Project will occur. It is composed of the following major permits and approvals, and related and collateral actions, only some of which are before the Commission at this time:
 - a. The creation of the Tenth and Market Streets Special Use District, and associated Zoning Map amendment;
 - b. A General Plan amendment;
 - c. Approvals under Section 309 of the Planning Code, with exceptions for rear-yard requirements, bulk requirements, ground-level wind current requirements, and loading space requirements;
 - d. Conditional Use Authorization for parking in excess of permitted accessory amounts;
 - e. General Plan and Planning Code section 101.1 priority policy consistency determinations;
 - f. Granting of a rear-yard obstruction variance under Planning Code Section 305;
 - g. Project approval under City Charter Section 5.103 for the design of a public structure;
 - h. Vacation and sale of a portion of Jessie Street;
 - i. Construction document approvals;
 - j. Demolition, site and building permit issuance; and

The Residential Component would also contain about 6,750 gsf of retail uses. Residential open space would be provided in a central terrace on the second level, above the parking garage and between and to the west and north of the residential towers.

The Office Component as described in the FEIR is proposed on the northern portion of the site at the southwest corner of the intersection of Tenth and Market Streets. The 24-story, approximately 320-foot-tall office building would include approximately 513,250 gsf of municipal office uses (including approximately 5,000 gsf of childcare facilities) and one level of below-grade parking for approximately 83 vehicles. The total parking area for the office building would be about 31,550 gsf. The ground floor of the office building would contain a reception lobby; a public plaza; a five-story, 65-foot-tall atrium; loading facilities; and an approximately 6,000 gsf of restaurant use along Market Street. As a part of its approval actions, the Planning Commission is not considering the Section 309 approval or other actions related to the acquisition and financing of the Office Component of the Project at this time. Discussions are continuing between the Applicant and the City regarding resolution of certain design and financial issues relating to the Office Component.

For the purposes of these findings, the Project consists of the Residential Component, with the Office Component to be considered separately at a later date.

3. **Significant and Unavoidable Impacts.** The Project's Final Environmental Impact Report ("FEIR") concluded that construction of the Project as proposed in the FEIR (including the Office Component), even with mitigation, may have a significant effect on transportation, in that the Project would cause peak period level of service (LOS) at the intersection of Mission Street and South Van Ness Avenue to worsen from LOS E to F. The FEIR also concluded that the Project would result in a considerable contribution to cumulative traffic growth in 2020 at this same intersection.

Although adjusting the signal timing at this intersection would mitigate this impact, resulting in the intersection operating at LOS E, further study is necessary to determine the feasibility of implementing the mitigation measure, and thus the FEIR concludes that this would be a significant and potentially unavoidable impact.

The FEIR also finds that two MUNI transit corridors (Third Street and Mission Street) would operate at 102 percent of capacity during peak travel times, resulting in a significant impact on MUNI operations. Normally, the imposition of the Transit Impact Development Fee ("TIDF") would mitigate this impact. However, because the Office component of the project is to be owned and operated by the City for municipal office uses, the TIDF does not apply. Therefore, the FEIR concludes that such a mitigation measure is infeasible and that this impact is significant and unavoidable.

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- k. Approval of various transactional and financing documents relating to the purchase and construction of the City office building.

The following is a description of the uses contemplated by the Project and the Project's relationship to the FEIR:

The project site, 1407-1435 Market Street, 18-70 Tenth Street, and 1400 Mission Street, is approximately 95,000 square feet (about two acres) on the west side of Tenth Street between Market and Mission Streets, adjacent to the Bank of America Data Center at Market and 11th Streets. The project site is bisected by a dead end portion of Jessie Street. The project site is within the Mid-Market Redevelopment Survey Area, proposed for designation as a redevelopment area by the San Francisco Redevelopment Agency, and in the proposed Market and Octavia Neighborhood Plan Area.

The proposed project would require demolition of approximately 166,700 gross square feet (gsf) of vacant office space and removal of 155 currently active surface parking spaces (totaling approximately 24,000 gsf). The vacant office space is within seven existing buildings ranging in height from two to four stories, or from 25 to 45 feet tall.

As described in the FEIR, the project includes a municipal office building on Market Street ("Office Component"), a market-rate housing building on Tenth Street, and affordable senior housing on Mission Street (together, the "Residential Component"). The Mission Street building is intended to be restricted to be affordable to seniors earning no more than 50 percent of the Area Median Income for the San Francisco Metropolitan Statistical Area, as defined by the US Department of Housing and Urban Development and adjusted for household size. The affordability of the Tenth Street building could vary depending on available funding. Housing could be all market rate (with the required inclusionary affordable housing units), moderate income (defined as affordable to households earning no more than 120 percent of the Area Median Income), mixed income, or fully affordable for low- or very low-income households.

The Mission Street building is proposed on the southernmost portion of the site at the northwest corner of Tenth and Mission Streets and would be 15 stories, or 150 feet (plus 20 feet of mechanical space), high. The 21-story, 200-foot-high Tenth Street building is proposed on the western side of the Tenth Street. The combined residential floor area of the project would total about 316,000 gross square feet (gsf): 210,667 gsf for the Tenth Street building and 105,333 gsf for the Mission Street building. Off-street parking for about 230 vehicles (220 spaces for the Tenth Street building and 10 spaces for the Mission Street building) would be provided on the ground floor and on one level partially below grade.

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No other alternative sites were identified within San Francisco where the Project could be constructed feasibly and consistent with the Project sponsor's objectives, and where the Project's environmental effects would be substantially lessened or avoided. In addition, no alternative sites for the housing were considered because no sites are under the control of the Owners that would allow the Owners to satisfy their objectives for the Residential Component of the Project.

For these reasons, the Alternatives that were eliminated from the FEIR from further consideration are again rejected as infeasible.

Alternative A-No Project Alternative. Under this alternative, there would be no change to the existing project site. Under the No Project Alternative, the seven existing vacant buildings would not be demolished, and no new residential, retail, or office space would be developed. If the No Project Alternative were implemented, none of the impacts associated with the Project would occur. The environmental characteristics of this alternative would be that generally described in the Environmental Setting chapter of the FEIR.

This alternative would not respond to the key goals of the *Downtown Plan*, the proposed *Mid-Market Redevelopment Plan*, and the proposed *Market and Octavia Neighborhood Plan*; these plans focus on the creation of more intense mixed-use districts with increased ratios of residential development to other types of land uses, and the elimination of physical and economic blight. The No Project Alternative also would not meet the Applicants' objectives of providing low- and moderate-income housing and would not meet the City's goal to own its own office space in the Civic Center area. For these reasons, the Commission hereby rejects Alternative A as infeasible.

Alternative B-Reduced Program. Under this alternative, the Office Component would be reduced to 32,350 gsf and to about two-stories in height, with total retail space of 3000 gsf. The Housing Components would remain as in the proposed Project. The off-street parking spaces for the Office Component would also be reduced, to about 43 spaces.

Under this alternative, trip generation for the Project would be reduced such that the intersection at Mission Street and South Van Ness Avenue would remain at the current LOS E under existing plus-project conditions. Under future cumulative conditions, this intersection would operate at LOS F, but the Reduced Program Alternative would not contribute substantially to this cumulative impact. Thus, Alternative B would reduce traffic impacts caused by the proposed development to less than significant levels. Alternative B would also create less shadow on nearby sidewalks and open spaces than the Project.

4. **Mitigation Measures.** The Project's FEIR includes a series of mitigation measures that have been identified that would reduce or eliminate potential environmental impacts of the Project. Mitigation measures described in Section IV of the FEIR include measures for transportation, noise, air quality, water quality, hazardous materials, and archaeological resources. The Commission hereby adopts these mitigation measures, as set forth in the attached Exhibit A to this motion, which shall be adopted as conditions of approval of the Project, except for the mitigation measures regarding approval by the Arts Commission (which only applies to the Office Component) and the Transportation Mitigation Measures (which would not be necessary for the Residential Component only, but would be necessary if the Office Component is finally approved in the future).
5. **Rejection of EIR Alternatives.** The California Environmental Quality Act ("CEQA") provides that alternatives analyzed in the FEIRs may be rejected if "specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible . . . project alternatives identified in the final EIR." (CEQA Guidelines § 15091(a)(3).) The Commission has reviewed each of the alternatives to the Project as described in the FEIR that would reduce or avoid the impacts of the Project and rejects them as infeasible for the following reasons set forth below.

In addition to the two alternatives evaluated, the FEIR also discusses alternatives considered and rejected for further discussion in the FEIR. An alternative with reduced housing was considered. Because the majority of the trips generated by the Project are connected with the Office Component, reducing or even eliminating the housing component would not result in a substantial reduction in the total trips and the Project's potentially significant transportation impacts would not be avoided or substantially lessened. For this reason a reduced housing alternative was rejected, and not evaluated in the FEIR.

An off-site alternative was not evaluated in the FEIR. The City had previously considered alternatives to the Office Component, including a proposed project at 525 Golden Gate Avenue. The Commission certified a Final EIR for this project on February 15, 2001. That EIR considered five alternatives, including an off-site alternative at the corner of Polk and Hayes streets. The 525 Golden Gate Avenue site is no longer feasible for an office building as the City has decided to use that site for a new County Law Library, and prepared an Addendum to the Final EIR to address the revised project.

While Alternative B would reduce traffic impacts caused by the proposed development to less than significant levels, it would not achieve, to as great an extent, the objectives or and goals of the Applicant, or of the City. By reducing the amount of potential office space to 32,350 gsf, the alternative would not meet the City's goal of moving and consolidating a significant portion of leased office space to a building owned by the City. A smaller building on the office site would also be out of scale from an urban design perspective and would be less responsive to the Applicants' goal of contributing to the redevelopment of the Mid-Market Redevelopment Area by introducing a substantial amount of new housing, office, and retail on this portion of Market Street.

For these reasons, the Commission hereby rejects Alternative B as infeasible.

6. CEQA - Statement of Overriding Considerations.

Notwithstanding the significant effects noted above, pursuant to CEQA Section 21081(b), the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, the Commission finds, after considering the FEIR, that specific overriding economic, legal, social and other considerations, as set forth below, outweigh the identified significant effects on the environment. In addition, the Commission finds that those Project Alternatives rejected above are also rejected for the following specific economic, social and other considerations, in and of themselves, in addition to the specific reasons discussed in Paragraph 4 above:

- a. San Francisco continues to face a critical housing shortage, both in terms of market rate and affordable housing units. The Association of Bay Area Governments ("ABAG") has determined that San Francisco's share of the regional housing need for 1998 through June 2006 is 20,374 units, or 2,717 units per year. San Francisco would need a total production rate of 2,852 units a year through June 2006 to achieve a 5% vacancy rate over the City's housing need. Of the 20,374 housing units required to meet the City's housing demand between 1999 and 2006, 7,270 units are needed for low- or very low-income households or families. Significant numbers of additional units are likely to be needed in the City after 2006.

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- b. The San Francisco Planning Department publishes an annual Housing Inventory Report. This Report provides a 20-year overview of the City's housing production trends, housing units approved for construction, and housing units completed. Between 1990 and 2000, a total of 12,460 units were completed and 1,540 units were demolished or lost by alterations, merger of units, or both, resulting in a net gain of 11,173 units. More than 50% of the new units constructed are located in the City's Downtown, Western Addition and South of Market districts. San Francisco must dramatically increase its housing production in order to meet the ABAG projections for the City's housing demand. The Housing Component provides up to 450 new housing units, of which approximately 200 will be affordable rental units for seniors. The remaining units will include additional affordable housing as required by Section 315 of the Planning Code, and also may provide units that meet "workforce affordability" levels.
- c. The San Francisco residential real estate market continues to be one of the most expensive in the United States. A February 1999 report from the National Association of Realtors found that San Francisco had the highest median price of existing homes in the United States. In the 1980s, average home prices in San Francisco rose nearly three times as fast as the overall cost of living in San Francisco, according to data from the Bay Area Council and 1990 Census.
- d. The Project also will further regional policies relating to the preservation of open space and the reduction of urban sprawl. By concentrating new housing in the City, the Project will reduce urban sprawl and lessen the pressure to develop open space in other parts of the Bay Area. The cost and consequences of urban sprawl have been documented for more than two decades.
- e. In order to effectively reduce urban sprawl, San Francisco and other Bay Area governments must support new development models that create more compact and efficient development patterns that accommodate growth. The Project is a major part of San Francisco's efforts to place high-density housing near the downtown core, where transit and jobs are readily available. The Project will directly advance the important regional goals of reducing urban sprawl and thereby reduce the pressure to develop open space areas in the Bay Area.

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- f. The Project will also contribute to the goals and objectives of the proposed *Mid-Market Redevelopment Plan*, which include encouraging and assisting in the development of a more land-use intensive mixed-use district than currently exists with a special emphasis on increasing the ratio of residential development to other land uses; aiding existing businesses, attracting new commercial development and developing and rehabilitating affordable housing units.
- g. The Project will make much more efficient use of the Property, in furtherance of the goals and objectives of the City's General Plan. The Project Site currently consists of several low-rise office buildings that are unoccupied, and in a state of disrepair, as well as a surface parking lot for parking for the general public. The Project will replace the inefficient use with a an office building, up to 450 residential units, including a large number of affordable units. The Project will also provide ground floor retail, and other active street-front uses. In the future, the northern portion of the site could be developed as a City office building.
- h. The northern portion of the site at 10th and Market Streets is currently under future consideration by the City as a potential City-owned office building, pending resolution of certain financial and design issues, which could help the City meet its long-term goals of owning more office space in the Civic Center area.

Having considered these Project benefits, the Commission finds that the benefits of the Project outweigh the unavoidable adverse environmental effects, and that the adverse environmental effects are therefore acceptable.

- 7. The Planning Department is the custodian of the documents and other materials that constitute the record of the proceedings upon which all CEQA findings set forth herein are based. Such documents and other materials are available for review by this Commission and the public at the Department's offices at 1660 Mission Street.

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DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby adopts the foregoing CEQA Findings and Statement of Overdoing Considerations.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission on Thursday, October 28, 2004.

Linda D. Avery
Commission Secretary

AYES: Commissioners S. Lee, Antonini, Hughes, W. Lee, and Olague
NOES: None
ABSENT: Commissioners Alexander and Bell
ADOPTED: October 28, 2004

**EXHIBIT A
FEIR MITIGATION MEASURES**

TRANSPORTATION*

EXISTING (YEAR 2003) PLUS PROJECT CONDITIONS

- A.1 *Traffic Mitigation Measure.* The proposed project would constitute a considerable contribution to existing plus project traffic at the intersection of South Van Ness Avenue and Mission Street, which would result in an operating condition of LOS F. Adjustment of signal splits at the intersection is restricted by the time required for pedestrians to cross the intersection. Keeping the same cycle length and adjusting the signal timing only would not improve the level of service. It was determined using an optimization tool that by increasing the cycle length to 130 seconds and adjusting the signal splits slightly there would be an improvement in the level of service. The modified green time would be 48 seconds for the northbound and southbound directions, 32 seconds for the eastbound, and 37 seconds for the westbound direction. This adjustment would result in an intersection LOS E (same as the existing condition) with an average delay of 71.6 seconds. This indicates that with the suggested modification, this intersection would operate better than the existing condition.

Any changes to the signal timing along Mission Street could potentially affect the signal progression and MUNI bus operation along the corridor and would require further study. The project sponsor shall coordinate with Department of Parking and Traffic to assess the potential secondary effects, as well as the feasibility of this mitigation measure. If this measure has adverse effects on MUNI operations, it would not be implemented, and the impact would be unavoidable and significant.

* The transportation mitigation measures are not to be incorporated as conditions of approval for the Residential Component of the project that the Commission is approving at time. At the time that the Office Component of the Project is approved by the Commission, these transportation mitigation measures would be required as conditions of approval.

FUTURE CUMULATIVE (YEAR 2020) CONDITIONS

- A.2 *Traffic Mitigation Measure.* Traffic generated by the proposed project would constitute a considerable contribution to cumulative traffic at the intersection of South Van Ness Avenue and Mission Street, which would result in a future operating condition of LOS F. Mitigation Measure A.1 would also improve the level of service for future cumulative conditions. This mitigation would result in the intersection operating at LOS E with a delay slightly higher than existing condition (78.9 seconds per vehicle).

Any changes to the signal timing along Mission Street could potentially affect the signal progression and MUNI bus operation along the corridor and would require further study. The Department of Parking and Traffic shall coordinate with MUNI to assess the potential secondary effects, as well as the feasibility of this mitigation measure. If it is determined that this measure would have a significant impact on MUNI operations, it would not be implemented, and the impact would be unavoidable and significant.

NOISE

Contractors shall be required to use construction equipment with state-of-the-art noise shielding and muffling devices.

- C.1 The project sponsor shall require that its geotechnical engineering contractor conduct a pre-construction assessment of existing subsurface conditions and the structural integrity of nearby buildings subject to pile driving impacts prior to receiving a building permit. If recommended by the geotechnical engineer, for structures or facilities within 50 feet of pile driving, the project sponsor shall require ground-borne vibration monitoring of nearby structures. The project sponsor shall also require its construction contractor to use feasible noise-reducing pile driving techniques if nearby structures are subject to pile driving noise and vibration. These techniques may include pre-drilling pile holes (depending on soil type) to the maximum feasible depth, installing intake and exhaust mufflers on pile driving equipment, vibrating piles into place when feasible, and installing shrouds around the pile driving hammer where feasible.

At least 48 hours prior to pile driving activities, the project sponsor shall notify building owners and occupants within 200 feet of the project site of the dates, hours, and expected duration of such activities.

AIR QUALITY

- D.1 The project sponsor shall require the contractor(s) to spray the site with water during demolition, excavation, and construction activities; spray unpaved construction areas with water at least twice per day; cover stockpiles of soil, sand, and other material; cover trucks hauling debris, soils, sand or other such material; and sweep surrounding streets during demolition, excavation, and construction at least once per day to reduce particulate emissions.

Ordinance 175-91, passed by the Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, the project sponsor would require that the contractor(s) obtain reclaimed water from the Clean Water Program for this purpose. The project sponsor would require the project contractor(s) to maintain and operate construction equipment so as to minimize exhaust emissions of particulates and other pollutants by such means as prohibiting idling motors when equipment is not in use or when trucks are waiting in queues, and implementing specific maintenance programs to reduce emissions for equipment that would be in frequent use for much of the construction period.

WATER QUALITY

- E.1 a. If dewatering were necessary, the project sponsor shall follow the recommendations of the geotechnical engineer or environmental remediation consultant, in consultation with the Bureau of Environmental Regulation and Management of the Department of Public Works, regarding treatment, if any, of pumped groundwater prior to discharge to the combined sewer system.
- b. If dewatering were necessary, groundwater pumped from the site shall be retained in a holding tank to allow suspended particles to settle, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the Department of Public Works to reduce the amount of sediment entering the combined sewer system.
- c. The project sponsor shall require the general contractor to install and maintain sediment traps in local stormwater intakes during construction to reduce the amount of sediment entering the combined sewer system, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the Department of Public Works.

HAZARDOUS MATERIALS

F.1 In addition to local, state, and federal requirements for handling hazardous materials, underground storage tanks, and soil and groundwater containing chemical contaminants, the project sponsor shall enter into a remedial action agreement with the Department of Public Health pursuant to Health and Safety Code Section 101480 et seq. At a minimum, the project sponsor shall undertake the following work and any additional requirements imposed by the Department of Public Health under the agreement.

- a. A Phase II investigation has been performed to evaluate soil and groundwater quality at the site as a result of former operations at the site and in the site vicinity. Soil and groundwater were evaluated for the presence of petroleum hydrocarbons, metals, volatile organic compounds, semi-volatile organic compounds and polynuclear aromatic hydrocarbons.
- b. A site mitigation plan shall be developed to address any contaminated soil and/or groundwater, underground storage tanks, or other hazardous materials identified during the Phase II investigation or subsequent demolition activities.

If deemed necessary, all impacted materials shall be mitigated prior to construction. Soils with elevated petroleum hydrocarbon or lead concentrations may require excavation and off-site disposal. Soil levels in excess of applicable federal, state, or local limits for petroleum hydrocarbon or lead concentrations shall be disposed of off site in accordance with California hazardous waste disposal regulations (CCR Title 26) or shall be managed in place with approval of the California Department of Toxic Substances Control or the Regional Water Quality Control Board.

If the site mitigation results in earth-moving activities that require the preparation of a site safety and health plan because contaminated soils and/or groundwater may be encountered, in addition to measures that protect on-site workers, the plan shall include measures to minimize public exposure to contaminated soils. Such measures would include dust control, appropriate site security, restriction of public access, and posting of warning signs. Such measures would apply from the time of surface disruption through the completion of earthwork construction.

- c. Prior to any demolition or excavation at the project site, the project sponsor shall conduct surveys to identify any potentially hazardous materials (e.g., asbestos, lead-based paint, PCBs, mercury) in existing buildings or building materials. At a minimum, these surveys shall identify any hazardous materials that would require removal and disposal prior to demolition. These surveys shall be completed by a state registered inspector or a similarly qualified individual who states that all necessary mitigation measures have been implemented.
- d. All reports and plans prepared in accordance with this mitigation measure shall be provided to the San Francisco Department of Public Health (DPH) and any other agencies identified by DPH. When all hazardous materials have been removed from existing buildings and soil and groundwater analysis and other activities have been completed, as appropriate, the project sponsor shall submit to the San Francisco Planning Department and DPH a report stating that the mitigation measure has been implemented. The report shall describe the steps taken to comply with the mitigation measure and include all verifying documentation. The report shall be certified by a Registered Environmental Assessor or a similarly qualified individual who states that all necessary mitigation measures have been implemented.
- e. Should elevated levels of contamination remain at the site, a deed notification shall be required for the project site along with a DPH-approved Cap Maintenance Plan. The deed notification is to be recorded on the deed, prior to DPH issuing a "No Further Action" letter for the project site.

ARCHAEOLOGICAL RESOURCES

- G.1 Based on a reasonable presumption that archaeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of a qualified archaeological consultant having expertise in California prehistoric and urban historical archaeology. The archaeological consultant shall implement the archaeological research design and treatment plan (ARD/TP). The consultant shall be available to conduct an archaeological monitoring and/or data recovery program if required pursuant to this measure. The archaeological consultant's work shall be conducted in accordance with this measure and with the requirements of the project ARD/TP (Archeo-Tec, *Draft Archaeological Research Design/Treatment Plan, Tenth/Market/Mission Mixed Use Project*, June 26, 2003) at the direction of the Environmental Review Officer (ERO). In instances of any inconsistency between the requirements of the project ARD/TP and of this archaeological mitigation measure, the requirement of this latter shall prevail. All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archaeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archaeological resource as defined in CEQA Guidelines Sect. 15064.5 (a)(c).

Archaeological Testing Program. The archaeological consultant shall prepare and submit to the ERO for review and approval a final archaeological testing plan (ATP). The archaeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archaeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archaeological testing program will be to determine to the extent possible the presence or absence of archaeological resources and to identify and to evaluate whether any archaeological resource encountered on the site constitutes a historical resource under CEQA.

At the completion of the archaeological testing program, the archaeological consultant shall submit a written report of the findings to the ERO. If based on the archaeological testing program the archaeological consultant finds that significant archaeological resources may be present, the ERO in consultation with the archaeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archaeological testing, archaeological monitoring, and/or an archaeological data recovery program. If the ERO determines that a significant archaeological resource is present and that the resource could be adversely affected by the proposed project, at its own discretion, the project sponsor may either:

- Redesign the proposed project so as to avoid any adverse effect on the significant archaeological resource; or
- Implement a data recovery program, unless the ERO determines that the archaeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

Archaeological Monitoring Program. If the ERO in consultation with the archaeological consultant determines that an archaeological monitoring program is to be implemented, the archaeological monitoring program shall minimally include the following provisions:

- The archaeological consultant, project sponsor, and ERO shall meet and consult on the scope of the archaeological monitoring program reasonably prior to any project-related soils-disturbing activities commencing. The ERO in consultation with the archaeological consultant shall determine what project activities shall be archaeologically monitored. In most cases, any soils-disturbing activities (e.g., demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles for foundation or shoring, site remediation) shall require archaeological monitoring because of the risk these activities pose to potential archaeological resources and to their depositional context;
- The archaeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), how to identify the evidence of the expected resource(s), and the appropriate protocol in the event of apparent discovery of an archaeological resource;
- The archaeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archaeological consultant and the ERO until the ERO has, in consultation with project archaeological consultant, determined that project construction activities could have no effects on significant archaeological deposits;

- The archaeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual materials as warranted for analysis;
- If an intact archaeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archaeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archaeological monitor has cause to believe that the pile driving activity may affect an archaeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archaeological consultant shall immediately notify the ERO of the encountered archaeological deposit. The archaeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archaeological deposit, and present the findings of this assessment to the ERO.

Whether or not significant archaeological resources are encountered, the archaeological consultant shall submit a written report of the findings of the monitoring program to the ERO.

Archaeological Data Recovery Program. The archaeological data recovery program shall be conducted in accord with an archaeological data recovery plan (ADRP). The archaeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archaeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archaeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practical.

The scope of the ADRP shall include the following elements:

- *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations.

PLANNING COMMISSION

Case No. 2003.0262EIXCVMRTZ
Tenth and Market Mixed-Use Project
1401-1435 Market Street
Assessor's Block 3507, Lot 039
Motion No. 16880
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Once approved by the ERO, copies of the FARR shall be distributed as follows: The California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Major Environmental Analysis division of the Planning Department shall receive three copies of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.

- *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures.
- *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies.
- *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archaeological data recovery program.
- *Security Measures.* Recommended security measures to protect the archaeological resource from vandalism, looting, and non-intentionally damaging activities.
- *Final Report.* Description of proposed report format and distribution of results.
- *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.

Human Remains and Associated or Unassociated Funerary Objects. The treatment of human remains and of associated or unassociated funerary objects discovered during any soils-disturbing activity shall comply with applicable state and federal laws. This shall include immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC), which shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archaeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (CEQA Guidelines. Sec. 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects.

Final Archaeological Resources Report. The archaeological consultant shall submit a draft final archaeological resources report (FARR) to the ERO that evaluates the historical significance of any discovered archaeological resource and describes the archaeological and historical research methods employed in the archaeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archaeological resource shall be provided in a separate removable insert within the final report.

PLANNING COMMISSION

Case No. 2006.0584KXCV
1407-1435 Market Street
Block 3507, Lot 041

Subject to: (check if applicable)

- ☒ Inclusionary Housing
- ☐ Childcare Requirement
- ☐ Downtown Park Fund
- ☒ Public Art
- ☐ Public Open Space
- ☐ Jobs-Housing Linkage
- ☐ Transit Impact Development Fee
- ☒ First Source Hiring

SAN FRANCISCO

PLANNING COMMISSION

MOTION NO. 17414

ADOPTING FINDINGS RELATED TO THE APPROVAL OF A SECTION 309 DETERMINATION OF COMPLIANCE AND REQUEST FOR EXCEPTIONS FOR THE CONSTRUCTION OF A RESIDENTIAL PROJECT CONTAINING APPROXIMATELY 719 DWELLING UNITS, APPROXIMATELY 19,000 SQUARE FEET OF RETAIL SPACE, AND A GARAGE WITH A CAPACITY OF UP TO 593 PARKING SPACES THE PROPERTY AT 1407-1435 MARKET STREET AND 16-70 TENTH STREET (ASSESSOR'S BLOCK 3507, LOT 041), LOCATED WITHIN THE C-3-G (DOWNTOWN GENERAL COMMERCIAL) DISTRICT AND 200-S AND 320-S HEIGHT AND BULK DISTRICTS.

RECITALS

1. On March 10, 2003, TCM Mid-Market Venture, Inc. filed an application for environmental review related to a mixed-use development (Myers Project) on the Project Site and the parcel south of the Project Site. The Myers Project consisted of two residential highrises (a 15-story, 150-foot-high, 200-unit senior housing building and a 20-story, 200-foot-high, 250-unit building) plus a 24-story, 320-foot-high office building for occupancy by the City and County of San Francisco. Environmental review of the Myers Project was conducted pursuant to the California Environmental Quality Act (CEQA) and Chapter 31 of the San Francisco Administrative Code.
2. On October 14, 2004, the Planning Commission (Commission) certified the Final Environmental Impact Report (FEIR) for the Myers Project.
3. On October 28, 2004, the residential component of the Myers Project was approved by the Commission. The office component of the Myers Project was never approved by the Commission, because the City and County of San Francisco pursued alternate plans to address its office needs.
4. The Myers Project has been revised, and on October 17, 2005, Tenth and Market, LLC (Project Sponsor) requested that the Planning Department (Department) review the

proposed revisions in accordance with CEQA.

5. On May 3, 2006, the Project Sponsor applied for a Section 309 Determination of Compliance and Request for Exceptions, Application No. 2006.0584X, on the property at 1407-1435 Market Street and 16-70 Tenth Street, Lot 041 in Assessor's Block 3507 (Project Site), in connection with a residential project containing approximately 719 dwelling units, approximately 19,000 square feet of commercial space, and a garage with a capacity of up to 593 parking spaces (Project), in general conformity with plans dated March 8, 2007 and labeled Exhibit B. The Project Site is within the C-3-G District and 200-S and 320-S Height and Bulk Districts.
6. On March 8, 2007, the Department published an Addendum to the FEIR, which determined that the current Project would not cause new significant impacts not identified in the FEIR and no new mitigation measures would be necessary to reduce significant impacts.
7. On April 5, 2007, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on the Section 309 application.
8. MOVED, that the Commission hereby approves the Section 309 Determination of Compliance and Request for Exceptions requested in Application No. 2006.0584X for the Project, subject to conditions contained in Exhibit A attached hereto and incorporated by reference, based on the following findings:

FINDINGS

Having reviewed the materials identified in the recitals above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and also constitute findings of this Commission.
2. The C-3-G District covers the western portions of downtown San Francisco and is composed of a variety of uses: hotels, offices, places of entertainment, residential buildings, and retail establishments. Many of these uses serve a citywide or regional clientele, but the intensity of development is lower than in the downtown core. Residential uses are principally permitted within the C-3-G District.
3. The Project Site, with a total area of approximately 66,383 square feet, is a roughly rectangular parcel (Block 3507, Lot 041) that is a portion of a larger parcel formerly known as Lot 039. A subdivision of Lot 039 into two lots resulted in the current configuration. The Project Site, which is bounded by Market Street on the north, Tenth Street on the east, Jessie Street on the south, and an adjacent parcel on the west, is located within the C-3-G District and 200-S and 320-S Height and Bulk Districts. The height limits step down from 320 feet along Market Street to 200 feet along Jessie

Street. The Project Site is also within a larger area that is proposed for designation as the Mid-Market Special Use District (SUD).

The Project Site is currently occupied by several vacant office buildings ranging in height from two to four stories. These buildings have been vacant for approximately seven years. Demolition permits for these buildings were issued between October 2006 and February 2007 after the Department of Building Inspection determined that the buildings were seismic hazards and public health and safety nuisances. The demolition work is currently in progress. A portion of the Project Site is also being used as a surface parking lot for approximately 75 vehicles.

4. The scale of development in the vicinity of the Project Site is very diverse, with the current height limits in the area ranging from 50 feet to 320 feet. Two- and three-story buildings are wedged between much taller buildings on both sides of Market Street. Two buildings in the area, Fox Plaza (1390 Market Street) and the AAA Building (100 Van Ness Avenue), approach heights of 400 feet. Almost all of the buildings in the area are occupied by office and retail uses, but there are some multi-family residential buildings, including Fox Plaza and Trinity Plaza. Other uses in the area include automobile repair/service centers, public storage facilities, and surface parking lots.

The adjacent parcel to the west is occupied by the 22-story, 313-foot-high Bank of America data processing center. On the east side of Tenth Street, the northern half of the block is occupied by the 11-story, 130-foot-high San Francisco Furniture Mart. On the north side of Market Street, a 20-story, 200-foot-high residential building (1 Polk Street) is currently under construction. The Civic Center lies several blocks to the north of the Project Site.

5. Following the demolition of the existing office buildings and surface parking lot, the proposed Project will be the construction of two buildings sharing a common base and containing approximately 719 dwelling units, approximately 19,000 square feet of commercial space, and a garage with a capacity of up to 668 parking spaces (578 residential spaces and 90 commercial spaces). The taller north tower, at the corner of Tenth and Market Streets, will be 35 stories and approximately 352 feet high with a 12-story, 123-foot-high base along Market Street. The shorter south tower, at the corner of Tenth and Jessie Streets, will be 19 stories and approximately 220 feet high. The two towers will be connected by a nine-story, 93-foot-high base running along Tenth Street.
6. The Project requires the authorization of a Section 309 Determination of Compliance and Request for Exceptions, including exceptions for separation of towers, rear yard, comfort-level wind, parking, an architectural vertical extension above the height limit, a ten percent upper tower extension above the height limit, and bulk. Other required entitlements include conditional use authorization and variances from certain requirements of the Planning Code.

7. The Myers Project that was analyzed in the FEIR consisted of two residential highrises (a 15-story, 150-foot-high, 200-unit senior housing building and a 20-story, 200-foot-high, 250-unit building) plus a 24-story, 320-foot-high office building for occupancy by the City and County of San Francisco.
8. On March 8, 2007, the Department published an Addendum to the FEIR. The Addendum analyzed a revised proposal that includes the Project, as generally described herein, and the previously-approved affordable senior housing building at the corner of Tenth and Mission Streets. The Addendum also discussed a variant to the affordable senior housing building that would provide affordable family housing with the same unit count but a different unit mix. In reviewing the proposed Project, the Commission has reviewed and considered the Addendum and the FEIR.
9. As discussed in the Addendum, development of the Project eliminates the significant and unavoidable transportation impact identified in the FEIR. Thus, construction of the revised proposal reviewed and analyzed in the Addendum would not result in any significant and unavoidable environmental impacts. As further discussed in the Addendum, development of the Project will not result in any new or substantially increased environmental impacts other than those impacts identified and discussed in the FEIR. There are no substantial changes in the Project, substantial changes to circumstances under which the Project is being undertaken, or new information of substantial importance from that analyzed and considered in the FEIR that will result in any new or substantially increased environmental impacts. Thus, preparation of the Addendum to the FEIR was appropriate, and no further environmental review is required under Public Resource Code Section 21116 or CEQA Guidelines Section 15162.

The Planning Department is the custodian of the documents and other materials that constitute the record of the proceedings upon which all CEQA findings set forth herein are based. Such documents and other materials are available for review by this Commission and the public at the Department's offices at 1660 Mission Street.

10. The FEIR and the Addendum include mitigation measures that would reduce other potential environmental impacts of the Project to a less-than-significant level. The Commission has reviewed and considered the mitigation and improvement measures, collectively identified as Exhibit C, which shall be incorporated as conditions of approval under Exhibit A of this Motion.
11. The Commission is not aware of any opposition to the Project.
12. **Planning Code Compliance.** The Commission finds that the Project meets the provisions of the Planning Code as follows:
 - a. **Floor Area Ratio.** Section 124 establishes basic floor area ratios (FAR) for all zoning districts. FAR is the ratio of the gross floor area of all the buildings on a lot to the total area of the lot. As set forth in Section 124(a), the FAR for the C-3-

G District is 6.0 to 1. Under Sections 123 and 128, the FAR can be increased to a maximum of 9.0 to 1 with the purchase of transferable development rights (TDR). Section 124(f) provides that in C-3-G Districts, additional square footage above the base FAR of 6.0 to 1 may be approved by conditional use for the construction of dwelling units affordable for 20 years to households whose incomes are within 150 percent of the median income, as defined in Section 124(f).

With a lot area of 66,383 square feet, up to 398,298 gross square feet can be developed on the Project Site without TDR, and up to 597,447 gross square feet can be developed with TDR. The Project Sponsor has stated that the process of purchasing the required TDR to increase the allowable FAR on the Project Site from 6.0 to 1 to 9.0 to 1 is nearly complete. The Project Sponsor may also pursue the transfer of unused gross floor area from the adjacent property to the south of the Project Site. This parcel, along with the Project Site, comprises a single "development lot," and the transfer of unused gross floor area from this parcel to the Project Site would provide financial capital to fund the construction of the previously-approved affordable senior housing building at the corner of Tenth and Mission Streets.

In addition to purchasing the required TDR, the Project Sponsor is seeking conditional use authorization to develop additional square footage above the 6.0 to 1 base FAR for dwelling units that will be affordable for a minimum of 20 years to households whose incomes are within 150 percent of the median income as defined in Section 124(f).

- b. **Setbacks in C-3 Districts.** In order to preserve the predominant street wall, Section 132(b) requires that structures on the southeast side of Market Street between the southerly extension of the easterly line of the Powell Street right-of-way and Tenth Street shall be set back 25 feet from the Market Street property line at a height of 90 feet.

The provisions of Section 132.1(b) are not applicable, because the Project Site is not located on the southeast side of Market Street between the southerly extension of the Powell Street right-of-way and Tenth Street. The Project Site is just west of Tenth Street.

- c. **Separation of Towers.** In order to provide light between structures, Section 132.1(c) requires all structures within an S Bulk District to be set back from an interior property line which does not abut a public sidewalk and from the property line abutting the right-of-way of a public street or alley. The setback shall be a minimum of 15 horizontal feet from the interior property line or the center of a public right-of-way, as the case may be, beginning at a height which is 1.25 times the width of the principal street on which the building faces, and increasing to the widths indicated in Chart A of Section 132.1 as the building increases in height.

The principal street on which the north tower fronts is Market Street, which is 120 feet wide. Beginning at a height of 150 feet and up to a height of 300 feet, the building must be set back 15 feet from the center of Market Street and from all interior property lines. The required setback increases from 15 feet at a building height of 300 feet to 35 feet at a building height of 550 feet as shown in Chart A of Section 132.1. The north tower complies with the separation of towers requirement. Above a height of 150 feet, the north tower will be set back approximately 102 feet from the center line of Market Street, approximately 57 feet from the center line of Tenth Street, and approximately 65 feet from the western interior property line.

The principal street on which the south tower fronts is Tenth Street, which is 80 feet wide. Beginning at a height of 100 feet and up to a height of 300 feet, the building must be set back 15 feet from the center of Tenth Street and from all interior property lines. The south tower partially complies with the separation of towers requirement. Above a height of 100 feet, the south tower will be set back approximately 57 feet from the center line of Tenth Street and approximately 25 feet from the center line of Jessie Street. The south tower will not be set back at least 15 feet from the western interior property line, and a separation of towers exception is required.

Pursuant to Sections 132.1(c)(2) and 309(a)(1), exceptions to the separation of towers requirement may be allowed in accordance with the provisions of Section 309 as provided below:

(A) Encroachments of building volume on the setback may be approved as follows:

- (i) For the portion of the building over 300 feet from the ground, encroachments may be allowed provided that (1) there are compensating recesses beyond the required setback below and within approximately 100 vertical feet of the encroachment, which recesses are at least equal in volume to the volume of the encroachment and (2) it is found that, overall, access to light and air and the appearance of separation between buildings will not be impaired.

This criterion is not applicable, because the south tower will not exceed a height of 300 feet.

- (ii) Between the top of the base and 300 feet above the ground, encroachments may be allowed provided that (1) there are compensating recesses beyond the required setback at the same level or within approximately 50 vertical feet above or below the encroachment, which recesses are at least equal in volume to the

volume of the encroachment, (2) that the encroachment extends no more than five feet horizontally into the area otherwise required for a setback, (3) the encroachment extends for less than 1/3 of the horizontal length of the structure, and (4) it is found that, overall, access to light and air and the appearance of separation between buildings will not be impaired.

The portion of the south tower that encroaches into the required setback is approximately 62 feet wide which is less than one-third of the horizontal east-west length of the structure. Furthermore, the encroachment area has open space on either side (common open space to the north and Jessie Street to the south), so the encroachment will not impair access to light or the presence of separation between buildings.

- (B) Exceptions may be allowed to the extent that it is determined that restrictions on adjacent properties make it unlikely that development will occur at a height or bulk which will, overall, impair access to light and air or the presence of separation between buildings, thereby making setbacks unnecessary.

With respect to the south tower, the relevant adjacent property is the Bank of America data processing center to the west. The data processing center is comprised of a six-story podium that runs the entire length of the lot and a 313-foot-high tower at the north end of the lot. Since the tower of the data processing center is located at the northern end of the lot, there is no adjacent structure higher than six stories to the west of the Project's south tower. There is a service driveway located between the data processing center and the western property line of the Project Site. As a result, the podium of the data processing center and the Project's south tower will be separated by approximately 35 feet. Encroachment into the required setback will not impair access to light or the presence of separation between the two buildings.

- (C) Exceptions may be allowed on lots with a frontage of less than 75 feet provided that (i) it is found that, overall, access to light and air will not be impaired and (ii) the granting of the exception will not result in a group of buildings the total street frontage of which is greater than 125 feet without a separation between buildings which meets the requirements of Chart A.

This criterion is not applicable, because the Project Site does not have a street frontage that is less than 75 feet.

- d. **Rear Yard.** Section 134 establishes minimum required rear yards in all zoning districts. The rear yard is a function of lot depth. Under Section 134(a)(1), the

required rear yard for properties in C-3 Districts is 25 percent of the total depth of the lot on which the building is situated, but in no case less than 15 feet. Section 134(a)(1)(C) states that in C-3 Districts, "rear yards shall be provided at the lowest story containing a dwelling unit and at each succeeding level or story of the building."

Pursuant to Sections 134(d) and 309(a)(1), an exception to the rear yard requirement is allowed in C-3 Districts, provided that the building location and configuration assure adequate light and air to windows within the residential units and to the usable open space provided.

The purpose of the rear yard requirement is to preserve mid-block open space and provide usable open space for residential uses. From the second through ninth floors, the footprint of the Project takes on a backward "C" shape, with the spine of the "C" running along Tenth Street. The result is an 18,650-square-foot rear yard on the western half of the Project Site that will partially satisfy the Project's usable open space requirement.

A rear yard exception is required, because the rear yard does not extend the full width of the lot. Instead of passing through from Jessie Street to Market Street, the rear yard is enclosed at its northern and southern ends.

Whether Market Street or Tenth Street is designated as the front of the Project Site, requiring a Code-complying rear yard would result in a Project that interrupts the street wall along Market Street or Tenth Street (the missing tooth effect), which would not be aesthetically pleasing or consistent with basic urban design principles. The area of the rear yard, which is approximately 28 percent of the total area of the Project Site, and the building configuration and location will assure that all of the dwelling units facing the rear yard will receive adequate light. Furthermore, there is no existing pattern of mid-block open space on the subject block. For these reasons, a rear yard exception is appropriate.

- e. **Usable Open Space.** Usable open space is required for dwelling units in all zoning districts. Under Section 135(d)(2), the minimum amount of usable open space for dwelling units in C-3 Districts is as follows: 36 square feet per unit if private and 48 square feet per unit if common.

The Project will provide a combination of private usable open space (balconies and patios) and common usable open space (a small park at the end of Jessie Street, a common yard at the second floor, a terrace on the roof of the north tower, and terraces and a solarium on the roof of the south tower) in compliance with the requirements of Section 135(d)(2).

Section 135(g)(2) requires that any area of an inner court that is credited as common usable open space must not be less than 20 feet in every horizontal

dimension and 400 feet in area; and the height of the walls and projections above the court on at least three sides (or 75 percent of the perimeter, whichever is greater) is such that no point on any such wall or projection is higher than one foot for each foot that such point is horizontally distant from the opposite side of the clear space in the court.

The Project includes an 18,650-square-foot rear yard that is intended to partially satisfy the Project's requirement for common usable open space. This rear yard is surrounded by a 352-foot-high tower to the north, a 93-foot-high building to the east, a 220-foot-high tower to the south, and the 90-foot-high podium of the Bank of America data processing center to the west. Given the heights of these buildings, the Project will not meet the requirements of Section 135(g)(2). The Project Sponsor has elected to seek and justify a variance, which will be considered by the Zoning Administrator.

- f. **Streetscape Improvements.** Section 138.1(b) requires that when there is a substantial alteration to an existing building in the C-3 District, street trees and sidewalk paving must be provided. Under Section 138.1(c), the Commission may also require the Project Sponsor to install additional sidewalk improvements such as lighting, special paving, seating and landscaping in accordance with the guidelines of the Downtown Streetscape Plan if it finds that these improvements are necessary to meet the goals and objectives of the General Plan.

Subject to approval by the Department of Public Works, the Project will provide one or more of the following streetscape improvements along Market, Tenth, and Jessie Streets: benches, bicycle racks, landscaping, lighting, sidewalk paving, and street trees. The Project Sponsor will be responsible for making necessary repairs to and maintaining the sidewalks abutting the Project Site.

- g. **Downtown Park Fund.** Under Section 139, a project in a C-3 District that proposes a net addition of office space is required to pay a fee which will be deposited in the Downtown Park Fund. The fee is jointly established by the Planning Commission and the Recreation and Park Commission. The purpose of the Downtown Park Fund is to provide the City with the financial resources to develop public park and recreation facilities for the enjoyment of employees and visitors in downtown San Francisco.

The provisions of Section 139 are not applicable, because the Project does not include the net addition of office space.

- h. **Dwelling Unit Exposure.** Section 140 requires every dwelling unit in every use district to face either a public street, a public alley at least 25 feet in width, a rear yard meeting the requirements of this Code, or an open area at least 25 feet in every horizontal dimension for the floor at which the dwelling unit in question is

located and the floor immediately above it, with an increase in five feet in every horizontal dimension at each subsequent floor.

All of the proposed dwelling units facing Tenth, Market, or Jessie Streets will comply with the standards for dwelling unit exposure. The remaining units not facing one of the three streets bordering the Project Site will face the 18,650-square-foot rear yard and will have adequate access to light. However, the rear yard between is not Code-complying and requires a rear yard exception. In addition, the dimensions of this open area do not increase five feet in every horizontal dimension at each subsequent residential floor. For these reasons, some of the dwelling units on the lower levels of the Project will not meet the literal requirements for dwelling unit exposure. The Project Sponsor has elected to seek and justify a variance, which will be considered by the Zoning Administrator.

- i. **Street Trees.** Section 143 requires the installation of street trees in the case of the construction of a new building. One 15-gallon street tree shall be required for every 20 feet of property frontage along each street or alley, with any remaining fraction of ten feet or more of frontage requiring an additional tree. The species and locations of trees installed in the public right-of-way shall be subject to approval by the Department of Public Works.

Subject to approval by the Department of Public Works, the Project Sponsor shall comply with the requirements set forth in Section 143 by providing street trees along Market, Tenth, and Jessie Streets.

- j. **Shadows on Public Sidewalks.** In order to maintain direct sunlight on public sidewalks in certain downtown areas during critical use periods, Section 146(a) requires new structures to avoid penetrating a sun access plane defined by an angle sloping away from the street above a stipulated height at the property line as set forth in Table 146. Section 146(c) requires new buildings and additions to existing buildings in C-3 Districts to be shaped, if it can be done without creating an unattractive design and without unduly restricting the development potential of the site in question, to reduce substantial shadow impacts on public sidewalks other than those protected by Section 146(a).

The requirements of Section 146(a) are not applicable, because the Project Site is not located on any of the streets designated in Table 146. Although the Project would cast new shadows on nearby sidewalks and streets (Market, Ninth, and Tenth Streets), these new shadows would not be above levels that are common in dense urban environments. These new shadows cannot be reduced or eliminated without unduly restricting the development potential of the Project Site. For these reasons, the Project complies with the requirements of Section 146(c).

- k. **Shadows on Public Open Spaces.** Section 147 sets forth certain requirements and determinations regarding shadows being cast on public or publicly accessible open space. Section 147 seeks to reduce substantial shadow impacts on public plazas and other publicly accessible spaces other than those protected under Section 295.

A shadow analysis determined that the Project would not cast net new shadow on United Nations Plaza or the Fulton Street Mall, two public open spaces that are not protected under Section 295.

- l. **Ground-Level Wind Currents.** In C-3 Districts, buildings and additions to existing buildings shall be shaped, or other wind-baffling measures shall be adopted, so that the developments will not cause ground-level wind currents to exceed more than 10 percent of the time year round, between 7:00 a.m. and 6:00 p.m., the comfort level of 11 miles per hour equivalent wind speed in areas of substantial pedestrian use and seven miles per hour equivalent wind speed in public seating areas.

When preexisting ambient wind speeds exceed the comfort level, or when a proposed building or addition may cause ambient wind speeds to exceed the comfort level, the building shall be designed to reduce the ambient wind speeds to meet the requirements. An exception may be granted, in accordance with the provisions of Section 309, allowing the building or addition to add to the amount of time that the comfort level is exceeded by the least practical amount if (1) it can be shown that a building or addition cannot be shaped and other wind-baffling measures cannot be adopted to meet the foregoing requirements without creating an unattractive and ungainly building form and without unduly restricting the development potential of the building site in question, and (2) it is concluded that, because of the limited amount by which the comfort level is exceeded, the limited location in which the comfort level is exceeded, or the limited time during which the comfort level is exceeded, the addition is insubstantial.

No exception shall be granted and no building or addition shall be permitted that causes equivalent wind speeds to reach or exceed the hazard level of 26 miles per hour for a single hour of the year.

The Project Sponsor retained the services of independent consultants to analyze ground-level wind currents in the vicinity of the Project Site. A wind tunnel analysis, the results of which are included in the Addendum to the FEIR, was conducted using a scale model of the Project Site and its immediate vicinity. Measurements were taken at 25 test points.

Comfort Criterion

Without the Project, 17 test points currently exceed the pedestrian comfort level of 11 mph. With the Project, there would be four new exceedances of the comfort criterion along Mission Street, and an exception is required.

The windy conditions in the vicinity of the Project Site are caused primarily by the existence of Fox Plaza. From an urban design standpoint, almost nothing can be done to the Project that would significantly improve the existing wind conditions. The Project cannot be designed or shaped in a way that would meet the provisions of Section 148 without drastically altering the architectural design of the Project or creating unattractive and ungainly building forms along Market and Tenth Streets, and an exception is appropriate. Wind tunnel tests for other projects in the immediate vicinity of the Project Site show that as more development occurs, the cumulative wind conditions will gradually improve. For these reasons, an exception from the comfort criterion is appropriate.

Hazard Criterion

Without the Project, six test points currently exceed the wind hazard criterion of 26 mph for a total duration of 253 hours a year. These measurements of existing conditions differ substantially from the measurements of existing conditions for the Myers Project, which indicated seven exceedances with a total duration of 482 hours a year. The differences can be partially explained by the limited repeatability of wind tunnel testing. If the same project is tested multiple times, minute changes in the locations or the orientations of the sensors can result in significantly different results from one test to the next. In addition, measurements of higher wind velocities have higher statistical margins of error than measurements of lower wind velocities.

With the Project, the wind tunnel tests showed three new exceedances would be created with a total duration of 609 hours a year. Sections 148 and 309 do not allow the granting of a hazard level exception, but the standards of Section 148 are variable pursuant to Section 305. Additional computer-based analyses showed that the Project would not significantly change existing wind conditions in the vicinity of the Project Site. Given the limited repeatability of wind tunnel testing and the uncertainty related to the statistical margins of error for measurements of higher wind velocities, the Project Sponsor has elected to seek and justify a hazard criterion variance, which will be considered by the Zoning Administrator.

Usable Open Space

Six additional test points were used to collect data on projected wind speeds within the Project's proposed open space areas. All six test points showed

exceedances of the comfort criterion, and three of the test points showed exceedances of the hazard criterion.

The wind tunnel analysis recommends that all open space areas be landscaped or sheltered appropriately to reduce wind speeds and improve their usability. This recommendation has been incorporated into the FEIR and the Addendum as an improvement measure and is included as a condition of approval in Exhibits A and C of this Motion.

- m. **Public Art.** In the case of construction of a new building or addition of floor area in excess of 25,000 square feet to an existing building in a C-3 District, Section 149 requires a project to include works of art costing an amount equal to one percent of the construction cost of the building and requires the Commission to approve the type and location of the artwork, but not the artistic merits of the specific artwork proposed. The types of permitted artwork include sculptures, bas-reliefs, murals, mosaics, decorative water features, or other work permanently affixed to the building or site.

With an estimated construction cost of approximately \$125 million, the Project is required to provide artwork equal in value to approximately \$1.25 million or to one percent of the revised applicable construction cost if modified by the Director of the Department of Building Inspection.

- n. **Parking.** Pursuant to Section 151.1, residential uses in C-3 Districts are not required to provide off-street parking, but up to one space for every four dwelling units can be provided as of right. Pursuant to Section 309, residential parking that exceeds one space for every four dwelling units, up to a maximum of three spaces for every four dwelling units and one space for every dwelling unit with at least two bedrooms and at least 1,000 square feet of occupied floor area, can be provided with the granting of an exception. Section 161 exempts commercial uses in C-3 Districts from providing parking. Pursuant to Section 204.5(c), up to 15 spaces or seven percent of the total floor area of the development or use, whichever is greater, can be devoted to commercial parking as of right. Commercial parking that exceeds the accessory amounts specified in Section 204.5(c) requires conditional use authorization. Pursuant to Sections 102.9(b)(16) and 309, the Commission can require that existing short-term commercial parking spaces be replaced in part or in whole. Such required replacement parking would be considered accessory and would be exempt from the calculation of gross floor area.

With 719 dwelling units, a maximum of 179 residential spaces can be provided without an exception. With approximately 19,000 square feet of commercial space proposed for the Project Site, a maximum of 15 spaces or 1,330 square feet, whichever results in the greater number of spaces, can be devoted to commercial parking as of right.

The Project Sponsor is seeking an exception to provide 578 residential spaces. In addition, the Project Sponsor is requesting that the Commission require the provision of 75 commercial spaces to replace the existing commercial spaces that will be eliminated to make way for the construction of the Project.

The Project Sponsor is proposing a total of 668 parking spaces (578 residential and 90 commercial), which requires approval under Section 309. The Commission is hereby approving the 578 residential spaces but not the 75 replacement commercial spaces. The Commission will support accessory commercial parking (15 spaces or seven percent of the total commercial square footage of the Project, whichever is greater) as defined in Section 204.5(c).

Pursuant to Section 151.1(e), in C-3 Districts, any request for residential parking in excess of what is permitted by right in Table 151.1 shall be reviewed on a case-by-case basis by the Commission subject to the procedures set forth in Section 309. In granting approval for residential parking above that permitted by right in Table 151.1, the Commission shall make the following affirmative findings:

- (1) For projects with 50 or more units, all residential accessory parking in excess of 0.5 spaces for each dwelling unit shall be stored and accessed by mechanical stackers or lifts, valet, or other space-efficient means that allows more space above grade for housing, maximizes space efficiency, and discourages use of vehicles for commuting or daily errands. The Commission may authorize the request for additional parking notwithstanding that the project sponsor cannot fully satisfy this requirement provided that the project sponsor demonstrates hardship or practical infeasibility (such as for retrofit of existing buildings) in the use of space-efficient parking given the configuration of the parking floors within the building and the number of independently accessible spaces above 0.5 spaces per dwelling unit is *de minimis* and subsequent valet operation or other form of parking space management could not significantly increase the capacity of the parking spaces above the maximum limits in Table 151.1.

With 719 dwelling units, any residential parking spaces in excess of 360 spaces shall be space-efficient. The Project is proposing 578 residential parking spaces, and 218 of those spaces are required to be space-efficient. The Project will provide the required number of space-efficient residential parking spaces.

- (2) For any project with residential accessory parking in excess of 0.375 spaces per dwelling unit, the project complies with the housing requirements of Sections 315 through 315.9 except as follows: the inclusionary housing requirements that apply to projects seeking

conditional use authorization as designated in Section 315.3(a)(2) shall apply to the project.

The Project requires conditional use authorization and therefore must comply with the inclusionary housing requirements set forth in Section 315.3(a)(2) that were in effect prior to the adoption of the 2006 amendments to the inclusionary housing requirements.

- (3) The findings of Sections 151.1(d)(2), 151.1(d)(3), and 151.1(d)(5) are satisfied.

Section 151.1(d)(2). Vehicle movement on or around the project site associated with the excess accessory parking does not unduly impact pedestrian spaces or movement, transit service, bicycle movement, or the overall traffic movement in the district.

The proposed parking is not expected to adversely impact traffic congestion. The traffic analysis prepared for the Project concluded that under the Existing Plus Project conditions, all of the study intersections operating at LOS D or better are expected to continue operating at LOS D with the addition of the Project. Given the proximity of downtown and numerous public transit alternatives, it is expected that most residents who own automobiles will either walk or take public transit to and from their places of employment and limit their driving to evenings and weekends. There will be no curb cuts on Market Street, so the proposed parking will not adversely impact bicyclists, motorists, or public transit on Market Street.

Section 151.1(d)(3). Accommodating excess accessory parking does not degrade the overall urban design quality of the project proposal.

The overall urban design quality of the Project will not be degraded by the excess accessory parking. Much of the proposed parking will be below grade. The portion of the garage that will be at grade will be lined with active uses and will not be visible from any public right-of-way except Jessie Street.

Section 151.1(d)(5). Excess accessory parking does not diminish the quality and viability of existing or planned streetscape improvements.

The excess accessory parking will not diminish the quality and viability of existing or planned streetscape improvements. The Project Site has approximately 660 feet of street frontage, and only 61 feet along Jessie Street will be devoted to the garage entrances/exits. There will be no

garage entrances/exits on Market or Tenth Streets, which are the two primary street frontages of the Project Site.

- (4) All parking meets the active use and screening requirements in Sections 155(s)(1)(B) and 155(s)(1)(C) and the project sponsor is not requesting any exceptions or variances requiring such treatments elsewhere in the Code.

Section 155(s)(1)(B). Parking at the ground level to the full height of the ground-level parking shall be lined with active uses, as defined by Section 145.4(e) to a depth of at least 25 feet along all street frontages, except for space allowed for parking and loading access, building egress, and access to mechanical systems. So as not to preclude conversion of parking space to other uses in the future, parking at the ground level shall not be sloped and shall have a minimum clear ceiling height of nine feet.

Much of the proposed parking will be below grade. The portion of the garage that will be at grade will be lined with active uses as defined in Section 145.4(e) that are at least 40 feet deep. The proposed parking will not be sloped and will have a minimum floor-to-ceiling height of nine feet.

Section 155(s)(1)(C). Parking allowed above the ground level in accordance with an exception under Section 309 or a conditional use in accordance with Section 303 as authorized by Sections 155(s)(2) or 155(s)(3) shall be entirely screened from public rights-of-way in a manner that accentuates ground-floor retail and other uses, minimizes louvers and other mechanical features, and shall be in keeping with the overall massing and architectural vocabulary of the building's lower floors. So as not to preclude conversion of parking space to other uses in the future, parking allowed above the ground level shall not be sloped and shall have a minimum clear ceiling height of nine feet.

The provisions of Section 155(s)(1)(C) are not applicable, because the Project will not provide parking above the ground level.

Section 155(s)(5)(A) establishes standards for the width of openings for off-street parking and loading facilities. Any single development is limited to a total of two façade openings of no more than 11 feet wide each or one opening of no more than 22 feet wide for access to off-street parking and one façade opening of no more than 15 feet wide for access to off-street loading. Shared openings for parking and loading are encouraged. The maximum permitted width of a shared parking and loading garage opening is 27 feet.

In order to avoid new curb cuts along Market and Tenth Streets, all vehicular access for the Project will be provided on Jessie Street. At a width of 20 feet, the

parking entry complies with the requirements of Section 155(s)(5)(A), but the 23-foot-wide loading entry does not comply. Site constraints (Jessie Street is only 35 feet wide and provides limited maneuvering room) make it difficult to utilize a Code-complying façade opening for the off-street loading facility. The Project Sponsor has elected to seek and justify a variance, which will be considered by the Zoning Administrator.

- o. **Loading.** Section 152.1 establishes minimum requirements for off-street loading. In C-3 Districts, the loading requirement is based on the total gross floor area of the structure or use. Residential uses exceeding 500,000 square feet are required to provide three off-street loading spaces plus one space for each additional 400,000 square feet. Retail uses between 10,001 square feet and 30,000 square feet are required to provide one off-street loading space.

With a gross floor area of approximately 574,000 square feet, the residential component of the Project is required to provide three off-street loading spaces. With a gross floor area of approximately 19,000 square feet, the commercial component of the Project is required to provide one off-street loading space. The total off-street loading requirement for the Project is four spaces. The Project is providing two full-sized loading spaces and four van-sized spaces in compliance with the requirements of Section 152.1.

- p. **Bicycle Parking.** Pursuant to Section 155.5, in all zoning districts, residential uses containing four or more dwelling units are required to provide bicycle parking at no cost or fee to the building occupants or tenants. For projects containing 50 or more dwelling units, the requirement is as follows: 25 Class 1 spaces plus one Class 1 space for every four dwelling units over 50, with a maximum requirement of 400 spaces.

With 719 dwelling units, the Project is required to and will provide 192 Class 1 bicycle parking spaces at various locations throughout the Project Site.

- q. **Car Sharing.** Pursuant to Section 166, in all zoning districts, residential uses that provide parking shall also provide car share parking. For projects containing 201 or more dwelling units, the requirement is as follows: one car share space plus one car share space for every 200 dwelling units over 200.

With 719 dwelling units, the Project is required to and will provide four car share spaces.

- r. **Dwelling Unit Density.** Section 215(a) establishes density ratios for residential uses. In C-3 Districts, the maximum dwelling unit density ratio shall not exceed one unit for every 125 square feet of lot area.

With a lot area of 66,383 square feet, 531 units are permitted on the Project Site. The Project Sponsor is seeking conditional use authorization to provide 719 units, which is a density ratio of one unit for every 92 square feet of lot area.

- s. **Height Exemption for Elevator Penthouses.** Section 260(b)(1)(B) allows height exemptions of 16 feet for elevator, mechanical, and stair penthouses where the height limit is more than 65 feet. The Zoning Administrator may, after conducting a public hearing, grant a further height exemption for an elevator penthouse for a building with a height limit of more than 65 feet but only to the extent that the Zoning Administrator determines that such an exemption is required to meet state or federal laws or regulations.

The roof of the elevator penthouse of the north tower will be approximately 28 feet above the roof of the building. The Project Sponsor has elected to seek a height exemption, which will be considered by the Zoning Administrator.

- t. **Architectural Vertical Extension Above Height Limit.** Pursuant to Section 260(b)(1)(G), in any C-3 District, vertical extensions to buildings, such as spires, which enhance the visual appearance of the structure and are not used for human occupancy may be allowed, pursuant to the provisions of Section 309, up to 75 feet above the height otherwise allowed. The extension shall not be subject to the percentage coverage limitations otherwise applicable to this subsection, provided that the extension is less than 100 square feet in cross-section and 18 feet in diagonal dimension.

The north tower includes decorative architectural screens that extend to a maximum of 41 feet above the roof, which requires an exception. This vertical extension will enhance the visual appearance of the north tower and screen the mechanical and elevator penthouses on the roof. The screen is not intended for human occupancy.

- u. **Upper Tower Extension Above Height Limit.** Pursuant to Section 263.9, in S Bulk Districts, additional height up to 10 percent of the heights shown on Maps 1H, 2H and 7H of the Zoning Map may be allowed as an extension of the upper tower, provided that the volume of the upper tower as extended is reduced by the percentage shown in Chart B of Section 270(d). This additional height may be allowed pursuant to the provisions of Section 309 only to the extent it is determined that the upper tower volume is distributed in a way that will add significantly to the sense of slenderness of the building and to the visual interest to the termination of the building, and that the added height will improve the appearance of the skyline when viewed from a distance, will not adversely affect light and air to adjacent properties, and will not add significant shadows to public open spaces

At the suggestion of the Department, the Project Sponsor is seeking an exception to apply the 10 percent height extension to the north and south towers. The north tower has a prescribed height limit of 320 feet, and the 10 percent height extension would result in a 352-foot-high building. The south tower has a prescribed height limit of 200 feet, and the 10 percent height extension would result in a 220-foot-high building.

Granting the exception for the 10 percent height extension will add to the sense of slenderness of each tower and draw attention to the visually distinct top of each tower. By allowing an additional 32 feet of height, the bulk of the north tower can be reduced, further emphasizing the building's slender vertical proportions. The additional height of each tower will not adversely impact the skyline when viewed from a distance, will not adversely impact access to light for adjacent properties, and will not cast any new shadows on public open spaces in the vicinity of the Project Site.

- v. **Bulk Limits.** Section 270 establishes bulk limits applicable to all buildings. The Project Site is within an S Bulk District, and the bulk limits for an S Bulk District as set forth in Section 270(d) are as follows:

- (1) **Base.** The base is the lowest portion of the building extending vertically to a street wall height up to 1.25 times the width of the widest abutting street or 50 feet, whichever is more. There are no length or diagonal dimension limitations applicable to the base. The building base shall be delineated from the lower and upper tower and related to abutting buildings by a setback, cornice line or equivalent projection or other appropriate means.

For the north tower, the widest abutting street is Market Street, which is 120 feet wide, meaning that the base for the north tower is that portion of the building extending vertically from grade up to a height of 150 feet. The actual Market Street base of the north tower is 123' 4" high.

For the south tower, the widest abutting street is Tenth Street, which is 80 feet wide, meaning that the "base" for the south tower is that portion extending vertically from grade up to a height of 100 feet. The actual base of the south tower is 93' 4" high.

- (2) **Lower Tower.** Bulk controls for the lower tower apply to that portion of the building height above the base as shown on Chart B in Section 270. The bulk controls for the lower tower are a maximum length of 160 feet, a maximum floor size of 20,000 square feet, and a maximum diagonal dimension of 190 feet.

As indicated in Chart B, the lower tower of the north tower is the portion of the building extending vertically from a height of 150 feet to a height of 200 feet. With a maximum length of 134' 1", a maximum diagonal of 162' 7", and a maximum floor size of 11,940 square feet, the north tower complies with the lower tower bulk controls.

As indicated in Chart B, the lower tower of the south tower is the portion of the building extending vertically from a height of 100 feet to a height of 160 feet. With a maximum length of 142 feet, a maximum diagonal of 148' 3", and a maximum floor size of 8,050 square feet, the south tower complies with the lower tower bulk controls.

- (3) **Upper Tower Dimensions.** Upper tower bulk controls apply to buildings taller than 160 feet. They apply to the upper tower portion of a building up to the height shown on Chart B, which height excludes the vertical attachment and other features exempted by Section 260 and excludes the extended upper tower height exceptions provided for in Section 263.7 of this Code. The bulk controls for the upper tower are: a maximum length of 130 feet; a maximum average floor size of 12,000 square feet; a maximum floor size for any floor of 17,000 square feet; and a maximum average diagonal measure of 160 feet. In determining the average floor size of the upper tower, areas with a cross-sectional area of less than 4,000 square feet may not be counted and sculptured architectural forms that contain large volumes of space but no usable floors shall be included in average floor size calculation by computing the cross section at 12.5-foot intervals.

The upper tower of the north tower is the portion of the building extending vertically from a height of 200 feet to a height of 320 feet. With a maximum length of 119' 1", average and maximum floor sizes of 10,920 square feet, and a maximum average diagonal of 150' 3", the north tower complies with upper tower bulk controls.

The upper tower of the south tower is the portion of the building extending vertically from a height of 160 feet to a height of 200 feet. The maximum floor size (8,050 square feet) and maximum diagonal (148' 3") comply with the upper tower bulk controls, but the maximum length (142 feet) does not comply with the upper tower bulk controls, and a bulk exception is required.

Upper Tower Volume Reduction. When the average floor size of the lower tower exceeds 5,000 square feet, the volume of the upper tower shall be reduced to a percentage of the volume that would occur if the average floor size of the lower tower were extended to the proposed building height. The percentage varies with the bulk of the lower tower

and with whether or not a height extension is employed pursuant to Section 263.7 and is shown on Chart C. In achieving the required volume reduction, a setback or change in profile at a specific elevation is not required.

Based on an average lower tower floor size of 11,940 square feet, the required volume reduction for the upper tower of the north tower would be approximately 16 percent or 1,910 square feet, which would translate to an upper tower floor size of 10,030 square feet. A bulk exception is required, because the floors of the upper tower of the north tower will not provide the required volume reduction.

Based on an average lower tower floor size of 8,050 square feet, the required volume reduction for the upper tower of the south tower would be approximately 7.5 percent or 604 square feet, which would translate to an upper tower floor size of 7,446 square feet. A bulk exception is required, because with the floors of the upper tower of the south tower will not provide the required volume reduction.

Termination of the Tower. The top of the tower shall be massed in a manner that will create a visually distinctive roof or other termination of the building façade. Modifications to a proposed project may be required, in the manner provided in Section 309, to achieve this purpose.

The north tower will terminate with a decorative architectural screen that flanks the north and south façades. In keeping with the skin of the north tower, the screen will be a glass curtain wall system. The north screen will extend to a maximum height of 393 feet, and the south screen will extend to a maximum height of 380 feet.

The south tower will terminate with a trellis that extends from the east and west ends of the rooftop solarium. With its 15-foot-high windows, the solarium, in combination with the trellis, will create a visually distinctive roof.

Pursuant to Section 272(a), the bulk limits prescribed by Section 270 have been carefully considered in relation to objectives and policies for conservation and change in C-3 Districts. However, there may be some exceptional cases in which these limits may properly be permitted to be exceeded to a certain degree, provided, however, that there are adequate compensating factors. Exceptions to the bulk limits may be approved in the manner provided in Section 309, provided that at least one of the following criteria is met:

- (1) Achievement of a distinctly better design, in both a public and a private sense, than would be possible with strict adherence to the bulk limits,

avoiding an unnecessary prescription of building form while carrying out the intent of the bulk limits and the principles and policies of the Master Plan.

Granting the requested bulk exceptions would result in a distinctly better overall design. In order for the each tower to comply with the prescribed bulk controls, multiple setbacks would be required to taper each tower as it increases in height. This reduction would result in towers tower that are broken up into two or more distinct sections (the tiered wedding cake effect). This design would detract from the simple overall massing and slender vertical proportions of each tower.

- (2) Development of a building or structure with widespread public service benefits and significance to the community at large, where compelling functional requirements of the specific building or structure make necessary such a deviation; and provided further that all of the following criteria are met:

The north and south towers are integral elements in a Project that will redevelop an underutilized 1.5-acre site with approximately 719 dwelling units and approximately 19,000 square feet of commercial space. Of the 719 dwelling units proposed for the Project Site, 12 percent will be subject to the on-site inclusionary housing requirements set forth in Section 315.

- (A) The added bulk does not contribute significantly to shading of publicly accessible open space.

As stated in the findings of compliance with Sections 147 and 295, the Project will not result in adverse shadow impacts on any publicly accessible open spaces or parks in the vicinity of the Project Site.

- (B) The added bulk does not increase ground-level wind currents in violation of the provisions of Section 148 of this Code.

As stated in Finding 12L of this Motion, the Project is not expected to exacerbate existing wind conditions in the vicinity of the Project Site.

- (3) The added bulk does not significantly affect light and air to adjacent buildings.

The adjacent property to the west of the Project Site is the only one that could be impacted by the additional bulk of the north and south towers. Given that the Bank of America data processing center is at least 35 feet

away and has no east-facing windows, the additional bulk of the north and south towers will not adversely impact access to light for the Bank of America data processing center.

- (4) If appropriate to the massing of the building, the appearance of bulk in the building, structure or development is reduced to the extent feasible by means of at least one and preferably a combination of the following factors, so as to produce the impression of an aggregate of parts rather than a single building mass:

- (A) Major variations in the planes of wall surfaces, in either depth or direction, that significantly alter the mass.

The façades of the north tower include changes in plane, projecting balconies, and a decorative architectural screen that emphasizes the vertical proportions of the building. The façades of the south tower include projecting bays and balconies, a setback at the 20th floor, and a trellis that extends from the east and west ends of the solarium.

- (B) Significant differences in the heights of various portions of the building, structure or development that divide the mass into distinct elements.

The south tower, at a height of 220 feet, is substantially shorter than the 352-foot-high north tower. The north and south towers are approximately 130 feet apart, but they are connected by a 93-foot-high base that runs along Tenth Street. There is also a 123-foot-high base element along Market Street. As a result of these varying heights, the mass of the Project is divided into distinct elements.

- (C) Differences in materials, colors or scales of the façades that produce separate major elements.

The east façade of the north tower features a vertical column of glass curtain wall next to a vertical column of high-quality precast concrete. The north and south façades will feature a decorative architectural screen. In keeping with the skin of the north and south façades, the screen will be a glass curtain wall system.

The south tower sits on a 93-foot-high base featuring high-quality stone and precast concrete. The façades of the tower element have alternating columns of precast concrete and glass curtain wall that emphasize the tower's vertical proportions. The tower is

crowned by trellis extending from a two-story high solarium with 15-foot-high windows.

- (D) Compensation for those portions of the building, structure or development that may exceed the bulk limits by corresponding reduction of other portions below the maximum bulk permitted.

The lower towers of the north and south towers have floor sizes that are significantly smaller than what the bulk controls permit. The lower tower of the north tower could have floors that are 7,720 square feet larger than what is being proposed, and the lower tower of the south tower could have floors that are 11,940 square feet larger than what is being proposed. This reduction in floor sizes compensates for the portions of the upper towers that exceed the bulk controls.

- (E) In cases where two or more buildings, structures or towers are contained within a single development, a wide separation between such buildings, structures or towers.

There will be approximately 130 feet of separation between the north and south towers.

- (5) The building, structure or development is made compatible with the character and development of the surrounding area by means of all of the following factors:

- (A) A silhouette harmonious with natural land forms and building patterns, including the patterns produced by height limits.

As designed, the silhouette, height, and bulk of the Project are harmonious with the existing pattern of development in the neighborhood. The north tower is similar in height to the Bank of America data processing center and shorter than Fox Plaza. The 12-story base of the north tower matches the typical building heights along Market Street, and the nine-story base along Tenth Street responds to the reduced scale of development along that street.

- (B) Either maintenance of an overall height similar to that of surrounding development or a sensitive transition, where appropriate, to development of a dissimilar character.

The Project steps down in height from the 352-foot-high north tower on Market Street to the 220-foot-high south tower at Tenth

and Jessie Streets. This height transition mirrors the transition of development from highrise structures along Market Street to small-scale buildings in the South of Market neighborhood.

- (C) Use of materials, colors and scales either similar to or harmonizing with those of nearby development.

The Project will feature the use of high-quality stone or precast concrete, metal, and a glass curtain wall system. The stone or precast concrete reflects the prominent use of light-colored finish materials on existing buildings throughout the vicinity of the Project Site, and the metal cladding and glass curtain wall system present a more contemporary look that is prevalent in current development projects.

- (D) Preservation or enhancement of the pedestrian environment by maintenance of pleasant scale and visual interest.

In order to generate pedestrian activity and interest, the south tower will provide ground-floor commercial space along Tenth Street. There will also be a 361-square-foot public open space at the corner of Tenth and Jessie Streets.

- w. **Shadows on Parks.** Section 295 requires any project proposing a structure exceeding a height of 40 feet to undergo a shadow analysis in order to determine if the project will result in the net addition of shadow to properties under the jurisdiction of the Recreation and Park Department.

The Department conducted a shadow analysis and determined that the Project would not impact any properties under the jurisdiction of the Recreation and Park Department.

- x. **Jobs-Housing Linkage Program.** Large-scale development projects that contain entertainment, hotel, office, research and development, or retail uses create jobs as well as an increased demand for housing. Under Section 313, these large-scale development projects are required to pay a fee to a designated housing developer or to the City in order to help offset the cost of building additional housing.

Any development that proposes 25,000 or more square feet of retail space is subject to the requirements of Section 313. The provisions of Section 313 are not applicable, because the Project will not include the development of more than 25,000 square feet of retail space.

- y. **Childcare Requirement.** Large-scale office and hotel developments create jobs as well as an increased demand for childcare services for the employees who fill those jobs. Under Section 314, these large-scale development projects are required to (1) provide on-site childcare, (2) provide off-site childcare, (3) pay an in-lieu fee, or (4) combine the provision of on-site or off-site childcare with the payment of an in-lieu fee.

The provisions of Section 314 are not applicable, because the Project does not include the net addition of office or hotel space.

- z. **Inclusionary Housing.** Projects proposing five or more dwelling units are required to comply with the inclusionary housing ordinance set forth in Section 315. The specific requirement depends upon the entitlements being sought, the date the required applications were filed, and whether the affordable units are being provided on-site or off-site or through the payment of an in-lieu fee.

Section 315.4(c) states that in general, affordable units shall be comparable in number of bedrooms, exterior appearance, and overall quality of construction to market-rate units in the principal project.

The Project submitted its entitlement applications prior to July 18, 2006, so it is subject to the inclusionary housing requirements that were in effect prior to the adoption of the current requirements. Of the 719 dwelling units proposed for the Project Site, 12 percent will be subject to the on-site inclusionary housing requirements set forth in Section 315.

13. **General Plan Conformity.** The Project will affirmatively promote the following objectives and policies of the General Plan:

The **Housing Element** of the General Plan contains the following relevant objectives and policies:

OBJECTIVE 1 TO PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT DEMAND.

Policy 1.1 Encourage higher residential density in areas adjacent to downtown, in underutilized commercial and industrial areas proposed for conversion to housing, and in neighborhood commercial districts where higher density will not have harmful effects, especially if the higher density provides a significant number of units that are affordable to lower income households. Set allowable densities in established residential areas at levels

which will promote compatibility with prevailing neighborhood scale and character where there is neighborhood support.

The Project Site is on the western edge of the downtown core, and it is within the area proposed for designation as the Mid-Market Special Use District, the provisions of which will encourage high-density residential development. Given the size of the Project Site, the Project will be compatible in scale and density with the neighborhood.

Policy 1.4

Locate infill housing on appropriate sites in established residential neighborhoods.

The Project Site is an infill site within the area proposed for designation as the Mid-Market Special Use District, the provisions of which will encourage high-density residential development. With approximately 719 dwelling units, the Project will create a necessary and desirable residential use on the Project Site, which is currently occupied by several vacant office buildings and a surface parking lot.

OBJECTIVE 4

SUPPORT AFFORDABLE HOUSING PRODUCTION BY INCREASING SITE AVAILABILITY AND CAPACITY.

Policy 4.2

Include affordable units in larger housing projects.

Of the 719 dwelling units proposed for the Project Site, 12 percent will be subject to the on-site inclusionary housing requirements set forth in Section 315.

The **Transportation Element** of the General Plan contains the following relevant objectives and policies:

OBJECTIVE 34

RELATE THE AMOUNT OF PARKING IN RESIDENTIAL AREAS AND NEIGHBORHOOD COMMERCIAL DISTRICTS TO THE CAPACITY OF THE CITY'S STREET SYSTEM AND LAND USE PATTERNS.

Policy 34.3

Permit minimal or reduced off-street parking for new buildings in residential and commercial areas adjacent to transit centers and along transit preferential streets.

In keeping with the reduced parking requirements for C-3 Districts, the Project is proposing 578 residential parking spaces for 719 dwelling units. As required under Section 151.1(e)(1), many of

these spaces would not be independently accessible in order to discourage casual automobile use. The Project Site is well-served by public transit, with BART, Golden Gate Transit, MUNI, and SamTrans all providing service within the immediate vicinity.

The **Urban Design Element** of the General Plan contains the following relevant objectives and policies:

OBJECTIVE 3 MODERATION OF MAJOR NEW DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHBORHOOD ENVIRONMENT.

Policy 1 Promote harmony in the visual relationships and transitions between new and older buildings.

The Project will be harmonious, both in height and bulk, with the existing scale of development in the vicinity of the Project Site. The Project will step down in height from 352 feet to 220 feet and provide a visual transition from highrise structures along Market Street to smaller-scale buildings in the South of Market neighborhood.

Policy 3 Promote efforts to achieve high quality of design for buildings to be constructed at prominent locations.

The Project will feature glass, metal, and high-quality stone or precast concrete. Multiple setbacks will produce changes in plane on the façades and architectural details will give texture to the buildings.

OBJECTIVE 4 IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE, AND OPPORTUNITY.

Policy 10 Encourage or require the provision of recreation space in private development.

The Project will include usable open space for its residents in the form of private balconies and patios, a small park at the end of Jessie Street, a common yard at the second floor (the roof of the garage), a terrace on the roof of the north tower, and terraces and a solarium on the roof of the south tower. In addition, the Project will include a public plaza at the corner of Tenth and Market Streets and a smaller public plaza at the corner of Tenth and Jessie Streets.

Policy 13 Improve pedestrian areas by providing human scale and interest.

In order to generate pedestrian activity and interest, the Project will include approximately 19,000 square feet of commercial space on the ground floor.

The **Downtown Area Plan** of the General Plan contains the following relevant objectives and policies:

OBJECTIVE 7 EXPAND THE SUPPLY OF HOUSING IN AND ADJACENT TO DOWNTOWN.

Policy 1 Promote the inclusion of housing in downtown commercial developments.

The Project will include approximately 719 dwelling units as part of a mixed-use development.

Policy 2 Facilitate the conversion of underused industrial and commercial areas to residential use.

The Project will provide a high-density residential development of approximately 719 dwelling units on a site that is currently occupied by several vacant office buildings and a surface parking lot.

OBJECTIVE 21 IMPROVE FACILITIES FOR FREIGHT DELIVERIES AND BUSINESS SERVICES.

Policy 2 Discourage access to off-street freight loading and service vehicle facilities from transit-preferential streets or pedestrian-oriented streets and alleys.

The entrances to the off-street parking and off-street loading facilities will be located on Jessie Street, which is not a transit-preferential street.

14. **Priority Policy Findings.** Section 101.1(b) establishes eight priority planning policies and requires the review of permits for consistency with said policies:

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

The existing buildings on the Project Site formerly housed some office uses. The Project will include approximately 19,000 square feet of commercial space, which will provide local residents with employment and ownership opportunities. The residential component of the Project will strengthen the customer base of existing businesses in the neighborhood.

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

The Project, with dwelling units intended for a wide range of ages and incomes, will bring an influx of residents with different cultural and economic backgrounds into the area and enhance the character and diversity of the neighborhood.

- (3) That the City's supply of affordable housing be preserved and enhanced.

The Project Site is currently occupied by several vacant office buildings and a surface parking lot. There is no existing affordable housing on the Project Site. The Project will provide approximately 719 dwelling units. Of the 719 dwelling units proposed for the Project Site, 12 percent will be subject to the on-site inclusionary housing requirements set forth in Section 315.

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

With numerous public transit alternatives in the immediate vicinity of the Project Site, it is anticipated that many residents of and visitors to the Project will use public transit instead of driving. Given the proximity of multiple public transit alternatives (BART, Golden Gate Transit, MUNI, and SamTrans), the Project will provide an adequate amount of parking (578 residential spaces for 719 units). There will be no curb cuts on Market Street, so the proposed parking will not adversely impact bicyclists, motorists, or public transit on Market Street.

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

The Project, which includes a mix of residential and retail uses, will not displace any industrial or service sector uses. The Project Site is currently occupied by several vacant office buildings and a surface parking lot.

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

The Project will comply with all current seismic safety standards.

- (7) That landmarks and historic buildings be preserved.

The buildings proposed for demolition have not been designated architecturally or historically significant, and the Project Site is not within an existing historic district.

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

The Project will not impact any parks or open spaces or their access to sunlight.

15. The Commission hereby finds that approval of the Section 309 Determination of Compliance and Request for Exceptions would promote the health, safety, and welfare of the City.

DECISION

Based upon the whole record, the submissions by the Project Sponsor, the staff of the Department, and other interested parties, the oral testimony presented to the Commission at the public hearing, and all other written materials submitted by all parties, the Commission hereby APPROVES Section 309 Application No. **2006.0584X** for the Project subject to the following conditions attached hereto as Exhibit A which are incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Section 309 Determination of Compliance and Request for Exceptions to the Board of Appeals within fifteen (15) days after the date of this Motion. The effective date of this Motion shall be the date of this Motion if not appealed OR the date of the decision of the Board of Appeals if appealed to the Board of Appeals. For further information, please contact the Board of Appeals in person at 1660 Mission Street, Room 3036 or call (415) 575-6880.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting on April 5, 2007.

Linda D. Avery
Commission Secretary

AYES: Commissioners Alexander, Antonini, S. Lee, and W. Lee
NOES: Commissioners Moore, Olague, and Sugaya
ABSENT: None
ADOPTED: April 5, 2007

EXHIBIT A

CONDITIONS OF APPROVAL

GENERAL

1. This Section 309 Determination of Compliance and Request for Exceptions is granted to construct a residential project containing approximately 719 dwelling units, approximately 19,000 square feet of commercial space, and a garage with a capacity of up to 593 parking spaces on the property at 1407-1435 Market Street and 16-70 Tenth Street (Assessor's Block 3507, Lot 041), in general conformity with the plans stamped Exhibit B and dated April 5, 2007.
2. The Commission may, in a public hearing, consider the revocation of this authorization under Section 309 if a site or building permit for the work has not been issued within three years of the date of the Motion approving the project. Once that site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued thenceforth diligently to completion. The Commission may also consider revocation of this authorization if a permit for the project has been issued but is allowed to expire and more than three years have passed since the Motion was approved. 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 within three years is delayed by a City, state or federal agency or by appeal of the issuance of such permit.
3. Should monitoring of the conditions of approval of this Motion be required, the Project Sponsor shall pay fees as established in Planning Code Section 351(e)(1).
4. Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and are subsequently reported to the Zoning Administrator and found to be in violation of the Planning Code, and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter in accordance with the hearing notification and conduct procedures as set forth in Sections 174, 306.3, and 306.4 of the Planning Code to consider revocation of this authorization.
5. The Project Sponsor shall appoint a community liaison officer to deal with issues of concern to owners and occupants of nearby properties at all times during construction of the Project. Prior to the commencement of construction activities, the Project Sponsor shall provide the Zoning Administrator and the owners of the properties within 300 feet of the Project Site written notice of the name, business address, and telephone number of the community liaison.

6. If any clause, sentence, section, or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other of the remaining provisions, clauses, sentences, or sections of these conditions. It is hereby declared to be the intent of the Commission that these conditions of approval would have been adopted had such invalid sentence, clause, section, or part thereof not been included herein.
7. Prior to the issuance of a building (or site) permit for the construction of the Project, the Project Sponsor shall execute and record a Notice of Special Restrictions (Notice) at the Office of the County Recorder / County Clerk, which Notice shall state that construction of the Project has been authorized by and is subject to the conditions of this Motion. From time to time after 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 and record said writing if requested.
8. The Project Sponsor shall submit a written report describing the status of compliance with the conditions of approval contained within this Motion every 12 months from the date of this approval through the issuance of the first temporary certificate of occupancy for the first building. This requirement shall lapse when the Zoning Administrator determines that all the conditions of approval have been satisfied or that the report is no longer required for other reasons.

MITIGATION AND IMPROVEMENT MEASURES

9. The Mitigation and Improvement Measures set forth in the Addendum to the FEIR and identified as Exhibit C shall be incorporated as conditions of approval under Exhibit A of this Motion.

INCLUSIONARY HOUSING

10. The Project shall comply with the inclusionary housing requirements set forth in Section 315 of the Planning Code.
11. The inclusionary units shall be provided on-site in an amount equal to 12 percent of the total number of units in the Project. The exact number of inclusionary units shall be determined based on the final unit count as shown on the site permit application. This condition of approval shall constitute the written determination and notice of the inclusionary housing requirement pursuant to the procedures set forth in Section 315.4(a)(2).
12. The inclusionary units shall be designated on the building plans prior to the approval of any site permit application. The inclusionary units (1) shall be spread evenly throughout the Project, (2) shall reflect the unit size mix of the market-rate units, (3) shall be constructed and marketed concurrently with the construction and sale of the market-rate

units, and (4) shall be of comparable quality and materials as the market-rate units in the Project as determined by the Zoning Administrator.

PARKING

13. The residential parking shall not exceed the following ratios: 0.75 spaces for every studio and one-bedroom unit and one space for every two-bedroom unit of at least 1,000 square feet.
14. All residential parking spaces shall be "unbundled" from the dwelling units in the project, that is, sold, rented, or leased separately from the dwelling units, with an option to buy, rent, or lease parking spaces on a first-come first-served basis. If Section 315 BMR units are provided on-site, 12 percent of the parking spaces shall be offered to occupants or buyers of the BMR units for right of first refusal. The parking so designated shall be priced below the market-rate parking spaces in the same proportion as the dwelling unit prices.
15. The commercial parking shall be limited to a maximum of 15 spaces.
16. The Project shall provide parking for car share as follows: one car share space plus one car share space for every 200 dwelling units over 200.
17. The Project shall Class 1 bicycle parking as follows: 25 spaces plus one space for every four dwelling units over 50.

ARCHITECTURAL DESIGN

18. The following condition(s) shall be met prior to the issuance of a building (or site) permit of final addendum to a building (or site) permit:
 - a. Final detailed building plans shall be reviewed and approved by the Planning Department before issuance of the first addendum to the site permit. Detailed building plans shall include a final site plan, parking plan, open space and landscaping plans, floor plans, elevations, sections, specifications of finish materials and colors, and details of construction. The on-site inclusionary housing units required under Section 315 shall be identified on the floor plans.
 - b. Final architectural and decorative detailing, materials, glazing, color, and texture of exterior finishes shall be submitted for review by, and shall be satisfactory to the Director of the Department. The Project architect shall submit dimensional design drawings for building details with specifications and samples of materials to ensure a high design quality is maintained.
 - c. Highly reflective glass, mirror glass, or deeply tinted glass shall not be permitted. Only clear glass shall be permitted at pedestrian levels.

- d. The decorative architectural screen of the north tower is an integral part of the Project's architectural design. Elimination of the screen or a substantial reduction in the height or size of the screen shall constitute an alteration requiring Commission approval.
- e. Ground-level storefronts in general conformity with Exhibit A (or B) shall be maintained in an attractive manner, providing transparency into the tenancy behind. Visibility of the commercial interiors and activity through all storefront windows shall be maintained in order to ensure that the ground level of the building remains visually active, provides visual interest to pedestrians, and enhances sidewalk security. Commercial interior layouts should be designed with these requirements in mind. Generally, storefront windows should not be visually obscured with the following: blinds, shades or curtains; shelving; equipment; darkly tinted, translucent or opaque film; painted, stenciled or adhesive signage applied to individual window surfaces that has an overall transparency of less than 50%, or any signage that covers more than 1/3 of the area of any individual window; full or partial height interior partition walls placed directly against or within 10 feet from the window glazing; or any other items that significantly block the vision of pedestrians through the storefront windows into the occupiable commercial space. Solid roll-down security gates shall not be installed in storefront openings. The property owner shall ensure that this condition of approval is incorporated into all commercial leases.

STREETSCAPE IMPROVEMENTS

- 19. The following condition(s) shall be met prior to the issuance of a building (or site) permit of final addendum to a building (or site) permit:
 - a. The Project shall include pedestrian streetscape improvements generally as described in this Motion and in conformance with Planning Code Section 138.1 and the *Downtown Streetscape Plan*. A final pedestrian streetscape improvement plan including landscaping and paving materials and patterns, shall be submitted for review by, and shall be satisfactory to the Director of the Department, in consultation with the Director of the Department of Public Works.
- 20. The following condition(s) shall be met prior to the issuance of the first certificate of occupancy:
 - a. The Project Sponsor shall complete the required pedestrian streetscape improvements and shall be responsible for the upkeep and maintenance of such improvements if they exceed City standards.

- b. Street trees shall be installed pursuant to the requirements set forth in Section 143. The species and locations shall be subject to approval by the Department of Public Works.

PUBLIC ART

- 21. The following condition(s) shall be met prior to the issuance of a building (or site) permit of final addendum to a building (or site) permit:
 - a. Pursuant to Section 149, the Project shall include the work(s) of art valued at an amount equal to one percent of the hard construction costs for the Project as determined by the Director of the Department of Building Inspection. The Project Sponsor shall provide to the Director necessary information to make the determination of construction cost hereunder.
 - b. The Project Sponsor and the Project artist shall consult with the Planning Department during design development regarding the height, size, and final type of the art. The final art concept shall be submitted for review for consistency with this Motion by, and shall be satisfactory to, the Director of the Planning Department in consultation with the Commission.
- 22. The following condition(s) shall be met prior to the issuance of the first certificate of occupancy:
 - a. The Project Sponsor shall install the public art generally as described in this Motion and make it available to the public. If the Zoning Administrator concludes that it is not feasible to install the work(s) of art within the time herein specified and the Project Sponsor provides adequate assurances that such works will be installed in a timely manner, the Zoning Administrator may extend the time for installation for a period of not more than twelve (12) months.
 - b. The Project Sponsor shall comply with Code Section 149(b) by providing a plaque or cornerstone identifying the Project architect, the artwork creator and the Project completion date in a publicly conspicuous location on the Project Site. The design and content of the plaque shall be approved by Department staff prior to its installation.

OTHER

- 23. The Project is subject to and shall comply with the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code).
- 24. An evacuation and emergency response plan shall be developed by the Project Sponsor or building management staff, in consultation with the Mayor's Office of Emergency Services, to ensure coordination between the City's emergency planning activities and

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the Project's plan and to provide for building occupants in the event of an emergency. The Project's plan shall be reviewed by the Office of Emergency Services and implemented by the building management insofar as feasible before issuance of the final certificate of occupancy by the Department of Public Works. A copy of the transmittal and the plan submitted to the Office of Emergency Services shall be submitted to the Department. To expedite the implementation of the City's Emergency Response Plan, the Project Sponsor shall post information (with locations noted on the final plans) for building occupants concerning actions to take in the event of a disaster.

EXHIBIT C

MITIGATION AND IMPROVEMENT MEASURES

MITIGATION MEASURES

Noise

Construction Noise, contractors shall be required to use construction equipment with state-of-the-art noise shielding and muffling devices.

The project sponsor shall require that its geotechnical engineering contractor conduct a pre-construction assessment of existing subsurface conditions and the structural integrity of nearby buildings subject to pile driving impacts prior to receiving a building permit. If recommended by the geotechnical engineer, for structures or facilities within 50 feet of pile driving, the project sponsor shall require ground-borne vibration monitoring of nearby structures. The project sponsor shall also require its construction contractor to use feasible noise-reducing pile driving techniques if nearby structures are subject to pile driving noise and vibration. These techniques may include pre-drilling pile holes (depending on soil type) to the maximum feasible depth, installing intake and exhaust mufflers on pile driving equipment, vibrating piles into place when feasible, and installing shrouds around the pile driving hammer where feasible.

At least 48 hours prior to pile-driving activities, the project sponsor shall notify building owners and occupants within 200 feet of the project site of the dates, hours, and expected duration of such activities.

Air Quality

The project sponsor shall prepare and implement a Dust Control Plan. The plan shall be submitted to the Department of Public Works, which would be responsible for field verification of the plan during construction. The plan shall comply with the City grading ordinance. To reduce particulate matter emissions during construction and demolition phases, the contractor shall include in the Dust Control Plan dust control strategies recommended by the BAAQMD. The project sponsor shall include the following measures, as appropriate, in the plans and specifications for construction contracts, and in the Dust Control Plan.

Basic Control Measures: to be implemented on all Project construction sites.

- Cover all trucks hauling construction and demolition debris from the project site;
- Water all exposed or disturbed soil surfaces at least twice daily;
- Use watering to control dust generation during demolition of structures or break-up of pavement;

- Pave, apply water three times daily, or apply non-toxic soil stabilizers on all unpaved parking areas and staging areas;
- Sweep daily (with water sweepers) all paved parking areas and staging areas; and
- Provide daily clean-up of mud and dirt carried onto paved streets from the project site.

Ordinance 175-91, passed by the Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, the project sponsor would require that the contractor(s) obtain reclaimed water from the Clean Water Program for this purpose. The project sponsor would require the project contractor(s) to maintain and operate construction equipment so as to minimize exhaust emissions of particulates and other pollutants by such means as prohibiting idling motors when equipment is not in use or when trucks are waiting in queues, and implementing specific maintenance programs to reduce emissions for equipment that would be in frequent use for much of the construction period.

Water Quality

- a. If dewatering were necessary, the project sponsor shall follow the recommendations of the geotechnical engineer or environmental remediation consultant, in consultation with the Bureau of Environmental Regulation and Management of the Department of Public Works, regarding treatment, if any, of pumped groundwater prior to discharge to the combined sewer system.
- b. If dewatering were necessary, groundwater pumped from the site shall be retained in a holding tank to allow suspended particles to settle, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the Department of Public Works to reduce the amount of sediment entering the combined sewer system.
- c. The project sponsor shall require the general contractor to install and maintain sediment traps in local stormwater intakes during construction to reduce the amount of sediment entering the combined sewer system, if this were found to be necessary by the Bureau of Environmental Regulation and Management of the Department of Public Works.

Hazardous Materials

In addition to local, state, and federal requirements for handling hazardous materials, underground storage tanks, and soil and groundwater containing chemical contaminants, the project sponsor shall enter into a remedial action agreement with the Department of Public Health pursuant to Health and Safety Code Section 101480 et seq. At a minimum, the project sponsor shall undertake the following work and any additional requirements imposed by the Department of Public Health under the agreement.

- a. A Phase II investigation has been performed to evaluate soil and groundwater quality at the site as a result of former operations at the site and in the site vicinity. Soil and groundwater were evaluated for the presence of petroleum hydrocarbons, metals, volatile organic compounds, semi-volatile organic compounds and polynuclear aromatic hydrocarbons.
- b. A site mitigation plan shall be developed to address any contaminated soil and/or groundwater, underground storage tanks, or other hazardous materials identified during the Phase II investigation or subsequent demolition activities.

If deemed necessary, all impacted materials shall be mitigated prior to construction. Soils with elevated petroleum hydrocarbon or lead concentrations may require excavation and off-site disposal. Soil levels in excess of applicable federal, state, or local limits for petroleum hydrocarbon or lead concentrations shall be disposed of off site in accordance with California hazardous waste disposal regulations (CCR Title 26) or shall be managed in place with approval of the California Department of Toxic Substances Control or the Regional Water Quality Control Board.

If the site mitigation results in earth-moving activities that require the preparation of a site safety and health plan because contaminated soils and/or groundwater may be encountered, in addition to measures that protect on-site workers, the plan shall include measures to minimize public exposure to contaminated soils. Such measures would include dust control, appropriate site security, restriction of public access, and posting of warning signs. Such measures would apply from the time of surface disruption through the completion of earthwork construction.

- c. Prior to any demolition or excavation at the project site, the project sponsor shall conduct surveys to identify any potentially hazardous materials (e.g., asbestos, lead-based paint, PCBs, mercury) in existing buildings or building materials. At a minimum, these surveys shall identify any hazardous materials that would require removal and disposal prior to demolition. These surveys shall be completed by a state registered inspector or a similarly qualified individual who states that all necessary mitigation measures have been implemented.
- d. All reports and plans prepared in accordance with this mitigation measure shall be provided to the San Francisco Department of Public Health (DPH) and any other agencies identified by DPH. When all hazardous materials have been removed from existing buildings and soil and groundwater analysis and other activities have been completed, as appropriate, the project sponsor shall submit to the San Francisco Planning Department and DPH a report stating that the mitigation measure has been implemented. The report shall describe the steps taken to comply with the mitigation measure and include all verifying documentation. The report shall be certified by a Registered Environmental Assessor or a similarly qualified individual who states that all necessary mitigation measures have been implemented.
- e. Should elevated levels of contamination remain at the site, a deed notification shall be required for the project site along with a DPH-approved Cap Maintenance Plan. The

deed notification is to be recorded on the deed, prior to DPH issuing a "No Further Action" letter for the project site.

Archaeological Resources

Based on a reasonable presumption that archaeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of a qualified archaeological consultant having expertise in California prehistoric and urban historical archaeology. The archaeological consultant shall implement the archaeological research design and treatment plan (ARD/TP). The consultant shall be available to conduct an archaeological monitoring and/or data recovery program if required pursuant to this measure. The archaeological consultant's work shall be conducted in accordance with this measure and with the requirements of the project ARD/TP (Archeo-Tec, *Draft Archaeological Research Design/Treatment Plan, Tenth/Market/Mission Mixed Use Project*, June 26, 2003) at the direction of the Environmental Review Officer (ERO). In instances of any inconsistency between the requirements of the project ARD/TP and of this archaeological mitigation measure, the requirement of this latter shall prevail. All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archaeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archaeological resource as defined in CEQA Guidelines Sect. 15064.5 (a)(c).

Archaeological Testing Program. The archaeological consultant shall prepare and submit to the ERO for review and approval a final archaeological testing plan (ATP). The archaeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archaeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archaeological testing program will be to determine to the extent possible the presence or absence of archaeological resources and to identify and to evaluate whether any archaeological resource encountered on the site constitutes a historical resource under CEQA.

At the completion of the archaeological testing program, the archaeological consultant shall submit a written report of the findings to the ERO. If based on the archaeological testing program the archaeological consultant finds that significant archaeological resources may be present, the ERO in consultation with the archaeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archaeological testing, archaeological monitoring, and/or an archaeological data recovery program. If the ERO determines that a significant archaeological resource is present and that

the resource could be adversely affected by the proposed project, at its own discretion, the project sponsor may either:

- Redesign the proposed project so as to avoid any adverse effect on the significant archaeological resource; or
- Implement a data recovery program, unless the ERO determines that the archaeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

Archaeological Monitoring Program. If the ERO in consultation with the archaeological consultant determines that an archaeological monitoring program is to be implemented, the archaeological monitoring program shall minimally include the following provisions:

- The archaeological consultant, project sponsor, and ERO shall meet and consult on the scope of the archaeological monitoring program reasonably prior to any project-related soils-disturbing activities commencing. The ERO in consultation with the archaeological consultant shall determine what project activities shall be archaeologically monitored. In most cases, any soils-disturbing activities (e.g., demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles for foundation or shoring, site remediation) shall require archaeological monitoring because of the risk these activities pose to potential archaeological resources and to their depositional context;
- The archaeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), how to identify the evidence of the expected resource(s), and the appropriate protocol in the event of apparent discovery of an archaeological resource;
- The archaeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archaeological consultant and the ERO until the ERO has, in consultation with project archaeological consultant, determined that project construction activities could have no effects on significant archaeological deposits;
- The archaeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual materials as warranted for analysis;
- If an intact archaeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archaeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archaeological monitor has cause to believe that the pile driving activity may affect an archaeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archaeological

consultant shall immediately notify the ERO of the encountered archaeological deposit. The archaeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archaeological deposit, and present the findings of this assessment to the ERO.

Whether or not significant archaeological resources are encountered, the archaeological consultant shall submit a written report of the findings of the monitoring program to the ERO.

Archaeological Data Recovery Program. The archaeological data recovery program shall be conducted in accord with an archaeological data recovery plan (ADRP). The archaeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archaeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archaeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practical.

The scope of the ADRP shall include the following elements:

- *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations.
- *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures.
- *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies.
- *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archaeological data recovery program.
- *Security Measures.* Recommended security measures to protect the archaeological resource from vandalism, looting, and non-intentionally damaging activities.
- *Final Report.* Description of proposed report format and distribution of results.
- *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.

Human Remains and Associated or Unassociated Funerary Objects. The treatment of human remains and of associated or unassociated funerary objects discovered during any soils-disturbing activity shall comply with applicable state and federal laws. This shall include immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC), which shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archaeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (CEQA Guidelines. Sec. 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects.

Final Archaeological Resources Report. The archaeological consultant shall submit a draft final archaeological resources report (FARR) to the ERO that evaluates the historical significance of any discovered archaeological resource and describes the archaeological and historical research methods employed in the archaeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archaeological resource shall be provided in a separate removable insert within the final report.

Once approved by the ERO, copies of the FARR shall be distributed as follows: The California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Major Environmental Analysis division of the Planning Department shall receive three copies of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.

IMPROVEMENT MEASURES

Transportation

Loading Improvement Measures:

The Proposed Project does not meet Planning Code requirements for the amount of loading spaces and currently has a deficiency of one space in the Mission Street Senior Housing building. The project sponsors plan to seek a variance from this requirement if they should proceed with the approved Mission Street Senior Housing at this site.

The project sponsors would address the issues of truck/van access, especially the maneuvers required for trucks to back into the loading stalls and procedures for service vehicles to enter and park in the designated spaces within the garage at the Market Street Residential Building.

- Signage should be posted on Tenth Street directing all loading/unloading vehicles to enter Jessie Street (trucks larger than 35 feet would be prohibited).
- On Jessie Street, signs should direct trucks to pull up to the end of the Jessie Street and back into the loading stalls. The signs should direct service vehicles into the garage where valet attendants will assist them in finding the service spaces.
- Loading stalls should be clearly signed so drivers know they are permitted to use these spaces.
- Signs should also be placed on Jessie Street to warn pedestrians and motorists that trucks may be backing into loading stalls.
- In order to assist trucks in safely backing up and avoiding conflict with incoming vehicles, large exterior convex mirrors should be placed on the building so truck drivers can clearly see vehicles entering Jessie Street behind them.
- Within the garage, signs should be prominently posted at the exits warning motorists that trucks may be backing into loading stalls and directing them to use the mirrors for better visibility.
- The project sponsors should install a warning system that triggers a red light when trucks are backing up in order to stop vehicles exiting the garage. In lieu of this system, the project sponsors should place a Dock Master at the loading area.

Pedestrian Improvement Measure:

The Proposed Project would add 286 PM peak hour vehicles to Jessie Street, which would be entering and exiting the garages on Jessie Street onto Tenth Street. The City should clearly designate the pedestrian crosswalk with striping at Tenth and Jessie Streets in order to discourage vehicle traffic from blocking the pedestrian pathway.

Construction Traffic Improvement Measures:

Any construction traffic occurring between 7:00 a.m. and 9:00 a.m. or between 3:30 p.m. and 6:00 p.m. would coincide with peak-hour traffic and could impede traffic flow. The impact of lane closures and construction traffic would decrease the capacity of streets and slow the movement of traffic, including MUNI buses. During the AM peak period on one-way, southbound Tenth Street and during off-peak period, traffic volumes may accommodate construction vehicles without substantial delay to traffic. Although construction impacts would be temporary and of relatively short duration, the following improvement measures would lessen their impacts:

- To the extent possible for the Proposed Project, truck movements should be limited to the hours before 3:30 p.m.

- Prior to any lane closure and encroachment on traffic lanes, proper permits must be obtained from the City.
- The Project Sponsors must seek special permission for sidewalk closure if no alternative is found and should meet with the Traffic Engineering Division of the Department of Parking and Traffic, the Fire Department, and the Planning Department to determine feasible traffic measures to reduce traffic congestion and pedestrian circulation impacts during construction of the project.
- To ensure that construction activities do not impact MUNI bus stops or routes in the area, the Project Sponsors should coordinate with MUNI's Chief Inspector prior to construction.

Wind

Interior plazas, walkways, and terraces could be landscaped to reduce wind and improve usability. Porous materials or structures (vegetation, hedges, screens, latticework, and perforated or expanded metal structures) could be used to offer superior wind shelter compared to a solid surface. Wind-sheltering elements could have sufficient height to shelter the area in question. (Wind shadows behind porous wind screens or shelter belts generally provide shelter a distance downwind equivalent to three to five times the height of the wind screen). Outdoor furniture and any landscape structures could be firmly attached to the ground or buildings to resist being blown over.

PLANNING COMMISSION

Case No. 2006.0584KXCV
1407-1435 Market Street
Block 3507, Lot 041

Subject to: (check if applicable)

- ☒ Inclusionary Housing
- ☐ Childcare Requirement
- ☐ Downtown Park Fund
- ☒ Public Art
- ☐ Public Open Space
- ☐ Jobs-Housing Linkage
- ☐ Transit Impact Development Fee
- ☒ First Source Hiring

SAN FRANCISCO

PLANNING COMMISSION

MOTION NO. 17415

ADOPTING FINDINGS RELATED TO THE APPROVAL OF A CONDITIONAL USE TO (1) ALLOW ADDITIONAL SQUARE FOOTAGE ABOVE THE BASE FLOOR AREA RATIO (FAR) OF 6.0 TO 1 FOR DWELLING UNITS THAT WILL BE AFFORDABLE FOR A MINIMUM OF 20 YEARS TO HOUSEHOLDS WHOSE INCOMES ARE WITHIN 150 PERCENT OF THE MEDIAN INCOME AND (2) EXCEED THE MAXIMUM DWELLING UNIT DENSITY RATIO OF ONE DWELLING UNIT FOR EVERY 125 SQUARE FEET OF LOT AREA, IN CONNECTION WITH A RESIDENTIAL PROJECT CONTAINING APPROXIMATELY 719 DWELLING UNITS, APPROXIMATELY 19,000 SQUARE FEET OF COMMERCIAL SPACE, AND A GARAGE WITH A CAPACITY OF UP TO 593 PARKING SPACES ON THE PROPERTY AT 1407-1435 MARKET STREET AND 16-70 TENTH STREET (ASSESSOR'S BLOCK 3507, LOT 041), LOCATED WITHIN THE C-3-G (DOWNTOWN GENERAL COMMERCIAL) DISTRICT AND 200-S AND 320-S HEIGHT AND BULK DISTRICTS.

RECITALS

1. On March 10, 2003, TCM Mid-Market Venture, Inc. filed an application for environmental review related to a mixed-use development (Myers Project) on the Project Site and the parcel south of the Project Site. The Myers Project consisted of two residential highrises (a 15-story, 150-foot-high, 200-unit senior housing building and a 20-story, 200-foot-high, 250-unit building) plus a 24-story, 320-foot-high office building for occupancy by the City and County of San Francisco. Environmental review of the Myers Project was conducted pursuant to the California Environmental Quality Act (CEQA) and Chapter 31 of the San Francisco Administrative Code.
2. On October 14, 2004, the Planning Commission (Commission) certified the Final Environmental Impact Report (FEIR) for the Myers Project.
3. On October 28, 2004, the residential component of the Myers Project was approved by the Commission. The office component of the Myers Project was never approved by the

Commission, because the City and County of San Francisco pursued alternate plans to address its office needs.

4. The Myers Project has been revised, and on October 17, 2005, Tenth and Market, LLC (Project Sponsor) requested that the Planning Department (Department) review the proposed revisions in accordance with CEQA.
5. On May 3, 2006, the Project Sponsor applied for a Conditional Use, Application No. 2006.0584C, on the property at 1407-1435 Market Street and 16-70 Tenth Street, Lot 041 in Assessor's Block 3507 (Project Site), to (1) allow additional square footage above the base FAR of 6.0 to 1 for dwelling units that will be affordable for a minimum of 20 years to households whose incomes are within 150 percent of the median income and (2) exceed the maximum dwelling unit density ratio of one dwelling unit for every 125 square feet of lot area in connection with a residential project containing approximately 719 dwelling units, approximately 19,000 square feet of commercial space, and a garage with up to 593 parking spaces (Project), in general conformity with plans dated March 8, 2007 and labeled Exhibit B. The Project Site is within the C-3-G District and 200-S and 320-S Height and Bulk Districts.
6. On March 8, 2007, the Department published an Addendum to the FEIR, which determined that the current Project would not cause new significant impacts not identified in the FEIR and no new mitigation measures would be necessary to reduce significant impacts.
7. On April 5, 2007, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on the application for a conditional use.
8. MOVED, that the Commission hereby approves the conditional use requested in Application No. 2006.0584C for the Project, subject to conditions contained in Exhibit A attached hereto and incorporated by reference, based on the following findings:

FINDINGS

Having reviewed the materials identified in the recitals above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and also constitute findings of this Commission.
2. The C-3-G District covers the western portions of downtown San Francisco and is composed of a variety of uses: hotels, offices, places of entertainment, residential buildings, and retail establishments. Many of these uses serve a citywide or regional clientele, but the intensity of development is lower than in the downtown core. Residential uses are principally permitted within the C-3-G District.

3. The Project Site, with a total area of approximately 66,383 square feet, is a roughly rectangular parcel (Block 3507, Lot 041) that is a portion of a larger parcel formerly known as Lot 039. A subdivision of Lot 039 into two lots resulted in the current configuration. The Project Site, which is bounded by Market Street on the north, Tenth Street on the east, Jessie Street on the south, and an adjacent parcel on the west, is located within the C-3-G District and 200-S and 320-S Height and Bulk Districts. The height limits step down from 320 feet along Market Street to 200 feet along Jessie Street. The Project Site is also within a larger area that is proposed for designation as the Mid-Market Special Use District (SUD).

The Project Site is currently occupied by several vacant office buildings ranging in height from two to four stories. These buildings have been vacant for approximately seven years. Demolition permits for these buildings were issued between October 2006 and February 2007 after the Department of Building Inspection determined that the buildings were seismic hazards and public health and safety nuisances. The demolition work is currently in progress. A portion of the Project Site is also being used as a surface parking lot for approximately 75 vehicles.

4. The scale of development in the vicinity of the Project Site is very diverse, with the current height limits in the area ranging from 50 feet to 320 feet. Two- and three-story buildings are wedged between much taller buildings on both sides of Market Street. Two buildings in the area, Fox Plaza (1390 Market Street) and the AAA Building (100 Van Ness Avenue), approach heights of 400 feet. Almost all of the buildings in the area are occupied by office and retail uses, but there are some multi-family residential buildings, including Fox Plaza and Trinity Plaza. Other uses in the area include automobile repair/service centers, public storage facilities, and surface parking lots.

The adjacent parcel to the west is occupied by the 22-story, 313-foot-high Bank of America data processing center. On the east side of Tenth Street, the northern half of the block is occupied by the 11-story, 130-foot-high San Francisco Furniture Mart. On the north side of Market Street, a 20-story, 200-foot-high residential building (1 Polk Street) is currently under construction. The Civic Center lies several blocks to the north of the Project Site.

5. Following the demolition of the existing office buildings and surface parking lot, the proposed Project will be the construction of two buildings sharing a common base and containing approximately 719 dwelling units, approximately 19,000 square feet of commercial space, and a garage with up to 668 parking spaces (578 residential parking spaces and 90 commercial parking spaces). The taller north tower, at the corner of Tenth and Market Streets, will be 35 stories and approximately 352 feet high with a 12-story, 123-foot-high base along Market Street. The shorter south tower, at the corner of Tenth and Jessie Streets, will be 19 stories and approximately 220 feet high. The two towers will be connected by a nine-story, 93-foot-high base running along Tenth Street.

6. Conditional use authorization is required to (1) develop additional square footage above the base FAR of 6.0 to 1 for dwelling units that will be affordable for a minimum of 20 years to households whose incomes are within 150 percent of the median income pursuant to Section 124(f) and (2) exceed the maximum dwelling unit density ratio of one dwelling unit for every 125 square feet of lot area in a C-3-G District pursuant to Section 215(a).
7. On April 5, 2007, the Commission, in reviewing and approving a Section 309 Determination of Compliance and Request for Exceptions, adopted additional findings related to the Project's CEQA review and the Addendum to the FEIR, as set forth in Motion No. 17414, which findings are incorporated herein by this reference thereto as if fully set forth in this Motion.
8. The Commission is not aware of any opposition to the Project.

9. **Planning Code Compliance.** The Commission finds that the Project meets the provisions of the Planning Code as follows:

On April 5, 2007, the Commission, in reviewing and approving a Section 309 Determination of Compliance and Request for Exceptions, adopted findings related to the Project's compliance with the applicable Planning Code requirements as set forth in Motion No. 17414, which findings are incorporated herein by this reference thereto as if fully set forth in this Motion.

10. **Conditional Use Findings.** Under Section 303(c), the Commission may authorize a conditional use after finding that:

- (1) The proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or community.

The Project is necessary and desirable for the neighborhood, because it will revitalize an underutilized site and introduce a compatible mixed-use development. Encouraging high-density residential uses, increasing the number of affordable housing units, and attracting new commercial development are three of the broader objectives of the proposed Mid-Market Special Use District, and the Project is consistent with these objectives.

With approximately 719 units and approximately 19,000 square feet of commercial space, the Project will bring a substantial number of people to the neighborhood and provide numerous employment opportunities for local residents. The influx of residents will strengthen the customer base of other retail uses in the neighborhood and generate a substantial amount of pedestrian activity throughout the area.

The conditional use for additional density will allow the Project to provide an increased number of dwelling units and a more diverse unit mix, which would include smaller units at more moderate prices. Increasing the total number of dwelling units also increases the number of inclusionary housing units required under Section 315. The conditional use for additional floor area for affordable units will allow the Project to meet its inclusionary housing requirement on-site as opposed to off-site or through the payment of an in-lieu fee.

Section 124(f) requires the units to be affordable for a minimum of 20 years to households whose incomes are within 150 percent of the median income. Since the affordable units being constructed pursuant to Section 124(f) will be used to satisfy the inclusionary housing requirements of Section 315, these units will exceed the requirements set forth in Section 124(f), because Section 315 requires inclusionary rental units to be permanently affordable to households whose incomes are within 60 percent of the median income and ownership units to be permanently affordable to households whose incomes are within 100 percent of the median income.

- (2) Such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements, or potential development in the vicinity, with respect to aspects including, but not limited to the following:

- (A) The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures:

The size and shape of the site are adequate for accommodating a high-density residential development. The height and overall massing of the Project are appropriate for the site and the neighborhood. With conditional use authorization for additional square footage and dwelling unit density, the size, shape, and arrangement of the structures on the site will be able to accommodate the Project as proposed.

- (B) The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading:

Given the proximity of multiple public transit alternatives (BART, Golden Gate Transit, MUNI, and SamTrans), the Project will provide an adequate amount of parking (578 residential spaces for 719 dwelling units). There will be no curb cuts on Market Street, so the proposed parking and loading facilities will not adversely impact bicyclists, motorists, or public transit along Market Street. All vehicular access will be along Jessie Street, the south frontage of the Project Site.

- (C) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor:

The Project, which is primarily residential in nature, will not emit any noxious odors or other offensive emissions. All window glazing will comply with the Planning Code and relevant design guidelines to eliminate or reduce glare. During construction, appropriate measures will be taken to minimize dust and noise as much as possible.

- (D) Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs:

All proposed lighting and signage will comply with the requirements of the Planning Code. The loading and service areas will be located on Jessie Street and screened from view. Most of the proposed parking will be below grade. Any parking that is at grade will be wrapped by active uses and will not be visible from any public right-of-way. All of the proposed open space will include appropriate landscaping and other improvements (canopies and trellises for shade, seating areas, windscreens, etc.).

- (3) That such use or feature as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

Pursuant to Sections 305 and 309, the Project Sponsor is seeking variances and exceptions from a number of Planning Code requirements. The Project is consistent with and will not adversely affect the General Plan.

11. **General Plan Conformity.** The Project will affirmatively promote the following objectives and policies of the General Plan:

On April 5, 2007, the Commission, in reviewing and approving a Section 309 Determination of Compliance and Request for Exceptions, adopted findings related to the Project's conformity with the applicable objectives and policies of the General Plan as set forth in Motion No. 17414, which findings are incorporated herein by this reference thereto as if fully set forth in this Motion.

12. **Priority Policy Findings.** Section 101.1(b) establishes eight priority planning policies and requires the review of permits for consistency with said policies:

On April 5, 2007, the Commission, in reviewing and approving a Section 309 Determination of Compliance and Request for Exceptions, adopted findings related to the Project's consistency with the eight priority planning policies of Section 101.1(b) as

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set forth in Motion No. 17414, which findings are incorporated herein by this reference thereto as if fully set forth in this Motion.

13. The Commission hereby finds that approval of the conditional use authorization will promote the health, safety, and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department, and other interested parties, the oral testimony presented to the Commission at the public hearing, and all other written materials submitted by all parties, the Commission hereby APPROVES Conditional Use Application No. **2006.0584C** for the Project subject to the following conditions attached hereto as Exhibit A which are incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this conditional use authorization to the Board of Supervisors within thirty (30) days after the date of this Motion. The effective date of this Motion shall be the date of this Motion if not appealed (after the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting on April 5, 2007.

Linda D. Avery
Commission Secretary

AYES: Commissioners Alexander, Antonini, S. Lee, and W. Lee
NOES: Commissioners Moore, Olague, and Sugaya
ABSENT: None
ADOPTED: April 5, 2007

EXHIBIT A

CONDITIONS OF APPROVAL

GENERAL

1. This authorization is to (1) allow additional square footage above the base FAR of 6.0 to 1 for dwelling units that will be affordable for a minimum of 20 years to households whose incomes are within 150 percent of the median income and (2) exceed the maximum dwelling unit density ratio of one dwelling unit for every 125 square feet of lot area in connection with a residential project containing approximately 719 dwelling units, approximately 19,000 square feet of commercial space, and a garage with a capacity of up to 593 parking spaces on the property at 1407-1435 Market Street and 16-70 Tenth Street (Assessor's Block 3507, Lot 041), in general conformity with the plans stamped Exhibit B and dated April 5, 2007.
2. The Commission may, in a public hearing, consider the revocation of this conditional use authorization if a site or building permit for the work has not been issued within three years of the date of the Motion approving the project. Once that site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued thenceforth diligently to completion. The Commission may also consider revocation of this conditional use authorization if a permit for the project has been issued, but is allowed to expire and more than three years have passed since the Motion was approved. 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 within three years is delayed by a City, state or federal agency, or by appeal of the issuance of such permit.
3. Should monitoring of the conditions of approval of this Motion be required, the Project Sponsor shall pay fees as established in Section 351(e)(1).
4. Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and are subsequently reported to the Zoning Administrator and found to be in violation of the Planning Code, and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter in accordance with the hearing notification and conduct procedures as set forth in Sections 174, 306.3, and 306.4 of the Planning Code to consider revocation of this authorization.
5. The Project Sponsor shall appoint a community liaison officer to deal with issues of concern to owners and occupants of nearby properties at all times during construction of the Project. Prior to the commencement of construction activities, the Project Sponsor shall provide the Zoning Administrator and the owners of the properties within 300 feet of

the Project Site written notice of the name, business address, and telephone number of the community liaison.

6. If any clause, sentence, section, or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other of the remaining provisions, clauses, sentences, or sections of these conditions. It is hereby declared to be the intent of the Commission that these conditions of approval would have been adopted had such invalid sentence, clause, section, or part thereof not been included herein.
7. Prior to the issuance of a building (or site) permit for the construction of the Project, the Project Sponsor shall execute and record a Notice of Special Restrictions (Notice) at the Office of the County Recorder / County Clerk, which Notice shall state that construction of the Project has been authorized by and is subject to the conditions of this Motion. From time to time after 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 and record said writing if requested.
8. The Project Sponsor shall submit a written report describing the status of compliance with the conditions of approval contained within this Motion every 12 months from the date of this approval through the issuance of the first temporary certificate of occupancy for the first building. This requirement shall lapse when the Zoning Administrator determines that all the conditions of approval have been satisfied or that the report is no longer required for other reasons.

INCLUSIONARY HOUSING

9. The affordable units in the Project that are constructed pursuant to Section 124(f) are intended to meet the inclusionary housing requirements set forth in Section 315 (rental units permanently affordable to households whose incomes are within 60 percent of the median income and ownership units permanently affordable to households whose incomes are within 100 percent of the median income) and shall comply with these requirements.
10. The inclusionary units shall be provided on-site in an amount equal to 12 percent of the total number of units in the Project. The exact number of inclusionary units shall be determined based on the final unit count as shown on the site permit application. This condition of approval shall constitute the written determination and notice of the inclusionary housing requirement pursuant to the procedures set forth in Section 315.4(a)(2).
11. The inclusionary units shall be designated on the building plans prior to the approval of any site permit application. The inclusionary units (1) shall be spread evenly throughout the Project, (2) shall reflect the unit size mix of the market-rate units, (3) shall be

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constructed and marketed concurrently with the construction and sale of the market-rate units, and (4) shall be of comparable quality and materials as the market-rate units in the Project as determined by the Zoning Administrator.

OTHER

12. The Project is subject to and shall comply with the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code).



SAN FRANCISCO PLANNING DEPARTMENT

General Plan Referral

Date: November 14, 2011 (amended February 13, 2012)
Substantive amendments are in **Bold Font**

Case No. 2011.1261R
Proposed Sewer Easement Vacation
Southwest of Jessie Street near 10th St.

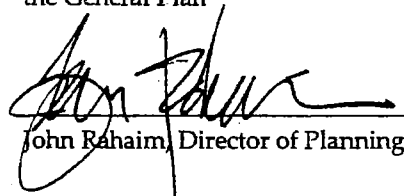
Block/Lot No.: 3507/041

Project Sponsor: Javier Rivera
Department of Public Works
875 Stevenson Street Room 410
San Francisco, CA 94103

Staff Contact: Andres Power - (415) 558-6384
Andres.Power@sfgov.org

Recommendation: Finding the project, on balance, is **in conformity** with
the General Plan

*Recommended
By:*


John Rahaim, Director of Planning

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT DESCRIPTION

The Department received your request for a General Plan referral on October 27, 2011. The Referral is for a request by Mr. Peter J. Bekey to vacate a sewer easement located at the end of Jessie Street in assessor's block 3507 lot 41 in connection with the construction of a 754 unit residential project with ground floor retail. The General Plan Referral is pursuant to Section 4.105 of the City Charter and Section 2A.53 of the Administrative Code of the City and County of California. A map showing the location of the subject easement is included in Attachment 1. The mixed use development was previously reviewed by Planning Department and approved by the City Planning Commission, and CEQA findings adopted, under case numbers 2003.0262EIXCVRSZT and 2006.0584EXKCVR.

ENVIRONMENTAL REVIEW

A Final Environmental Impact (FEIR) for the mixed used project was certified by the City Planning Commission on October 14, 2004 under Motion Number 16871, Case Number 2003.0262E, and an addendum thereafter prepared by the Planning Department.

According to the Planning Department's Environmental Planning section, the easement vacation, as a nonphysical activity, would not require environmental review under CEQA per Guidelines Section 15060(c)(2).

GENERAL PLAN COMPLIANCE AND BASIS FOR RECOMMENDATION

Following are relevant policies from the General Plan and associated analysis and comment. General Plan Objectives and Policies and in **bold** font, policy text is in regular font, and staff comments are in *italic*.

Community Safety ELEMENT

LIFELINES

San Francisco's lifelines are part of regional systems that extend well beyond the City's boundaries. State and private agencies operate some of the regional lifelines. Caltrans operates most of the regional transportation network, which is vulnerable to earthquake damage resulting in significant impacts on San Francisco.

Many areas may be without power, at least temporarily, during some portion of the first 72 hours or longer. Natural gas systems will probably experience breaks in major transmission lines and innumerable breaks in the local and individual systems, particularly in areas of poor soils. Telephone communications will be hampered by overloading resulting from many calls being placed and from phones knocked off hooks.

A Hayward fault earthquake will result in heavy damage to the City operated water system because major tunnels, aqueducts, and water distribution facilities cross the fault, resulting in possible long term water shortage. Many areas will probably be dependent on tanker trucks to provide water. Sewage collection systems and sewage treatment facilities on poorer soils near the Bay are likely to suffer damage, resulting in the discharge of raw sewage into the Bay.

POLICY 2.10

Identify and replace vulnerable and critical lifelines in high-risk areas.

The Water Department and the Department of Public Works have ongoing programs to replace vulnerable water mains and sewers and to improve performance of the systems during earthquakes by including system segmentation, safety shut-off systems and redundant back-up systems or other methods of reducing damage and providing alternative sources of service. Pacific Gas and Electricity has an ongoing program, with the goal of reducing the vulnerability of the regional gas and electric networks to earthquakes by the year 2000. Caltrans has bridge and highway retrofit programs underway. Lifeline work may present opportunities to coordinate construction activities. If coordination is possible, it should be vigorously pursued.

The existing public sewer that runs under the centerline of Jessie Street southwest of 10th Street would continue in operation. The project sponsor would be required to install a new manhole at the end of Jessie Street so the San Francisco Public Utilities Commission, Wastewater Enterprise can continue to operate and maintain the existing sewer, a vital lifeline to City living.

WASTEWATER FACILITIES

OBJECTIVE 10

Locate Wastewater facilities in a manner that will enhance the effective and efficient treatment of storm and wastewater.

The San Francisco Public Utilities Commission has stated that the vacation of the subject easement will not adversely affect waste or stormwater conveyance and treatment.

EIGHT PRIORITY POLICIES

The subject project is found to be consistent with the Eight Priority Policies of Planning Code Section 101.1 in that:

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

The vacation of the sewer easement will have no effect on neighborhood-serving retail uses or opportunities for resident employment.

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

Vacation of the sewer easement will have no effect on existing housing and neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced.

Vacation of the sewer easement will have no effect on affordable housing.

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

Vacation of the sewer easement will have no effect on existing housing and neighborhood character.

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

Vacation of the sewer easement would not result in a negative impact on the industrial or service section of the neighborhood.

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

Vacation of the sewer easement would not affect earthquake preparedness or injury and loss of life in an earthquake as currently understood by the Planning Department.

7. That landmarks and historic buildings be preserved.

Vacation of the sewer easement would not affect landmarks or historic buildings.

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

Vacation of the sewer easement would not affect parks or open space.

RECOMMENDATION: Finding the Project, on balance, in-conformity with the General Plan

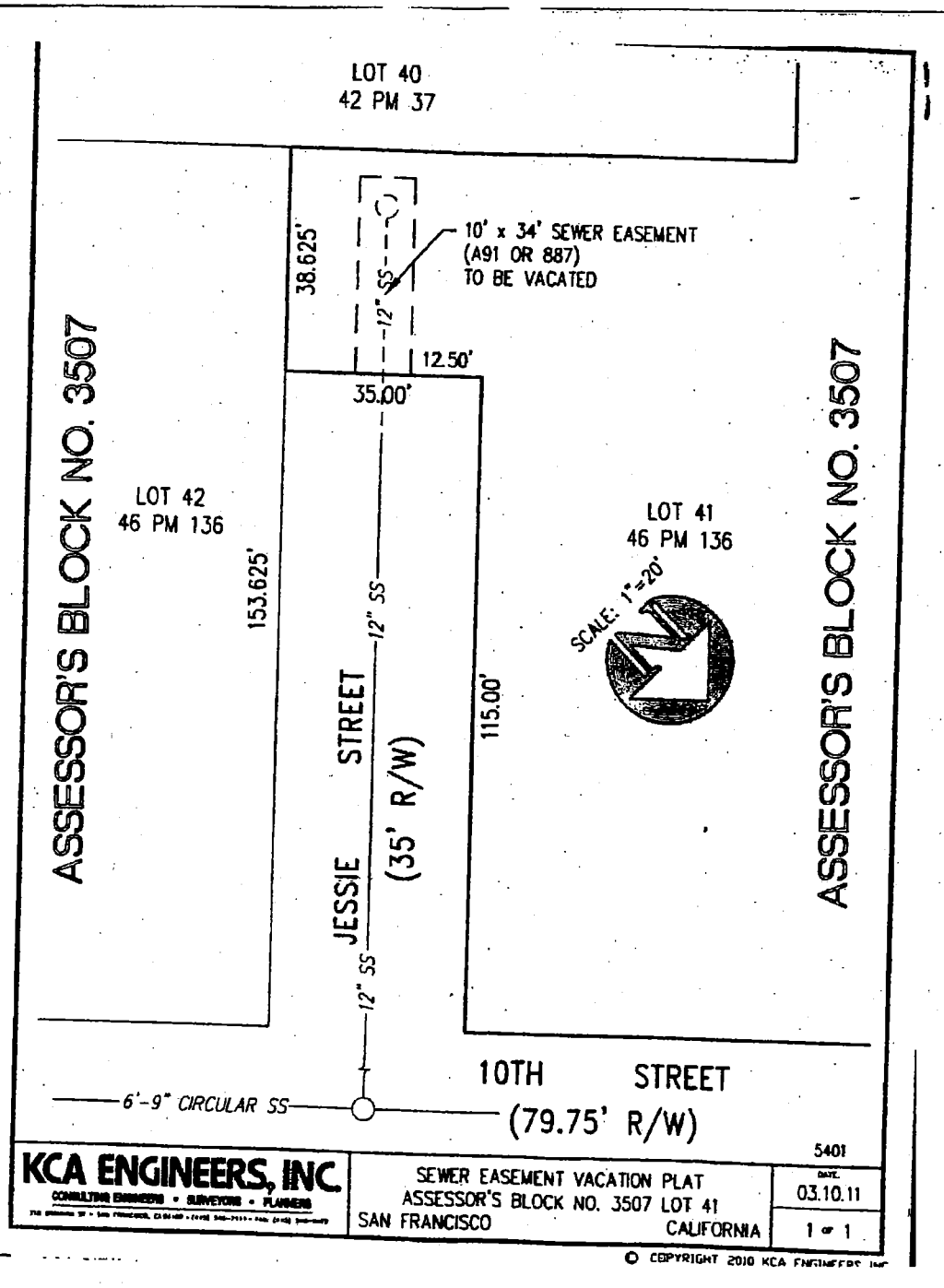
Attachment 1: Map Easement Location

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General Plan Referral
November 14, 2011 (amended February 13, 2012)

CASE NO. 2011.1261R
Sewer Easement Vacation
Near Jessie Street at 10th Street

ATTACHMENT 1: MAP EASEMENT LOCATION



City and County of San Francisco  Edwin M. Lee, Mayor Mohammed Nuru, Interim Director	(415) 554-5827 FAX (415) 554-5324 http://sfdpw.org Department of Public Works BUREAU OF STREET-USE & MAPPING 875 Stevenson Street, Room 410, S.F., CA ... Bruce R. Storrs, City and County Surveyor	DPW Order No: 179,775 CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS
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TRANSMITTING TO THE BOARD OF SUPERVISORS SUPPORTING DOCUMENTS FOR THE VACATION OF THE SEWER EASEMENT LOCATED IN ASSESSOR'S BLOCK 3507, LOT 041, AS SHOWN ON DEPARTMENT OF PUBLIC WORKS MAP SUR 2011-002.

The Tenth and Market, LLC requested that the Department of Public Works conduct an investigation into the vacation of a sewer easement located in Assessor's Block 3507, Lot 041. The Department of Public Works did not receive any response opposing the sewer easement vacation from any city agencies or any public utility companies during our investigation. Furthermore, the Department of City Planning has determined that the sewer easement vacation is in conformity with the General Plan.

The following have been approved by the Department of Public Works and are hereby transmitted to the Board of Supervisors:

1. A copy of the letter from the San Francisco Planning Department dated November 14, 2011 finding the street vacation to be in conformity with the General Plan.
2. A copy of DPW map SUR 2011-002 showing the location of the sewer easement to be vacated.

It is recommended that the Board of Supervisors adopt the Ordinance that will vacate the sewer easement as shown in SUR 2011-002.

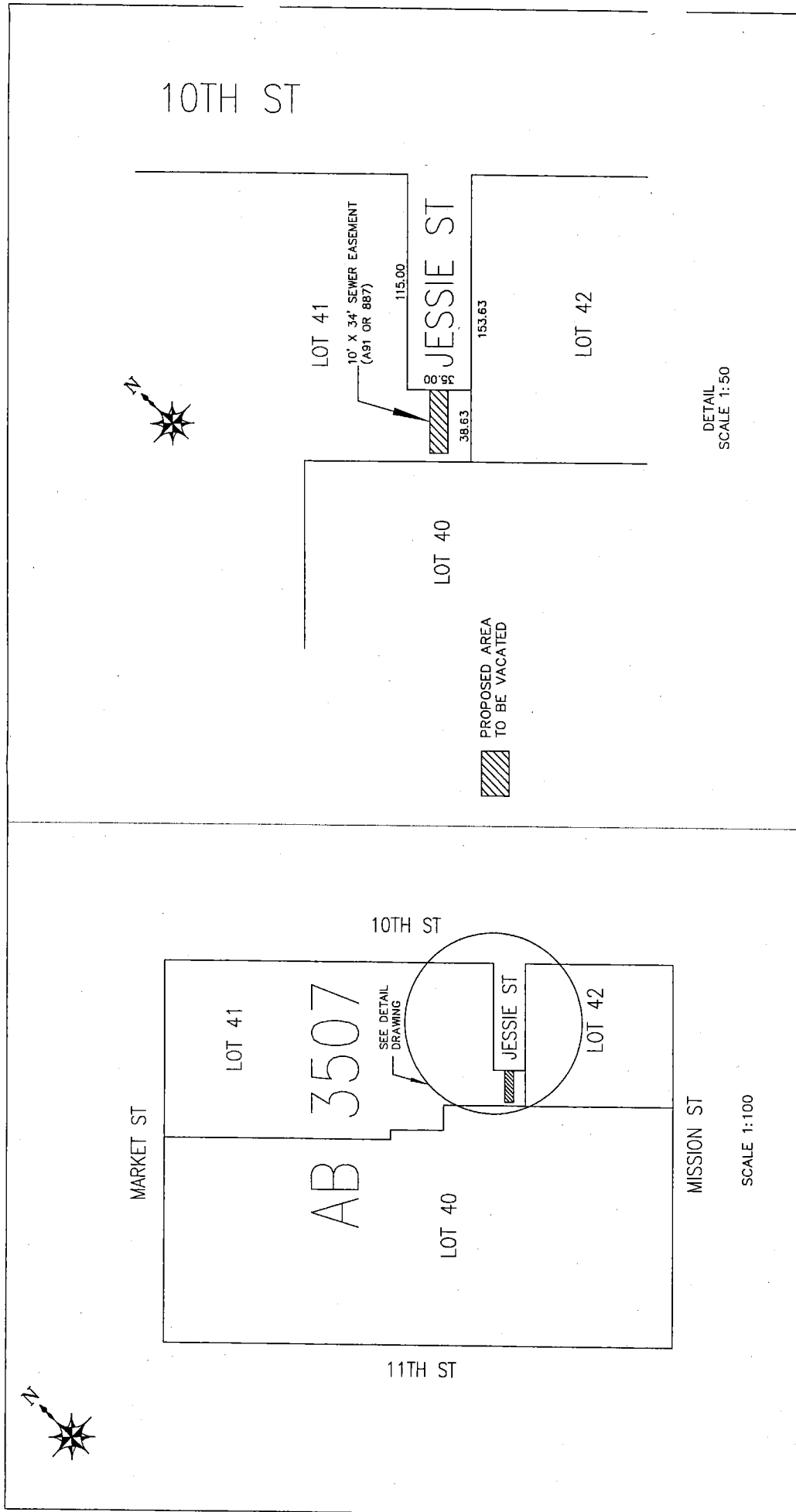
RECOMMENDED:	APPROVED
Bruce R. Storrs City & County Surveyor	Mohammed Nuru Interim Director of Public Works
	Fuad S. Sweiss Deputy Director for Engineering

APPROVED: November 17, 2011 Mohammed Nuru, INTERIM DIRECTOR

[Click here to sign this section](#)

 Valid signature - Signed by Storrs, Bruce	Show Details	X Remove
Thursday, November 17, 2011 3:56:15 PM		
 Valid signature - Signed by Storrs, Bruce	Show Details	X Remove
Tuesday, November 22, 2011 2:38:15 PM		
 Valid signature - Signed by Sweiss, Fuad	Show Details	X Remove
Tuesday, November 22, 2011 2:44:58 PM		
 Valid signature - Signed by Nuru, Mohammed	Show Details	X Remove
Tuesday, November 29, 2011 5:54:24 PM		

[Back](#)



DETAIL
SCALE 1:50

REFERENCES:	APPROVED:  BRUCE R. STORRS CITY & COUNTY SURVEYOR	DATE 11/17/11	BY		DATE	CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS		
			DRW	JR				
			CK	GM				
			APP					
					11/17/11	SEWER EASEMENT VACATION (A91 OR 887) IN ASSESSOR'S BLOCK 3507 LOT 41		
					11/17/11	FILE: SUR: 2011-002		
						SHEET 1 OF 1	SCALE: SEE DRAWING	CHANGE

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

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

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Tenth and Market, LLC, a Delaware Limited Liability 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.	
President - Chaim Elkoby Vice President - Sharon Christenbury Treasurer - Joe Zdon Assistant Treasurer - Pablo deAlmagro Secretary - Shlomo Dachoh	
Contractor address: 2200 Biscayne Boulevard, Miami, FL, 33137	
Date that contract was approved:	Amount of contract: \$77,000
Describe the nature of the contract that was approved: Agreement for Sale of Real Estate	
Comments:	

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

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

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

Print Name of Board

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

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

Date Signed

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

Date Signed

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

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

- ☒ 1. For reference to Committee:
An ordinance, resolution, motion, or charter amendment.
- ☐ 2. Request for next printed agenda without reference to Committee.
- ☐ 3. Request for hearing on a subject matter at Committee:
- ☐ 4. Request for letter beginning "Supervisor inquires"
- ☐ 5. City Attorney request.
- ☐ 6. Call File No. from Committee.
- ☐ 7. Budget Analyst request (attach written motion).
- ☐ 8. Substitute Legislation File No.
- ☐ 9. Request for Closed Session (attach written motion).
- ☐ 10. Board to Sit as A Committee of the Whole.
- ☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on

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

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

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

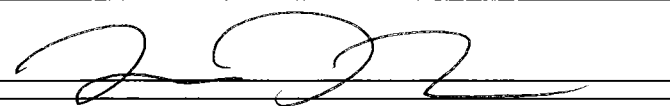
Sponsor(s):

Supervisor Kim

Subject:

Summary Vacation of Public Service Easement; Approval of Sale of Easement Interest –
1407-1435 Market Street

The text is listed below or attached:

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

120928