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San Francisco, CA 94102

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND 181 FREMONT STREET LLC,
RELATIVE TO THE DEVELOPMENT KNOWN AS
181 FREMONT DEVELOPMENT PROJECT**



San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
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**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND 181 FREMONT STREET LLC, A DELAWARE LIMITED LIABILITY
COMPANY, RELATIVE TO THE DEVELOPMENT KNOWN AS
THE 181 FREMONT DEVELOPMENT PROJECT**

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) dated for reference purposes only as of this 4th day of November, 2014, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the “**City**”), acting by and through its Planning Department, and 181 Fremont Street LLC, a Delaware limited liability company, its permitted successors and assigns (the “**Developer**”), pursuant to the authority of Section 65864 *et seq.* of the California Government Code.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer is the owner of that certain property known as 181 Fremont Street (the “**Project Site**”) which is an irregularly shaped property formed by two parcels measuring a total of 15,313 square feet, located on the east side of Fremont Street, between Mission and Howard Streets. The Project Site is within the C-3-0 (SD) District, the 700-S-2 Height and Bulk District, the Transit Center C-3-0 (SD) Commercial Special Use District, the Transbay C-3 Special Use District, the Transit Center District Plan area (the “**TCDP**”) and in Zone 2 of the Transbay Redevelopment Project Area (the “**Project Area**”).

B. The Redevelopment Plan for the Project Area (“**Plan**”) establishes land use controls and imposes other requirements on development within the Project Area. Notably, the Plan incorporates, in section 4.9.2, state law requirements that 25 percent of the residential units developed in the Project Area “shall be available to” low income households, and an additional 10 percent “shall be available to” moderate income households. Cal. Public Resources Code § 5027.1 (the “Transbay Affordable Housing Obligation”). To fulfill the Transbay Affordable Housing Obligation, both the Plan and the San Francisco Planning Code (“**Planning Code**”) require that all housing developments within the Project Area contain a minimum of 15 percent on-site affordable housing. Redevelopment Plan, § 4.9.3; Planning Code, § 249.28 (b) (6) (the “**On-Site Requirement**”). Neither the Redevelopment Plan nor the Planning Code authorize off-site affordable housing construction or an “in-lieu” fee payment as an alternative to the On-Site Requirement in the Project Area.

C. The Plan provides that the land use controls for Zone 2 of the Project Area shall be the Planning Code, as amended from time to time, so long as any amendments to the Planning Code are consistent with the Plan. Through a Delegation Agreement, the former Redevelopment Agency of the City and County of San Francisco (the “**Former Agency**”) delegated jurisdiction for permitting of projects in Zone 2 (including the Project Site) to the

Planning Department, with the Planning Code governing development, except for certain projects that require Redevelopment Agency action.

D. However, pursuant to Section 3.5.5 of the **Plan**, the Commission on Community Investment and Infrastructure (“**CCII**”) (as the Commission to the Successor Agency to the Former Agency, a public body organized and existing under the laws of the State of California, also known as the Office of Community Investment and Infrastructure (“**Successor Agency**” or “**OCII**”)), has the authority to grant a variation from the Plan and the associated Transbay Development Controls and Design Guidelines, or the Planning Code where the enforcement of these controls would otherwise result in practical difficulties for development creating undue hardship for the property owner and constitute an unreasonable limitation beyond the intent of the Plan, the Transbay Design for Development or the Transbay Development Controls and Design Guidelines.

E. Where a variation or other action of the Successor Agency materially changes the Successor Agency’s obligations to provide affordable housing, the Board of Supervisors (“Board”) must approve that action. San Francisco Ordinance No. 215-12, § 6 (a) (Oct. 4, 2012).

F. On December 6, 2012, the Planning Commission approved Motions 18763, 18764, 18765 and the Zoning Administrator issued a variance decision (later revised on March 15, 2013) (collectively, the “**Approvals**”). The Approvals approved a project on the Project Site (the “**Project**”) that would demolish an existing three-story building and an existing two-story building, and construct a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space. The Project also includes a bridge to the future elevated City Park situated on top of the Transbay Transit Center.

G. As part of the Project approval on December 6, 2012, the Planning Commission found that the Project was consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the Planning Principles set forth in Section 101.1 of the Planning Code (together, the “**General Plan Consistency Findings**”).

H. As part of the Project approval on December 6, 2012, Conditions of Approval were placed on the Project including the On-Site Requirement that pursuant to Planning Code Sections 249.28(b)(6) and 415.6 and Plan Section 4.9.3, the Project is required to provide 15% of the proposed dwelling units as affordable to qualifying households.

I. Developer has commenced construction of the Project in accordance with the provisions of the Plan, the Planning Code and the Approvals applicable thereto, including the On-Site Requirement (the “**Existing Requirements**”).

J. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 et seq. (the “**Development**

Agreement Statute”), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property related to the development of such property. Pursuant to the Development Agreement Statute, the City adopted Chapter 56 (**“Chapter 56”**) of the San Francisco Administrative Code establishing procedures and requirements for entering into a development agreement. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

K. Approval of this Agreement does not compel any changes in the Project that the Planning Commission previously approved. Rather, approval of this Agreement merely authorizes the Commission on Community Investment and Infrastructure, Planning Commission and Board of Supervisors to remove the On-Site Requirement from the Project. Thus, approval of this Agreement and authorizing the future acceptance of \$13.85 million for the Transbay Affordable Housing Obligation does not constitute a project under the California Environmental Quality Act (**“CEQA”**), CEQA Guidelines Section 15378 (b)(4) because it merely creates a government funding mechanism that does not involve any commitment to a specific project..

L. On June 5, 2014, OCII received a request from the Developer for a variation from the On-Site Requirement. The Developer proposed removing the affordability restrictions from the 11 affordable units on-site and converting them to market rate units. Letter, J. Paul, 181 Fremont Street, LLC, to M. Grisso, OCII (June 5, 2014) (**“Variation Request”**), attached as Exhibit A.

M. The Developer’s Variation Request explained that the Project was unique in that it is the only approved or proposed mixed-use office and housing development within the Project Area, it has the smallest number of residential units of any high rise development in the Project Area, its residential units are located on the upper 15 floors of a 52 story tower, and its HOA dues will be in excess of \$2000 per month. The Variation Request concludes that the application of the On-Site Requirement to the Project will create practical difficulties for maintaining the affordability of the units because homeowners association (**“HOA”**) fees, which are already high in such developments, will likely increase such that the original residents would not be able to afford the payments and thus an undue hardship can be created for both the Project Sponsor and the owners of the inclusionary housing units.

N. The Variation Request proposes that the Successor Agency grant a variation on the condition that the Developer contribute \$13.85 million toward the development of affordable housing in the Project Area (the **“Affordable Housing Fee”**). Payment of this fee would ensure that the conversion of the 11 inclusionary units to market rate units does not adversely affect the Successor Agency’s compliance with the Transbay Affordable Housing Obligation

O. On October 10, 2014, CCII, pursuant to Resolution No. 80-2014, approved a variation pursuant to Section 3.5.5 of the Plan, allowing the Project to pay the Affordable Housing Fee in lieu of satisfying the On-Site Requirement (the **“OCII Variation”**), attached as Exhibit B.

P. The Board, in its capacity as the governing body of OCII, has reviewed the OCII Variation under the authority that it reserved to itself in Ordinance No. 215-12 to approve

material changes to the Successor Agency's affordable housing program and has approved, by Board of Supervisors Resolution No. 404-14, the actions of OCII in granting the OCII Variation.

Q. The City has determined that as a result of the development of the Project in accordance with this Agreement additional, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies because the payment of the Affordable Housing Fee and use thereof in accordance with this Agreement rather than compliance with the On-Site Requirements will result in more affordable housing units within the Project Area at deeper affordability levels while maintaining land values necessary for the financing assumptions of the Transbay Joint Powers Authority (the "TJPA"). The basis for this determination is the following:

- To achieve the overall goal of at least 35% of all new housing development units within the Project Area, there must be both inclusionary units and stand-alone affordable housing developments in the Project Area.
- The Plan's 2005 report set a goal of 388 inclusionary units and approximately 795 stand-alone affordable housing units but at the time of the Plan's adoption, mixed-use, high-rise developments were not contemplated within the Project Area.
- The Project Area covers 40 acres and includes blocks programmed for: (i) stand-alone affordable housing developments; (ii) all or a majority of office space; and (iii) a combination of market and affordable housing.
- The TJPA established specific land value goals for each block in its funding plan for the Transbay Transit Center (the "TTC") and there are a limited number of publicly-owned blocks remaining upon which affordable housing may be built to meet the Plan's 35% affordability requirement.
- Adding affordable housing to blocks that must be sold to finance the TTC is not feasible without significantly reducing the land value and thereby creating shortfalls in the TTC funding.
- Due to zoning restrictions, the addition of affordable units to a block will result in a decrease of the number of market-rate units that may be built on that block. However, each block contains both market-rate and stand-alone affordable parcels and it is possible to add stand-alone affordable housing units to one or more of the stand-alone affordable parcels on a particular block while reducing the number of inclusionary units on the market rate parcel. This would result in the increase of the total amount of affordable housing, but would require additional public subsidy to fund the bonus stand-alone units.
- The Affordable Housing Fee is estimated to be capable of subsidizing the equivalent of approximately 69 stand-alone affordable housing units on publicly owned parcels in the Project Area in contrast to the up to 11 units that would be produced under the On-Site Requirement and accordingly the Affordable Housing Fee will allow OCII to better fulfill the requirements of the Transbay Affordable Housing Obligation (as

defined in Recital B above). In addition, the 69 stand-alone affordable housing units would provide deeper affordability levels (50% of AMI) compared to the levels (100% of AMI) that would be achieved through the application of the On-Site Requirement for up to 11 units.

- In addition, due to the unique nature of the Property, any affordable units created under the On-Site Requirement would have challenges associated with maintaining their affordability in so much as the residential units within the Project are for-sale and include high homeowners fees, in excess of \$2,000 per month. Although the initial price of the affordable for-sale units would be adjusted to reflect the cost of these fees, after completion of the Project such fees may rise from time-to-time in a manner that might cause the once affordable units to become unaffordable.
- The City and OCII determined the amount of the Affordable Housing Fee following review of an analysis and determination by The Concord Group (“TCG”), a real estate economics firm (see report, Exhibit C). TCG calculated the net additional revenue that would accrue to the Developer if the 11 on-site affordable units were converted to market-rate units.

R. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with CEQA, the CEQA Guidelines, Chapters 31 and 56 of the San Francisco Administrative Code, the Development Agreement Statute, the Enacting Ordinance and all other applicable laws as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental laws, including CEQA, before taking any discretionary action regarding the Project, or Developer's obligation to comply with all applicable laws in connection with the development of the Project.

S. On October 16, 2014, the Planning Commission held a public hearing and approved Motion 19262, conditionally amending the Conditions of Approval applicable to the Project related to the On-Site Requirement, which Conditions of Approval are attached to this Agreement as Exhibit D.

T. On October 16, 2014, the Planning Commission held a public hearing on this Agreement, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission made General Plan Consistency Findings with respect to this Agreement and recommended adoption of an ordinance approving this Agreement.

U. On October 28, 2014, the Board, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board approved the actions of OCII in granting the OCII Variation pursuant to Resolution No. 404-14. On November 4, 2014, the Board adopted Ordinance No. 404-14, approving this Agreement, incorporating by reference the General Plan Consistency Findings, and authorizing the Planning Director to execute this Agreement on behalf of the City (the “**Enacting Ordinance**”). The Enacting Ordinance took effect on 11/11/14, 2014.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. GENERAL PROVISIONS

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

1.2 **Definitions.** In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.2.1 **“Administrative Code”** shall mean the San Francisco Administrative Code.

1.2.2 **“Affordable Housing Fee”** shall mean the payment, pursuant to Section 2.1 of this Agreement, from the Developer to the City in the amount of thirteen million eight hundred fifty thousand dollars (\$13,850,000) for fulfillment of the Transbay Affordable Housing Obligation.

1.2.3 **“Board of Supervisors” or “Board”** shall mean the Board of Supervisors of the City and County of San Francisco.

1.2.4 **“CCII”** shall mean the Commission on Community Investment and Infrastructure.

1.2.5 **“City”** shall have the meaning set forth in the preamble paragraph. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors. The City’s approval of this Agreement will be evidenced by the signature of the Planning Director.

1.2.6 **“City Agency” or “City Agencies”** shall mean, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and that have subdivision or other permit, entitlement or approval authority or jurisdiction over the Project or the Project Site, together with any successor City agency, department, board, or commission.

1.2.7 **“City Attorney’s Office”** shall mean the Office of the City Attorney of the City and County of San Francisco.

1.2.8 **“Director” or “Planning Director”** shall mean the Director of Planning of the City and County of San Francisco.

1.2.9 **“Indemnify”** shall mean to indemnify, defend, reimburse, and hold harmless.

1.2.10 “**OCII**” shall mean Office of Community Investment and Infrastructure.

1.2.11 “**Official Records**” shall mean the official real estate records of the City and County of San Francisco, as maintained by the City’s Recorder’s Office.

1.2.12 “On-Site Requirement” is defined in Recital B.

1.2.13 “**Party**” means, individually or collectively as the context requires, the City and Developer (and, as Developer, any Transferee that is made a Party to this Agreement under the terms of an Assignment and Assumption Agreement). “**Parties**” shall have a correlative meaning.

1.2.14 “**Plan**” shall mean the Transbay Project Area Redevelopment Plan, Approved by Ordinance No. 124-05, Adopted by the Board of Supervisors on June 21, 2005 and Ordinance No. 99-06 adopted by the Board of Supervisors May 9, 2006, as amended from time to time.

1.2.15 “**Planning Code**” shall mean the San Francisco Planning Code.

1.2.16 “**Planning Commission**” or “**Commission**” shall mean the Planning Commission of the City and County of San Francisco.

1.2.17 “**Planning Department**” shall mean the Planning Department of the City and County of San Francisco.

1.3 Effective Date. This Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties and (ii) the effective date of the Enacting Ordinance (“**Effective Date**”). The Effective Date is .

1.4 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for the earlier of (i) Project completion (as evidenced by issuance of the Temporary Certificate of Occupancy) or (ii) ten (10) years after the effective date., unless extended or earlier terminated as provided herein (“**Term**”). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2. PROJECT CONTROLS AND VESTING

2.1 Project Controls; Affordable Housing Fee. During the term of this Agreement, Developer shall have the vested right to develop the Project Site in accordance with the Existing Requirements, provided (i) within 30 days following the Effective Date, Developer shall pay to the City the Affordable Housing Fee, and (ii) upon the City’s receipt of the Affordable Housing Fee, the On-Site Requirement shall not apply to the Project. Upon receipt, the City shall transfer the Affordable Housing Fee to OCII to be used by OCII to fulfill the Transbay Affordable Housing Obligation. The City agrees to work collaboratively with OCII to seek to maximize the

number of affordable units that can be built with the Affordable Housing Fee. OCII shall have the right, in its sole discretion, to determine how and where to apply the Affordable Housing Fee, with the only restriction being that OCII use the Affordable Housing Fee for predevelopment and development expenses and administrative costs associated with the acquisition, construction or rehabilitation of affordable housing in the Project Area. Developer shall have no right to challenge the appropriateness or the amount of any expenditure, so long as it is used for affordable housing in the Project Area.

2.2 Vested Rights. The City, by entering into this Agreement, is limiting its future discretion with respect to Project approvals that are consistent with this Agreement during the Term. Consequently, the City shall not use its discretionary authority in considering any application to change the policy decisions reflected by the Agreement or otherwise to prevent or to delay development of the Project as set forth in the Agreement. Instead, implementing approvals that substantially conform to or implement the Agreement shall be issued by the City so long as they substantially comply with and conform to this Agreement. The City shall not use its discretionary authority to change the policy decisions reflected by this Agreement or otherwise to prevent or to delay development of the Project as contemplated in this Agreement. The City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement.

2.3 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law. If any such changes in Federal or State Laws would materially and adversely affect the construction, development, use, operation or occupancy of the Project such that the Development becomes economically infeasible, then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties.

2.4 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

2.5 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment.

3. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the legal owner of the Project Site, and that all other persons with an ownership or security interest in the Project Site have consented to this Agreement. Developer is a Delaware limited liability company. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer has made all required state filings required to conduct business in the State of California and is in good standing in the State of California.

3.2 No Conflict with Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

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

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

3.5 Notification of Limitations on Contributions. Through execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for a contract as defined under Section 1.126 of the Campaign and Governmental Conduct Code until six (6) months after the date the contract is approved by the City elective officer or the board on which that City elective officer

serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

3.6 Other Documents. No document furnished or to be furnished by Developer to the City in connection with this Agreement contains or will contain to Developer's knowledge 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.

3.7 No Suspension or Debarment. Neither Developer, nor any of its officers, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency.

3.8 No Bankruptcy. Developer represents and warrants to City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

3.9 Taxes. Without waiving any of its rights to seek administrative or judicial relief from such charges and levies, Developer shall pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its property before the date on which penalties attach thereto, and all lawful claims which, if unpaid, would become a lien upon the Project Site.

3.10 Notification. Developer shall promptly notify City in writing of the occurrence of any event which might materially and adversely affect Developer or Developer's business, or that would make any of the representations and warranties herein untrue, or that would, with the giving of notice or passage of time over the Term, constitute a default under this Agreement.

3.11 Nexus/Reasonable Relationship Waiver. Developer consents to, and waives any rights it may have now or in the future, to challenge with respect to the Project, the legal validity of, the conditions, requirements, policies, or programs required by this Agreement, including, without limitation, any claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax, including any legal or other challenge to the proposed City and County of San Francisco Transbay Center District Plan [Mello-Roos] Community Facilities District No. 2014-1 (Transbay Transit Center) ("CFD") special tax based on the RMA attached hereto as Exhibit E.

3.12 Indemnification of City. Developer shall Indemnify the City and OCII (each an "Indemnified Party") and the Indemnified Party's officers, agents and employees from and, if

requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims (“Losses”) arising or resulting directly or indirectly from this Agreement and Developer’s performance (or nonperformance) of this Agreement, regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on an Indemnified Party, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or willful misconduct of an Indemnified Party. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the Indemnified Party’s cost of investigating any claims against the Indemnified Party. All Indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement.

3.13 Payment of Fees and Costs.

3.13.1. Developer shall pay to the City all City Costs during the Term within thirty (30) days following receipt of a written invoice from the City. Each City Agency shall submit to the Planning Department or another City agency as designated by the Planning Department monthly or quarterly invoices for all City Costs incurred by the City Agency for reimbursement under this Agreement, and the Planning Department or its designee shall gather all such invoices so as to submit one City bill to Developer each month or quarter. To the extent that a City Agency fails to submit such invoices, then the Planning Department or its designee shall request and gather such billing information, and any City Cost that is not invoiced to Developer within twelve (12) months from the date the City Cost was incurred shall not be recoverable.

3.13.2. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer are past due. If such failure to make payment continues for a period of more than sixty (60) days following notice, it shall be a Default for which the City shall have all rights and remedies as set forth in Section 7.4.

3.14 Mello-Roos Community Facilities District. The Project shall be subject to the provisions of the proposed **CFD**, once established, to help pay the costs of constructing the new Transbay Transit Center, the Downtown Rail Extension (“DTX”), and other improvements in the Transit Center District Plan area. The special tax rate has been established, as included in the CFD Rate and Method of Apportionment (“RMA”) attached hereto as Exhibit E.

i. If the Project is not subject to a CFD that will help pay the costs of constructing the new Transbay Transit Center, the DTX, and other improvements in the Transit Center District Plan area on the date that a Final C of O is issued to the Developer, then the Developer will be required to pay to the City for transmittal to the TJPA, and retention by the City as applicable, of the estimated CFD taxes amount that would otherwise be due to the San Francisco Office of the Assessor-Recorder (“**Assessor-Recorder**”) if the CFD had been established in accordance with the rates established in the RMA.

ii. The “amount that would otherwise be due” under 3.14(i) above shall be based on the RMA attached hereto as Exhibit E, calculated as if the Project were subject to the RMA from the date of issuance of the Final C of O until the Project is subject to the CFD.

iii. If the City proposes a CFD covering the Site, Developer agrees to cast its vote in favor of the CFD, provided that the tax rates are not greater than the Base Special Tax rates in the RMA attached as Exhibit E to this Agreement.

4. MUTUAL OBLIGATIONS

4.1 Notice of Completion or Revocation. Upon the Parties’ completion of performance or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Official Records.

4.2 Estoppel Certificate. Developer may, at any time, and from time to time, deliver written notice to the Planning Director requesting that the Planning Director certify in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; (iii) Developer is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9.2 below. The Planning Director shall execute and return such certificate within forty-five (45) days following receipt of the request. Each Party acknowledges that any mortgagee with a mortgage on all or part of the Project Site, acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

4.3 Cooperation in the Event of Third-Party Challenge.

4.3.1 In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City.

4.3.2 Developer shall assist and cooperate with the City at its own expense in connection with any Third-Party Challenge. The City Attorney’s Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney’s sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney’s Office and any consultants; *provided, however*) Developer shall have the right to receive monthly invoices for all such costs. Developer shall Indemnify the City from any other liability incurred by the City, its officers, and its employees as the result of any Third-Party Challenge, including any award to opposing counsel of attorneys’ fees or costs, except where such award is the result of the willful

misconduct of the City or its officers or employees. This section shall survive any judgment invalidating all or any part of this Agreement.

4.3.3 Affordable Housing Fee Challenge. The Parties agree that if a Third Party Challenge is initiated regarding the validity or enforceability of this Agreement or, specifically of the Affordable Housing Fee, Developer shall not sell [or lease?] the residential units designated for and required to complete the On-Site Requirements until the validity and enforceability of this Agreement, including payment of the Affordable Housing Fee, has been finally determined and upheld. If this Agreement or the Affordable Housing Fee is not upheld (on any final appeal), then Developer will satisfy the On-Site Requirements with the designated residential units.

4.4 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

4.5 Agreement to Cooperate; Other Necessary Acts. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Agreement are fulfilled during the Term. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, in accordance with the terms of this Agreement (and subject to all applicable laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

5. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

5.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute, at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year; *provided, however*, that such review shall be deferred to the following January if not commenced on or before May 31st.

5.2 Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section.

5.2.1 Required Information from Developer. Upon request by the Planning Director but not more than sixty (60) days and not less than forty-five (45) days before the Annual Review Date, Developer shall provide a letter to the Planning Director confirming Developer's compliance with this Agreement.

5.2.2 City Compliance Review. If the Planning Director finds Developer is not in compliance with this Agreement, the Planning Director shall issue a Certificate of Non-Compliance. The City's failure to timely complete the annual review is not deemed to be a waiver of the right to do so at a later date within a given year, so long as the annual review is commenced on or before May 31st, as contemplated in Section 5.1.

6. **AMENDMENT; TERMINATION; EXTENSION OF TERM**

6.1 Amendment or Termination. Except as provided in Section 2.3 (Changes in State and Federal Rules and Regulations) and Section 7.4 (Remedies), this Agreement may only be amended or terminated with the mutual written consent of the Parties. Except as provided in this Agreement to the contrary, the amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 56.

6.2 Extension Due to Legal Action, Referendum, or Excusable Delay.

6.2.1 If any litigation is filed challenging this Agreement or the validity of this Agreement or any of its provisions, then the Term shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension.

6.2.2 In the event of changes in state or federal laws or regulations, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, war, acts of terrorism, fire, acts of God, litigation, lack of availability of commercially-reasonable project financing (as a general matter and not specifically tied to Developer), or other circumstances beyond the control of Developer and not proximately caused by the acts or omissions of Developer that substantially interfere with carrying out the obligations under this Agreement ("**Excusable Delay**"), the Parties agree to extend the time periods for performance, as such time periods have been agreed to by Developer, of Developer's obligations impacted by the Excusable Delay. In the event that an Excusable Delay occurs, Developer shall notify the City in writing of such occurrence and the manner in which such occurrence substantially interferes with the ability of Developer to perform under this Agreement. In the event of the occurrence of any such Excusable Delay, the time or times for performance of the obligations of Developer, will be extended for the period of the Excusable Delay if Developer cannot, through commercially reasonable and diligent efforts, make up for the Excusable Delay within the time period remaining before the applicable completion date; *provided, however*, within thirty (30) days after the beginning of any such Excusable Delay, Developer shall have first notified City of the cause or causes of such Excusable Delay and claimed an extension for the reasonably estimated period of the Excusable Delay. In the event that Developer stops any work as a result of an Excusable Delay, Developer must take commercially reasonable measures to ensure that the affected real property is returned to a safe condition and remains in a safe condition for the duration of the Excusable Delay.

6.2.3 The foregoing Section 6.2.1 notwithstanding, Developer may not seek to delay the payment of the Affordable Housing Fee as a result of an Excusable Delay related to the lack of availability of commercially reasonable project financing.

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

7.1 Enforcement. The only Parties to this Agreement are the City and Developer. This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

7.2 Default. For purposes of this Agreement, the following shall constitute an event of default (an “**Event of Default**”) under this Agreement: (i) except as otherwise specified in this Agreement, the failure to make any payment within ninety (90) calendar days of when due; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant hereunder, including complying with all terms of the Conditions of Approval, attached hereto as Exhibit D, and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance (a “**Notice of Default**”); *provided, however*, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter.

7.3 Notice of Default. Prior to the initiation of any action for relief specified in Section 7.4 below, the Party claiming default shall deliver to the other Party a Notice of Default. The Notice of Default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the Notice of Default, then that Party, within twenty-one (21) calendar days of receipt of the Notice of Default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that a default has not occurred. The Parties shall meet to discuss resolution of the alleged default within thirty (30) calendar days of the delivery of the notice of non-default. If, after good faith negotiation, the Parties fail to resolve the alleged default within thirty (30) calendar days, then the Party alleging a default may (i) institute legal proceedings pursuant to Section 7.5 to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section 7.4.1. The Parties may mutually agree in writing to extend the time periods set forth in this Section.

7.4 Remedies.

7.4.1 Specific Performance; Termination. In the event of an Event of Default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity (subject to the limitation on damages set forth in Section 7.4.2 below). In the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party setting forth the basis for the termination. The Party alleging a material breach shall provide a

notice of termination to the breaching Party, which notice of termination shall state the material breach. The Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. The Party receiving the notice of termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable.

7.4.2 Actual Damages. Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) the City shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for (a) Developer's failure to pay sums to the City as and when due under this Agreement, but subject to any express conditions for such payment set forth in this Agreement, and (b) Developer's failure to make payment due under any Indemnity in this Agreement, and (2) either Party shall have the right to recover attorneys' fees and costs as set forth in Section 7.7, when awarded by an arbitrator or a court with jurisdiction. For purposes of the foregoing, "actual damages" shall mean the actual amount of the sum due and owing under this Agreement, with interest as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

7.5 Dispute Resolution. The Parties recognize that disputes may arise from time to time regarding application to the Project. Accordingly, in addition and not by way of limitation to all other remedies available to the Parties under the terms of this Agreement, including legal action, the Parties agree to follow the dispute resolution procedure in Section 7.6 that is designed to expedite the resolution of such disputes. If, from time to time, a dispute arises between the Parties relating to application to the Project the dispute shall initially be presented by Planning Department staff to the Planning Director, for resolution. If the Planning Director decides the dispute to Developer's satisfaction, such decision shall be deemed to have resolved the matter. Nothing in this section shall limit the rights of the Parties to seek judicial relief in the event that they cannot resolve disputes through the above process.

7.6 Dispute Resolution Related to Changes in State and Federal Rules and Regulations. The Parties agree to follow the dispute resolution procedure in this Section 7.6 for disputes regarding the effect of changes to State and federal rules and regulations to the Project pursuant to Section 2.3.

7.6.1 Good Faith Meet and Confer Requirement. The Parties shall make a good faith effort to resolve the dispute before non-binding arbitration. Within five (5) business days after a request to confer regarding an identified matter, representatives of the Parties who are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall immediately be submitted to the arbitration process set forth in Section 7.6.2.

7.6.2 Non-Binding Arbitration. The Parties shall mutually agree on the selection of an arbiter at JAMS in San Francisco or other mutually agreed to Arbiter to serve for the purposes of this dispute. The arbiter appointed must meet the Arbiters' Qualifications. The "**Arbiters' Qualifications**" shall be defined as at least ten (10) years of experience in a real property professional capacity, such as a real estate appraiser, broker, real estate economist, or attorney, in the Bay Area. The disputing Party(ies) shall, within ten (10) business days after submittal of the dispute to non-binding arbitration, submit a brief with all supporting evidence to the arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within ten (10) business days after distribution of the initial brief. The arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within five (5) business days after the submittal of the last brief, unless the arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the arbiter shall be submitted to the arbiter (with copies to all Parties) within five (5) business days after the arbiter's request, and thereafter the arbiter shall hold a telephonic hearing and issue a decision promptly but in any event not sooner than two (2) business days after submission of such additional briefs, and no later than thirty-two (32) business days after initiation of the non-binding arbitration. Each Party will give due consideration to the arbiter's decision before pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

7.7 Attorneys' Fees. Should legal action be brought by either Party against the other for an Event of Default under this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "reasonable attorneys' fees and costs" shall mean the fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office 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 Office'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.

7.8 No Waiver. Failure or delay in giving a Notice of Default shall not constitute a waiver of such Event of Default, nor shall it change the time of such Event of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies, nor shall it deprive any such Party of its right to

institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

7.9 Future Changes to Existing Standards. Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is terminated by mutual agreement of the Parties or terminated for default as set forth in Section 7.2, either Party may enforce this Agreement notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City or the voters by initiative or referendum (excluding any initiative or referendum that successfully defeats the enforceability or effectiveness of this Agreement itself).

7.10 Joint and Several Liability. If Developer consists of more than one person or entity with respect to any real property within the Project Site or any obligation under this Agreement, then the obligations of each such person and/or entity shall be joint and several.

8. MISCELLANEOUS PROVISIONS

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

8.2 Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code section 1468.

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

8.4 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this

Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement or to this Agreement shall be deemed to refer to the Agreement as amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.

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

8.5.1 The Agreement is to be undertaken by Developer the Project is a private development and no portion shall be deemed a public work. The City has no interest in, responsibility for, or duty to third persons concerning the Project. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

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

8.6 Recordation. Pursuant to Section 65868.5 of the Development Agreement Statute, the clerk of the Board shall cause a copy of this Agreement or any amendment thereto to be recorded in the Official Records within ten (10) business days after the Effective Date of this Agreement or any amendment thereto, as applicable, with costs to be borne by Developer.

8.7 Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

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

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

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

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

To Developer:

Janette D'Elia
Senior VP & COO
Jay Paul Compan
Four Embarcadero Center, Suite 3620
San Francisco, CA 94111

with a copy to:

Rachel B. Horsch
Pillsbury Winthrop Shaw Pittman LLP
4 Embarcadero Center, 22nd Floor
San Francisco, California, 94111

8.11 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

8.12 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or if any such term, provision, covenant, or condition does not become effective until the approval of any Non-City Responsible Agency, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be

unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. Notwithstanding the foregoing, the Developer and the City agree that the Agreement will terminate and be on no force or effect if Section 2.1 herein is found invalid, void or unenforceable.

8.13 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, Developer shall mark any such materials as such, . When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

[Remainder of Page Intentionally Blank;

Signature Page Follows]


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

CITY

CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation

By: 
John Rahaim
Director of Planning


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

By: 
Heidi Gewertz
Deputy City Attorney

Approved on 11/4/14
Board of Supervisors Ordinance No. 231-14

DEVELOPER

181 FREMONT STREET LLC, a Delaware
limited liability company

By: 
Name: Phillip A. Veinsky
Title: Vice President

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGEMENT

State of California

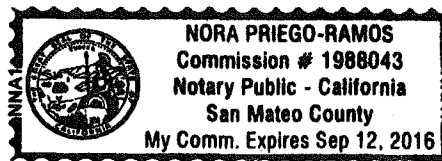
County of San Francisco

On December 3, 2014 before me, Nora Priego-Ramos, Notary Public

Personally appeared ----- John Rahaim -----

Who provided to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledge 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 OR PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal

Nora Priego-Ramos

Signature of Notary Public

ADDITIONAL OPTIONAL INFORMATION

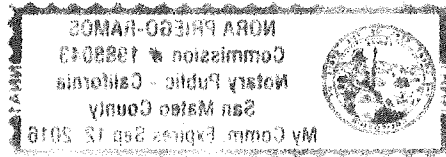
DESCRIPTION OF THE ATTACHED DOCUMENT

Development Agreement By and Between The City and County of San Francisco and
(Title or description of attached document)

181 Fremont Street LLC, Relative to the Development Known as 181 Fremont Development Project
(Title or description of attached document continued)

Number of Pages 83 Document Date November 4, 2014

None
(Additional Information)



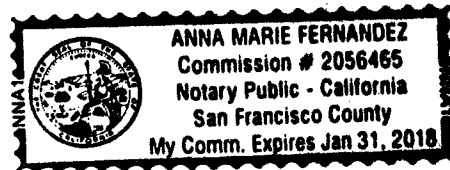
STATE OF CALIFORNIA
COUNTY OF

On November 19, 2014, before me, Anna Marie Fernandez, personally appeared Phillip A. Verinsky, 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 Anna Marie Fernandez (seal)



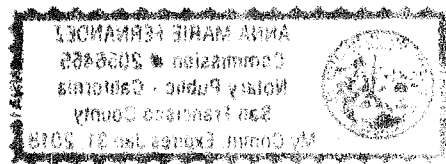


Exhibit A



June 5, 2014

Office of Community Investment and Infrastructure
Attn: Mike Grisso, Office of Community Investment and Infrastructure
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Re: Request for Variation 181 Fremont Street
San Francisco, CA Block 3719/Lots 10 & 11
Case No. 2007.0456EBKXV

Dear Mr. Grisso:

Pursuant to section 3.5.5 of the Redevelopment Plan for the Transbay Redevelopment Project Area (the "Plan"), 181 Fremont Street LLC, (the "Project Sponsor") hereby requests a variation from the requirements of section 4.9.3 of the Plan and section 415.6 of the San Francisco Planning Code in exchange for the payment of \$13.85 million dollars to the Office of Community Investment and Infrastructure ("OCII) for the provision of affordable housing within the Transbay Redevelopment Project Area (the "Project Area").

181 Fremont is a unique mixed-use high-rise development project (the "Project"). The Project contains office space and for-sale residential units, including 11 inclusionary affordable ownership units at the top of the tower. The construction of for-sale, on-site affordable housing units at the top of a high-rise creates practical difficulties for maintaining the affordability of the units because homeowners association ("HOA") fees, already high in such developments, will likely increase such that the original residents would not be able to afford the payments.

The burden placed on the Project Sponsor to maintain the affordability of the units creates an undue hardship for both the Project Sponsor and the owners of the inclusionary housing units. A variation allowing the Project Sponsor to pay an affordable housing fee to OCII will increase OCII's ability to delivery affordable housing units within the Project Area, a primary goal of the Plan, create deeper affordable levels, produce more net affordable units, and maintain land values necessary for the Transbay Joint Powers Authority's financing assumptions.

The Plan and Planning Code

Pursuant to section 3.5.5 of the Plan, OCII, in its sole discretion, may grant a variation from the Plan, the Development Controls and Design Guidelines, or the Planning Code, if enforcement would result in practical difficulties for development creating an undue hardship for the property owner and constitute an

unreasonable limitation beyond the intent of the Plan. OCII may grant variations only if there are unique physical constraints or other extraordinary circumstances applicable to the property. Any variation granted must be in harmony with the Plan and not materially detrimental to the public welfare or neighboring property or improvements.

Section 2.1G of the Plan states that it is both the purpose of California Redevelopment Law and a major objective of the Plan to strengthen the community by supplying affordable housing with the deepest affordability levels economically feasible. The Plan requires that 35% of all new housing units in the Project Area be affordable. Both Planning Code section 415.6 and section 4.9.3 of the Plan require that at least 15% of all new housing development units must be on-site, affordable housing units. To achieve this requirement, the Redevelopment Plan must utilize both inclusionary units and stand-alone affordable housing developments. The Plan's 2005 report set a goal of 388 inclusionary units and approximately 795 stand-alone affordable housing units.

The Project and the Project Area

The Project is currently the only approved or proposed mixed-use office and housing development within the Plan Area. The Project's tower contains 54 floors comprised of approximately 400,000 sq. sf. of office and retail space, and 74 residential units, the smallest number of residential units of any high-rise development in the Project Area. Office and retail uses occupy the lower 38 floors and residential units, including 11 inclusionary units, occupy the upper 15 floors.

The Plan Area covers 40 acres and includes blocks programmed for: (i) stand-alone affordable housing developments; (ii) all or a majority of office space; and (iii) a combination of market and affordable housing. The Transbay Joint Powers Authority ("TJPA") established specific land value goals for each block in its funding plan for the Transbay Transit Center ("TTC"). There are a limited number of publicly-owned blocks remaining upon which affordable housing may be built to meet the Plan's 35% affordability requirement.

Affordability Challenges

Due to the unique nature of the Property, maintaining the affordability of the affordable units in harmony with the Plan is problematic. The residential units within the Project are for-sale and include high HOA fees, in excess of \$2,000 per month. Although the initial price of the affordable for-sale units would be adjusted to reflect the cost of the HOA fees, after completion of the project the HOA may raise fees at any time regardless of the effect on the affordable units. Because the HOA, in its sole discretion, may increase HOA fees, once affordable units may quickly become unaffordable. The potential increase in turn-over of the units will de-stabilize the affordable community within the Project and create an undue hardship for both the Project owner and future owners of the affordable units. The granting of a variation will increase the number of affordable units within the Project Area and allow the production of units with deeper affordability levels.

Affordable Housing Fee

The Project Sponsor proposes to pay an affordable fee in the amount of \$13.85 million dollars to OCII to subsidize the equivalent an estimated 55 stand-alone affordable housing units on publicly owned parcels in the Project Area.

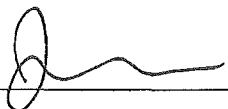
The fee is above and beyond that required pursuant to section 415.5 of the Planning Code. The amount of the fee was determined by The Concord Group ("TCG"), a real estate economics firm engaged by OCII. TCG calculated the net additional revenue that would accrue to the Project Sponsor if the 11 on-site affordable units were converted to market-rate units.

In summary, a variation from the on-site affordable housing requirements under the Plan and Planning Code would (i) result in the payment of \$13.85 million dollars to OCII in consideration of the elimination of the on-site requirement; (ii) provide OCII the ability to subsidize up to approximately 55 affordably housing units, with a net gain of 22 affordable units; (iii) prevent undue hardship to the Project Sponsor and future affordable housing unit owners; (iv) maintain of land values necessary for the TJPA's financing assumptions; and (v) remain in harmony with the intent of the Plan to produce affordable housing at the deepest affordability levels.

The Project Sponsor is prepared to enter into an agreement with OCII confirming such obligation to make the affordable housing fee payment in exchange for the requested variation. Please contact me at the e-mail or telephone number shown above if you have any questions.

Best regards,

181 FREMONT STREET LLC, a
Delaware limited liability company

By:  _____

Name: Jay Paul

Its: President

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 80-2014

Adopted October 10, 2014

**CONDITIONALLY APPROVING A VARIATION TO THE TRANSBAY
REDEVELOPMENT PLAN'S ON-SITE AFFORDABLE HOUSING REQUIREMENT
AS IT APPLIES TO THE MIXED-USE PROJECT AT 181 FREMONT STREET,
SUBJECT TO APPROVAL BY THE BOARD OF SUPERVISORS OF THE CITY AND
COUNTY OF SAN FRANCISCO IN ITS CAPACITY AS LEGISLATIVE BODY FOR
THE SUCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT
AGENCY, AND AUTHORIZING THE ACCEPTANCE OF A FUTURE PAYMENT OF
\$13.85 MILLION TO THE SUCCESSOR AGENCY FOR USE IN FULFILLING ITS
AFFORDABLE HOUSING OBLIGATIONS IN THE PROJECT AREA; TRANSBAY
REDEVELOPMENT PROJECT AREA**

WHEREAS, The California Legislature in 2003 enacted Assembly Bill 812 ("AB 812") authorizing the demolition of the historic Transbay Terminal building and the construction of the new Transbay Transit Center (the "TTC") (Stat. 2003, Chapter 99, codified at § 5027.1 of the Cal. Public Resources Code). AB 812 also mandated that 25 percent of the residential units developed in the area around the TTC "shall be available to" low income households, and an additional 10 percent "shall be available to" moderate income households if the City and County of San Francisco ("City") adopted a redevelopment plan providing for the financing of the TTC (the "Transbay Affordable Housing Obligation"); and,

WHEREAS, The Board of Supervisors of the City and County of San Francisco ("Board of Supervisors") approved a Redevelopment Plan for the Transbay Redevelopment Project Area ("Project Area") by Ordinance No. 124-05, adopted on June 21, 2005 and by Ordinance No. 99-06, adopted on May 9, 2006 ("Redevelopment Plan"). The Redevelopment Plan established a program for the Redevelopment Agency of the City and County of San Francisco ("Former Agency") to redevelop and revitalize the blighted Project Area; it also provided for the financing of the TTC and thus triggered the Transbay Affordable Housing Obligation; and

WHEREAS, The 2005 Report to the Board of Supervisors on the Redevelopment Plan ("Report") estimated that the Transbay Affordable Housing Obligation would require the development of 1200 affordable units. Report at p. VI-14 (Jan. 2005). The Report also stated: "The affordable housing in the Project Area will include approximately 388 inclusionary units, or units built within market-rate housing projects... The affordable housing will also include approximately 795 units in stand-alone, 100 percent affordable projects." Report at page VIII-7; and

WHEREAS, The Project Area is 40 acres in size and there are a limited number of publicly-owned properties ("Blocks") remaining on which to build affordable

housing to meet the Transbay Affordable Housing Requirement. All of the remaining Blocks are already programmed for stand-alone, 100 percent affordable housing (e.g., Blocks 2 and 12), for commercial office space (e.g., Block 5 and Parcel F), or for a combination of market-rate and affordable housing, with specific land value goals that the Transbay Joint Powers Authority ("TJPA") has used in its funding plan for the TTC. Nonetheless, with an additional public subsidy, units may be added to proposed stand-alone affordable housing developments on one or more of the Blocks; and,

WHEREAS, The Redevelopment Plan established, under Cal. Health and Safety Code § 33333, the land use controls for the Project Area, required development to conform to those land use controls, and divided the Project Area into two land use zones: Zone One and Zone Two. The Redevelopment Plan required the Former Agency to exercise land use authority in Zone One and authorized it to delegate to the San Francisco Planning Department ("Planning Department") the land use controls of the San Francisco Planning Code ("Planning Code"), as amended from time to time, in Zone Two; and

WHEREAS, On May 3, 2005, the Former Agency and the Planning Department entered into a Delegation Agreement whereby the Planning Department assumed land use authority in Zone Two of the Project Area subject to certain conditions and procedures, including the requirement that the Planning Department's approval of projects shall be consistent with the Redevelopment Plan ("Delegation Agreement"); and,

WHEREAS, To fulfill the Transbay Affordable Housing Obligation, both the Redevelopment Plan and the Planning Code require that all housing developments within the Project Area contain a minimum of 15 percent on-site affordable housing. Redevelopment Plan, § 4.9.3; Planning Code, § 249.28 (b) (6) (the "On-Site Requirement"). Neither the Redevelopment Plan nor the Planning Code authorize off-site affordable housing construction or an "in-lieu" fee payment as an alternative to the On-Site Requirement in the Project Area; and,

WHEREAS The Redevelopment Plan provides a procedure and standards by which certain of its requirements and the provisions of the Planning Code may be waived or modified. Section 3.5.5 of the Redevelopment Plan states: "The Agency Commission, in its sole discretion, may grant a variation from the Plan, the Development Controls and Design Guidelines, or the Planning Code where enforcement would otherwise result in practical difficulties for development creating undue hardship for the property owner and constitute an unreasonable limitation beyond the intent of the Plan, the Design for Development or the Development Controls and Design Guidelines... Variations to the Plan or the Development Controls and Design Guidelines shall only be granted because of unique physical constraints or other extraordinary circumstances applicable to the property. The granting [of] a variation must be in harmony with the Plan, the Design for Development and the Development Controls and Design Guidelines

and shall not be materially detrimental to the public welfare or materially injurious to neighboring property or improvements in the vicinity... In granting any variation, the Agency Commission shall specify the character and extent thereof, and shall also prescribe any such conditions as are necessary to secure the goals of the Plan, the Design for Development and the Development Controls and Design Guidelines;" and,

WHEREAS, On February 1, 2012, the Former Agency was dissolved pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) ("AB 26") and the decision by the California Supreme Court in California Redevelopment Assoc. v. Matosantos, 53 Cal.4th 231 (2011). On June 27, 2012, AB 26 was amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) ("AB 1484"). (AB 26 and AB 1484 are codified in sections 33500 et seq. of the California Health and Safety Code, which sections, as amended from time to time, are referred to as the "Redevelopment Dissolution Law."); and,

WHEREAS, Under the Redevelopment Dissolution Law, all of the Former Agency's assets (other than certain housing assets) and obligations were transferred to the Successor Agency to the Former Agency, also known as the Office of Community Investment and Infrastructure ("Successor Agency" or "OCII"). Some of the Former Agency's housing assets were transferred to the Mayor's Office of Housing and Community Development ("MOHCD"), acting as the housing successor; and,

WHEREAS, To implement the Redevelopment Dissolution Law, the Board of Supervisors adopted Resolution No. 11-12 (Jan. 26, 2012) and Ordinance No. 215-12 (Oct. 4, 2012), which granted land use authority over the Former Agency's Major Approved Development Projects, including the Transbay Redevelopment Project, to the Successor Agency and its Commission. The Delegation Agreement, however, remains in effect and the Planning Department continues to exercise land use authority over development in Zone Two; and,

WHEREAS, On April 15, 2013, the California Department of Finance ("DOF") determined finally and conclusively that the Successor Agency has enforceable obligations under Redevelopment Dissolution Law to complete certain development in the Project Area, including the Transbay Affordable Housing Obligation; Letter, S. Szalay, DOF Local Government Consultant, to T. Bohee, Successor Agency Executive Director (April 15, 2012 [sic]); and

WHEREAS, On December 6, 2012, the Planning Commission approved Motions 18763, 18764, 18765 and the Zoning Administrator issued a variance decision (later revised on March 15, 2013) (collectively, the "Approvals") for a project at 181 Fremont Street in Zone 2 of the Project Area. The Approvals authorized the demolition of an existing three-story building and an existing two-story building, and the construction of a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745

feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space (the "Project"). The Project also includes a bridge to the future elevated City Park situated on top of the Transit Center; and

- WHEREAS, To comply with the On-Site Requirement, the Approvals require the Project to include approximately 11 inclusionary below-market-rate units that are affordable to income-eligible households. All of the Project's approximately 74 residential units are located on the highest 15 floors of the approximately 52-story building. The residential units will be for-sale units with home owners association (HOA) assessments that the Project's developer estimates will exceed \$2000 per month; and
- WHEREAS, On June 5, 2014, OCII received a request from the developer of 181 Fremont Street ("Developer") for a variation from the On-Site Requirement. The Developer proposed removing the affordability restrictions from the approximately 11 affordable units on-site and converting them to market rate units. Letter, J. Paul, 181 Fremont Street, LLC, to M. Grisso, OCII (June 5, 2014) ("Variation Request"), attached as Exhibit A to the Commission Memorandum related to this Resolution; and,
- WHEREAS, In the Variation Request, the Developer explained that the Project was unique in that it is the only approved or proposed mixed-use office and housing development within the Project Area, it has the smallest number of residential units of any high rise development in the Project Area, its residential units are located on the upper 15 floors of an approximately 52-story tower, and its HOA dues will be in excess of \$2000 per month. The Variation Request concludes that the application of the On-Site Requirement to the Project creates "practical difficulties for maintaining the affordability of the units because homeowners association ("HOA") fees, already high in such developments, will likely increase such that the original residents would not be able to afford the payments" and thus "creates an undue hardship for both the Project Sponsor and the owners of the inclusionary housing units;" and
- WHEREAS, The Variation Request proposes that the Successor Agency grant a variation on the condition that the Developer contribute \$13.85 million toward the development of affordable housing in the Project Area. Payment of this fee would ensure that the conversion of the approximately 11 inclusionary units to market rate units does not adversely affect the Successor Agency's compliance with the Transbay Affordable Housing Obligation; and
- WHEREAS, The following facts support a finding that the On-Site Requirement imposes practical difficulties for the Project creating undue hardships for the owners of the inclusionary below-market-rate units ("BMR Owners") and MOHCD, as the public agency that would be responsible for enforcing the long-term affordability restrictions on the on-site units:

- 1) HOA fees pay for the costs of operating and maintaining the common areas and facilities of a condominium project and generally must be allocated equally among all of the units subject to the assessment, Cal. Code Reg., title 10, § 2792.16 (a). HOA fees may not be adjusted based on the below-market-rate (“BMR”) status of the unit or the income level of the homeowner. If HOA fees increase, BMR Owners will generally be required to pay the same amount of increases in regular assessments and of special assessments as other owners.
- 2) The City’s Inclusionary Affordable Housing Program ensures that income-eligible households are able to afford, at initial occupancy, all of the housing costs, but does not cover increases in HOA dues that occur over time. Initially, the LEHP will decrease the cost of the BMR unit itself to ensure that income-eligible applicants are able to meet all of the monthly costs, including HOA fees. Neither the Successor Agency nor MOHCD has a program, however, for assisting owners in BMR units when increases in regular monthly HOA fees occur.
- 3) Members of homeowner associations may approve increases in HOA fees without the support of the BMR Owners because BMR Owners, particularly in a development with inclusionary units, typically constitute a small minority of the total HOA membership. Increases less than 20 percent of the regular assessment may occur without a vote of the HOA; increases exceeding 20 percent require a majority vote of members in favor. Cal. Civil Code § 5605 (b). In addition, a homeowner association may impose special assessments to cover the costs of capital expenditures for repairs and other purposes. *Id.*
- 4) State legislation to provide protections to low- and moderate-income households in inclusionary BMR units of a market-rate building when HOA fees increase has been unsuccessful to date, *see e.g.* Assembly Bill No. 952, vetoed by Governor, Sep. 27, 2008 (2007-08 Reg. Sess.).
- 5) When HOA fees increase or special assessments are imposed, BMR Owners whose incomes have not increased comparably may have difficulty making the higher monthly payments for HOA fees. The result is that housing costs may become unaffordable and some BMR Owners will face the hardship of having to sell their unit at the reduced prices required under the limited equity programs of the Successor Agency and MOHCD. A recent nation-wide review and analysis of inclusionary housing programs concluded: “Condominium fees can increase substantially over time, making the overall costs of homeownership unsustainable for low- and moderate-income households. Rising condominium fees are a growing problem for many municipalities...Program administrators can set the initial affordable home price low enough to offset high initial condominium fees but, increases in these fees over time for new amenities or building repairs, can in some cases rival mortgage payments on below-market-rate units, leading to high overall housing costs, potential default, or homeowners being forced to sell their units.” R. Hickey, *et al*, *Achieving Lasting Affordability through Inclusionary Housing* at page 33, Lincoln Institute of Land Policy (2014), available at http://www.lincolninst.edu/pubs/2428_Achieving-Lasting-Affordability-through-Inclusionary-Housing. See also Carol Lloyd, *Owners’ Dues Keep Going Up*, S.F.

Chronicle, Aug. 5, 2007, available at <http://www.sfgate.com/default/article/Owners-dues-keep-going-up-2526988.php>; Robert Hickey, *After the Downturn: New Challenges and Opportunities for Inclusionary Housing*, Center for Housing Policy at page 10 (Feb. 2013), available at <http://www.nhc.org/media/files/InclusionaryReport201302.pdf> (“Multiple jurisdictions have had problems with HOA fees in [high-amenity, luxury developments] and other properties rising beyond what owners of inclusionary units can afford.”).

6) If the BMR Owner is forced to sell the inclusionary unit because of the high HOA fees, the cost of the restricted affordable unit, which will now include the high HOA fees, will be assumed by either the subsequent income-eligible buyer or by MOHCD. In either case, the high HOA dues will have caused an additional hardship. See Robert Hickey, *After the Downturn: New Challenges and Opportunities for Inclusionary Housing*, Center for Housing Policy, page 10 (Feb. 2013), available at <http://www.nhc.org/media/files/InclusionaryReport201302.pdf>. (“Rising fees and special assessments undercut the affordability of inclusionary units for both existing owners and future homebuyers. Jurisdictions struggle to prevent or even just stay apprised of these cost increases. And for jurisdictions committed to maintaining the affordability of their inclusionary housing stock--ownership as well as rental--the cost of offsetting higher fees can be exorbitant, compromising a municipality’s ability to promote affordability elsewhere in its jurisdiction.”); and

WHEREAS, MOHCD supports the finding that the On-Site Requirement creates undue hardships for the BMR Owners and MOHCD because the high HOA fees, which would be a disproportionately large portion of a BMR Owner’s monthly housing costs, would detract from many of the traditional benefits associated with homeownership, such as the mortgage interest tax deduction, and put both the BMR Owners and the BMR units at risk. (See email dated September 23, 2014 from Maria Benjamin, Director of Homeownership and Below Market Rate Programs for MOHCD, attached as Exhibit B to the Commission Memorandum related to this Resolution.)

WHEREAS, The hardship imposed by the On-Site Requirement constitutes an unreasonable limitation beyond the intent of the Redevelopment Plan to create affordable housing for the longest feasible time, as required under the Community Redevelopment Law, Cal. Health & Safety Code § 33334.3 (f) (1); and

WHEREAS, The following facts support a finding that extraordinary circumstances apply to the Project:

1) The Project is unique in that it is a mixed-use, high-rise development with a very small number of for-sale, on-site inclusionary affordable housing units at the top of the tower. Of high-rise development recently approved or proposed in the Project Area, the Project is the only mixed-use development with commercial office and residential uses and has the smallest number of residential units. As

noted above, the construction of affordable housing units at the top of a high-rise creates practical difficulties for maintaining the affordability of the units.

2) The Developer has offered to contribute toward the Transbay Inclusionary Housing Obligation \$13.85 million, which constitutes approximately 2.5 times the amount of the affordable housing fee that would be permitted under the City's Inclusionary Affordable Housing Program if this Project were located outside of the Project Area. *See* San Francisco Planning Code, §§ 415.1 *et seq.* The Successor Agency can use those funds to subsidize the equivalent of up to 69 stand-alone affordable housing units on publicly-owned parcels in the Project Area and thus significantly increase the number of affordable units that would be produced under the On-Site Requirement. The amount of the affordable housing fee was determined based on a market analysis by a real estate economics firm retained by the Successor Agency, The Concord Group ("TCG"). As shown in Exhibit A to the Commission Memorandum related to this Resolution, TCG calculated the net additional revenue that would accrue to the developer if 11 on-site affordable housing units were converted to market-rate units and concluded that the developer would accrue an additional \$13.85 million.

WHEREAS, The payment of \$13.85 million as a condition of granting the Variation Request ensures that the variation will not be materially detrimental to the public welfare and is necessary to secure the goals of the Redevelopment Plan to fulfill the Transbay Affordable Housing Obligation; and

WHEREAS Approval of the Variation Request would be subject to approval by the Board of Supervisors, in its capacity as legislative body for the Successor Agency, because it constitutes a material change to a Successor Agency affordable housing program, Ordinance No. 215-12, § 6 (a) (providing that "the Successor Agency Commission shall not modify the Major Approved Development Projects or the Retained Housing Obligations in any manner that would . . . materially change the obligations to provide affordable housing without obtaining the approval of the Board of Supervisors...."); and

WHEREAS, The San Francisco Planning Commission and Board of Supervisors will consider approving a development agreement with the Developer that would be consistent with this Resolution, would provide relief from the on-site affordable housing requirement in Section 249.28 of the Planning Code, and would require the Developer to pay an affordable housing fee of \$13.85 million to the Successor Agency for its use in fulfilling the Transbay Affordable Housing Obligation. The form of the proposed development agreement is attached to this resolution as Exhibit A; and

WHEREAS, Approval of the Variation Request does not compel any changes in the Project that the Planning Commission previously approved. Rather, approval of the Variation Request merely authorizes Planning Commission and Board of Supervisors to consider a future action that would remove the On-Site Requirement from the Project. Thus, approval of the Variation Request and authorizing the future acceptance of \$13.85 million for the Transbay Affordable

Housing Obligation does not constitute a project under the California Environmental Quality Act ("CEQA"), CEQA Guidelines (California Code of Regulations Title 14) Section 15378 (b)(4) because it merely creates a government funding mechanism that does not involve any commitment to a specific project; now, therefore, be it

RESOLVED, The Commission on Community Investment and Infrastructure, as Successor Agency, hereby approves a variation to the Redevelopment Plan's On-Site Requirement at 181 Fremont Street consistent with the Variation Request, subject to approval by the Board of Supervisors, acting in its capacity as the legislative body for the Successor Agency, on the condition that the Developer pay \$13.85 million to the Successor Agency for use in fulfilling the Transbay Affordable Housing Obligation; and, be it further

RESOLVED, The Commission on Community Investment and Infrastructure authorizes the Executive Director to take appropriate and necessary actions to effectuate the purpose of this resolution.

Exhibit A: Development Agreement

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of October 10, 2014.


Commission Secretary

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo, Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND 181 FREMONT STREET LLC,
RELATIVE TO THE DEVELOPMENT KNOWN AS
181 FREMONT DEVELOPMENT PROJECT**

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**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND 181 FREMONT STREET LLC, A DELAWARE LIMITED LIABILITY
COMPANY, RELATIVE TO THE DEVELOPMENT KNOWN AS
THE 181 FREMONT DEVELOPMENT PROJECT**

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) dated for reference purposes only as of this ____ day of _____, 2014, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the “**City**”), acting by and through its Planning Department, and 181 Fremont Street LLC, a Delaware limited liability company, its permitted successors and assigns (the “**Developer**”), pursuant to the authority of Section 65864 *et seq.* of the California Government Code.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer is the owner of that certain property known as 181 Fremont Street (the “**Project Site**”) which is an irregularly shaped property formed by two parcels measuring a total of 15,313 square feet, located on the east side of Fremont Street, between Mission and Howard Streets. The Project Site is within the C-3-0 (SD) District, the 700-S-2 Height and Bulk District, the Transit Center C-3-0 (SD) Commercial Special Use District, the Transbay C-3 Special Use District, the Transit Center District Plan area (the “**TCDP**”) and in Zone 2 of the Transbay Redevelopment Project Area (the “**Project Area**”).

B. The Redevelopment Plan for the Project Area (“**Plan**”) establishes land use controls and imposes other requirements on development within the Project Area. Notably, the Plan incorporates, in section 4.9.2, state law requirements that 25 percent of the residential units developed in the Project Area “shall be available to” low income households, and an additional 10 percent “shall be available to” moderate income households. Cal. Public Resources Code § 5027.1 (the “Transbay Affordable Housing Obligation”). To fulfill the Transbay Affordable Housing Obligation, both the Plan and the San Francisco Planning Code (“**Planning Code**”) require that all housing developments within the Project Area contain a minimum of 15 percent on-site affordable housing. Redevelopment Plan, § 4.9.3; Planning Code, § 249.28 (b) (6) (the “**On-Site Requirement**”). Neither the Redevelopment Plan nor the Planning Code authorize off-site affordable housing construction or an “in-lieu” fee payment as an alternative to the On-Site Requirement in the Project Area.

C. The Plan provides that the land use controls for Zone 2 of the Project Area shall be the Planning Code, as amended from time to time, so long as any amendments to the Planning Code are consistent with the Plan. Through a Delegation Agreement, the former Redevelopment Agency of the City and County of San Francisco (the “**Former Agency**”) delegated jurisdiction for permitting of projects in Zone 2 (including the Project Site) to the

Planning Department, with the Planning Code governing development, except for certain projects that require Redevelopment Agency action.

D. However, pursuant to Section 3.5.5 of the **Plan**, the Commission on Community Investment and Infrastructure (“**CCII**”) (as the Commission to the Successor Agency to the Former Agency, a public body organized and existing under the laws of the State of California, also known as the Office of Community Investment and Infrastructure (“**Successor Agency**” or “**OCII**”)), has the authority to grant a variation from the Plan and the associated Transbay Development Controls and Design Guidelines, or the Planning Code where the enforcement of these controls would otherwise result in practical difficulties for development creating undue hardship for the property owner and constitute an unreasonable limitation beyond the intent of the Plan, the Transbay Design for Development or the Transbay Development Controls and Design Guidelines.

E. Where a variation or other action of the Successor Agency materially changes the Successor Agency’s obligations to provide affordable housing, the Board of Supervisors (“Board”) must approve that action. San Francisco Ordinance No. 215-12, § 6 (a) (Oct. 4, 2012).

F. On December 6, 2012, the Planning Commission approved Motions 18763, 18764, 18765 and the Zoning Administrator issued a variance decision (later revised on March 15, 2013) (collectively, the “**Approvals**”). The Approvals approved a project on the Project Site (the “**Project**”) that would demolish an existing three-story building and an existing two-story building, and construct a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space. The Project also includes a bridge to the future elevated City Park situated on top of the Transbay Transit Center.

G. As part of the Project approval on December 6, 2012, the Planning Commission found that the Project was consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the Planning Principles set forth in Section 101.1 of the Planning Code (together, the “**General Plan Consistency Findings**”).

H. As part of the Project approval on December 6, 2012, Conditions of Approval were placed on the Project including the On-Site Requirement that pursuant to Planning Code Sections 249.28(b)(6) and 415.6 and Plan Section 4.9.3, the Project is required to provide 15% of the proposed dwelling units as affordable to qualifying households.

I. Developer has commenced construction of the Project in accordance with the provisions of the Plan, the Planning Code and the Approvals applicable thereto, including the On-Site Requirement (the “**Existing Requirements**”).

J. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 et seq. (the “**Development**”).

Agreement Statute”), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property related to the development of such property. Pursuant to the Development Agreement Statute, the City adopted Chapter 56 (**“Chapter 56”**) of the San Francisco Administrative Code establishing procedures and requirements for entering into a development agreement. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

K. Approval of this Agreement does not compel any changes in the Project that the Planning Commission previously approved. Rather, approval of this Agreement merely authorizes the Commission on Community Investment and Infrastructure, Planning Commission and Board of Supervisors to remove the On-Site Requirement from the Project. Thus, approval of this Agreement and authorizing the future acceptance of \$13.85 million for the Transbay Affordable Housing Obligation does not constitute a project under the California Environmental Quality Act (**“CEQA”**), CEQA Guidelines Section 15378 (b)(4) because it merely creates a government funding mechanism that does not involve any commitment to a specific project..

L. On June 5, 2014, OCII received a request from the Developer for a variation from the On-Site Requirement. The Developer proposed removing the affordability restrictions from the 11 affordable units on-site and converting them to market rate units. Letter, J. Paul, 181 Fremont Street, LLC, to M. Grisso, OCII (June 5, 2014) (**“Variation Request”**), attached as Exhibit A.

M. The Developer’s Variation Request explained that the Project was unique in that it is the only approved or proposed mixed-use office and housing development within the Project Area, it has the smallest number of residential units of any high rise development in the Project Area, its residential units are located on the upper 15 floors of a 52 story tower, and its HOA dues will be in excess of \$2000 per month. The Variation Request concludes that the application of the On-Site Requirement to the Project will create practical difficulties for maintaining the affordability of the units because homeowners association (**“HOA”**) fees, which are already high in such developments, will likely increase such that the original residents would not be able to afford the payments and thus an undue hardship can be created for both the Project Sponsor and the owners of the inclusionary housing units.

N. The Variation Request proposes that the Successor Agency grant a variation on the condition that the Developer contribute \$13.85 million toward the development of affordable housing in the Project Area (the **“Affordable Housing Fee”**). Payment of this fee would ensure that the conversion of the 11 inclusionary units to market rate units does not adversely affect the Successor Agency’s compliance with the Transbay Affordable Housing Obligation

O. On _____, 2014, CCII, pursuant to Resolution No. _____, approved a variation pursuant to Section 3.5.5 of the Plan, allowing the Project to pay the Affordable Housing Fee in lieu of satisfying the On-Site Requirement (the **“OCII Variation”**), attached as Exhibit B.

P. The Board, in its capacity as the governing body of OCII, has reviewed the OCII Variation under the authority that it reserved to itself in Ordinance No. 215-12 to approve

material changes to the Successor Agency's affordable housing program and has approved, by Board of Supervisors Resolution No. ____, the actions of OCII in granting the OCII Variation.

Q. The City has determined that as a result of the development of the Project in accordance with this Agreement additional, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies because the payment of the Affordable Housing Fee and use thereof in accordance with this Agreement rather than compliance with the On-Site Requirements will result in more affordable housing units within the Project Area at deeper affordability levels while maintaining land values necessary for the financing assumptions of the Transbay Joint Powers Authority (the "TJPA"). The basis for this determination is the following:

- To achieve the overall goal of at least 35% of all new housing development units within the Project Area, there must be both inclusionary units and stand-alone affordable housing developments in the Project Area.
- The Plan's 2005 report set a goal of 388 inclusionary units and approximately 795 stand-alone affordable housing units but at the time of the Plan's adoption, mixed-use, high-rise developments were not contemplated within the Project Area.
- The Project Area covers 40 acres and includes blocks programmed for: (i) stand-alone affordable housing developments; (ii) all or a majority of office space; and (iii) a combination of market and affordable housing.
- The TJPA established specific land value goals for each block in its funding plan for the Transbay Transit Center (the "TTC") and there are a limited number of publicly-owned blocks remaining upon which affordable housing may be built to meet the Plan's 35% affordability requirement.
- Adding affordable housing to blocks that must be sold to finance the TTC is not feasible without significantly reducing the land value and thereby creating shortfalls in the TTC funding.
- Due to zoning restrictions, the addition of affordable units to a block will result in a decrease of the number of market-rate units that may be built on that block. However, each block contains both market-rate and stand-alone affordable parcels and it is possible to add stand-alone affordable housing units to one or more of the stand-alone affordable parcels on a particular block while reducing the number of inclusionary units on the market rate parcel. This would result in the increase of the total amount of affordable housing, but would require additional public subsidy to fund the bonus stand-alone units.
- The Affordable Housing Fee is estimated to be capable of subsidizing the equivalent of approximately 69 stand-alone affordable housing units on publicly owned parcels in the Project Area in contrast to the up to 11 units that would be produced under the On-Site Requirement and accordingly the Affordable Housing Fee will allow OCII to better fulfill the requirements of the Transbay Affordable Housing Obligation (as

defined in Recital B above). In addition, the 69 stand-alone affordable housing units would provide deeper affordability levels (50% of AMI) compared to the levels (100% of AMI) that would be achieved through the application of the On-Site Requirement for up to 11 units.

- In addition, due to the unique nature of the Property, any affordable units created under the On-Site Requirement would have challenges associated with maintaining their affordability in so much as the residential units within the Project are for-sale and include high homeowners fees, in excess of \$2,000 per month. Although the initial price of the affordable for-sale units would be adjusted to reflect the cost of these fees, after completion of the Project such fees may rise from time-to-time in a manner that might cause the once affordable units to become unaffordable.
- The City and OCII determined the amount of the Affordable Housing Fee following review of an analysis and determination by The Concord Group ("TCG"), a real estate economics firm (see report, Exhibit C). TCG calculated the net additional revenue that would accrue to the Developer if the 11 on-site affordable units were converted to market-rate units.

R. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with CEQA, the CEQA Guidelines, Chapters 31 and 56 of the San Francisco Administrative Code, the Development Agreement Statute, the Enacting Ordinance and all other applicable laws as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental laws, including CEQA, before taking any discretionary action regarding the Project, or Developer's obligation to comply with all applicable laws in connection with the development of the Project.

S. On _____, the Planning Commission held a public hearing and approved Motion ___, conditionally amending the Conditions of Approval applicable to the Project related to the On-Site Requirement, which Conditions of Approval are attached to this Agreement as Exhibit D.

T. On _____, the Planning Commission held a public hearing on this Agreement, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission made General Plan Consistency Findings with respect to this Agreement and recommended adoption of an ordinance approving this Agreement.

U. On _____, the Board, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board approved the actions of OCII in granting the OCII Variation pursuant to Resolution No. _____ and adopted Ordinance No. _____, approving this Agreement, incorporating by reference the General Plan Consistency Findings, and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on ___, 2014.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. GENERAL PROVISIONS

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

1.2 Definitions. In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.2.1 **“Administrative Code”** shall mean the San Francisco Administrative Code.

1.2.2 **“Affordable Housing Fee”** shall mean the payment, pursuant to Section 2.1 of this Agreement, from the Developer to the City in the amount of thirteen million eight hundred fifty thousand dollars (\$13,850,000) for fulfillment of the Transbay Affordable Housing Obligation.

1.2.3 **“Board of Supervisors”** or **“Board”** shall mean the Board of Supervisors of the City and County of San Francisco.

1.2.4 **“CCII”** shall mean the Commission on Community Investment and Infrastructure.

1.2.5 **“City”** shall have the meaning set forth in the preamble paragraph. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors. The City’s approval of this Agreement will be evidenced by the signatures of the Planning Director and the Clerk of the Board of Supervisors [need to confirm if the Clerk needs to sign].

1.2.6 **“City Agency”** or **“City Agencies”** shall mean, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and that have subdivision or other permit, entitlement or approval authority or jurisdiction over the Project or the Project Site, together with any successor City agency, department, board, or commission.

1.2.7 **“City Attorney’s Office”** shall mean the Office of the City Attorney of the City and County of San Francisco.

1.2.8 **“Director”** or **“Planning Director”** shall mean the Director of Planning of the City and County of San Francisco.

1.2.9 “**Indemnify**” shall mean to indemnify, defend, reimburse, and hold harmless.

1.2.10 “**OCII**” shall mean Office of Community Investment and Infrastructure.

1.2.11 “**Official Records**” shall mean the official real estate records of the City and County of San Francisco, as maintained by the City’s Recorder’s Office.

1.2.12 “On-Site Requirement” is defined in Recital B.

1.2.13 “**Party**” means, individually or collectively as the context requires, the City and Developer (and, as Developer, any Transferee that is made a Party to this Agreement under the terms of an Assignment and Assumption Agreement). “**Parties**” shall have a correlative meaning.

1.2.14 “**Plan**” shall mean the Transbay Project Area Redevelopment Plan, Approved by Ordinance No. 124-05, Adopted by the Board of Supervisors on June 21, 2005 and Ordinance No. 99-06 adopted by the Board of Supervisors May 9, 2006, as amended from time to time.

1.2.15 “**Planning Code**” shall mean the San Francisco Planning Code.

1.2.16 “**Planning Commission**” or “**Commission**” shall mean the Planning Commission of the City and County of San Francisco.

1.2.17 “**Planning Department**” shall mean the Planning Department of the City and County of San Francisco.

1.3 Effective Date. This Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties and (ii) the effective date of the Enacting Ordinance (“**Effective Date**”). The Effective Date is _____.

1.4 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for the earlier of (i) Project completion (as evidenced by issuance of the Temporary Certificate of Occupancy) or (ii) ten (10) years after the effective date., unless extended or earlier terminated as provided herein (“**Term**”). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2. PROJECT CONTROLS AND VESTING

2.1 Project Controls; Affordable Housing Fee. During the term of this Agreement, Developer shall have the vested right to develop the Project Site in accordance with the Existing Requirements, provided (i) within 30 days following the Effective Date, Developer shall pay to the City the Affordable Housing Fee, and (ii) upon the City’s receipt of the Affordable Housing Fee, the On-Site Requirement shall not apply to the Project. Upon receipt, the City shall transfer the Affordable Housing Fee to OCII to be used by OCII to fulfill the Transbay Affordable

Housing Obligation. The City agrees to work collaboratively with OCII to seek to maximize the number of affordable units that can be built with the Affordable Housing Fee. OCII shall have the right, in its sole discretion, to determine how and where to apply the Affordable Housing Fee, with the only restriction being that OCII use the Affordable Housing Fee for predevelopment and development expenses and administrative costs associated with the acquisition, construction or rehabilitation of affordable housing in the Project Area. Developer shall have no right to challenge the appropriateness or the amount of any expenditure, so long as it is used for affordable housing in the Project Area.

2.2 Vested Rights. The City, by entering into this Agreement, is limiting its future discretion with respect to Project approvals that are consistent with this Agreement during the Term. Consequently, the City shall not use its discretionary authority in considering any application to change the policy decisions reflected by the Agreement or otherwise to prevent or to delay development of the Project as set forth in the Agreement. Instead, implementing approvals that substantially conform to or implement the Agreement shall be issued by the City so long as they substantially comply with and conform to this Agreement. The City shall not use its discretionary authority to change the policy decisions reflected by this Agreement or otherwise to prevent or to delay development of the Project as contemplated in this Agreement. The City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement.

2.3 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law. If any such changes in Federal or State Laws would materially and adversely affect the construction, development, use, operation or occupancy of the Project such that the Development becomes economically infeasible, then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties.

2.4 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

2.5 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment.

3. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the legal owner of the Project Site, and that all other persons with an ownership or security interest in the Project Site have consented to this Agreement. Developer is a Delaware limited liability company. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer has made all required state filings required to conduct business in the State of California and is in good standing in the State of California.

3.2 No Conflict with Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

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

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

3.5 Notification of Limitations on Contributions. Through execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for a contract as defined under Section 1.126 of the Campaign and Governmental Conduct Code until six (6) months after the date the contract is approved by the City elective officer or the board on which that City elective officer

serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

3.6 Other Documents. No document furnished or to be furnished by Developer to the City in connection with this Agreement contains or will contain to Developer's knowledge 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.

3.7 No Suspension or Debarment. Neither Developer, nor any of its officers, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency.

3.8 No Bankruptcy. Developer represents and warrants to City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

3.9 Taxes. Without waiving any of its rights to seek administrative or judicial relief from such charges and levies, Developer shall pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its property before the date on which penalties attach thereto, and all lawful claims which, if unpaid, would become a lien upon the Project Site.

3.10 Notification. Developer shall promptly notify City in writing of the occurrence of any event which might materially and adversely affect Developer or Developer's business, or that would make any of the representations and warranties herein untrue, or that would, with the giving of notice or passage of time over the Term, constitute a default under this Agreement.

3.11 Nexus/Reasonable Relationship Waiver. Developer consents to, and waives any rights it may have now or in the future, to challenge with respect to the Project, the legal validity of, the conditions, requirements, policies, or programs required by this Agreement, including, without limitation, any claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

3.12 Indemnification of City. Developer shall Indemnify the City and OCII (each an "Indemnified Party") and the Indemnified Party's officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("Losses") arising or resulting directly or indirectly from this Agreement and Developer's performance (or nonperformance) of this Agreement, regardless of the negligence of and

regardless of whether liability without fault is imposed or sought to be imposed on an Indemnified Party, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or willful misconduct of an Indemnified Party. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the Indemnified Party's cost of investigating any claims against the Indemnified Party. All Indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement.

3.13 Payment of Fees and Costs.

3.13.1. Developer shall pay to the City all City Costs during the Term within thirty (30) days following receipt of a written invoice from the City. Each City Agency shall submit to the Planning Department or another City agency as designated by the Planning Department monthly or quarterly invoices for all City Costs incurred by the City Agency for reimbursement under this Agreement, and the Planning Department or its designee shall gather all such invoices so as to submit one City bill to Developer each month or quarter. To the extent that a City Agency fails to submit such invoices, then the Planning Department or its designee shall request and gather such billing information, and any City Cost that is not invoiced to Developer within twelve (12) months from the date the City Cost was incurred shall not be recoverable.

3.13.2. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer are past due. If such failure to make payment continues for a period of more than sixty (60) days following notice, it shall be a Default for which the City shall have all rights and remedies as set forth in Section 7.4.

3.14 Mello-Roos Community Facilities District. The Project shall be subject to the provisions of the proposed City and County of San Francisco Transbay Center District Plan [Mello-Roos] Community Facilities District No. 2014-1 (Transbay Transit Center) ("CFD"), once established, to help pay the costs of constructing the new Transbay Transit Center, the Downtown Rail Extension ("DTX"), and other improvements in the Transit Center District Plan area. The special tax rate has not been established, but will be equal to or less than those set forth in the CFD Rate and Method of Apportionment ("RMA") attached hereto as Exhibit ____.

i. If the Project is not subject to a CFD that will help pay the costs of constructing the new Transbay Transit Center, the DTX, and other improvements in the Transit Center District Plan area on the date that a Final C of O is issued to the Developer, then the Developer will be required to pay to the City for transmittal to the TJPA, and retention by the City as applicable, of the estimated CFD taxes amount that would otherwise be due to the San Francisco Office of the Assessor-Recorder ("**Assessor-Recorder**") if the CFD had been established in accordance with the rates established in the RMA.

ii. The "amount that would otherwise be due" under 3.14(i) above shall be based on the RMA attached hereto as Exhibit ____, calculated as if the Project were subject to the RMA from the date of issuance of the Final C of O until the Project is subject to the CFD.

iii. If the City proposes a CFD covering the Site, Developer agrees to cast its vote in favor of the CFD, provided that the tax rates are not greater than the Base Special Tax rates in the RMA attached as Exhibit to this Agreement.

4. MUTUAL OBLIGATIONS

4.1 Notice of Completion or Revocation. Upon the Parties' completion of performance or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Official Records.

4.2 Estoppel Certificate. Developer may, at any time, and from time to time, deliver written notice to the Planning Director requesting that the Planning Director certify in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; (iii) Developer is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9.2 below. The Planning Director shall execute and return such certificate within forty-five (45) days following receipt of the request. Each Party acknowledges that any mortgagee with a mortgage on all or part of the Project Site, acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

4.3 Cooperation in the Event of Third-Party Challenge.

4.3.1 In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City.

4.3.2 Developer shall assist and cooperate with the City at its own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office and any consultants; *provided, however*) Developer shall have the right to receive monthly invoices for all such costs. Developer shall indemnify the City from any other liability incurred by the City, its officers, and its employees as the result of any Third-Party Challenge, including any award to opposing counsel of attorneys' fees or costs, except where such award is the result of the willful misconduct of the City or its officers or employees. This section shall survive any judgment invalidating all or any part of this Agreement.

4.3.3 Affordable Housing Fee Challenge. The Parties agree that if a Third Party Challenge is initiated regarding the validity or enforceability of this Agreement or, specifically of the Affordable Housing Fee, Developer shall not sell [or lease?] the residential units designated for and required to complete the On-Site Requirements until the validity and enforceability of this Agreement, including payment of the Affordable Housing Fee, has been finally determined and upheld. If this Agreement or the Affordable Housing Fee is not upheld (on any final appeal), then Developer will satisfy the On-Site Requirements with the designated residential units.

4.4 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

4.5 Agreement to Cooperate; Other Necessary Acts. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Agreement are fulfilled during the Term. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, in accordance with the terms of this Agreement (and subject to all applicable laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

5. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

5.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute, at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year; *provided, however*, that such review shall be deferred to the following January if not commenced on or before May 31st.

5.2 Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section.

5.2.1 Required Information from Developer. Upon request by the Planning Director but not more than sixty (60) days and not less than forty-five (45) days before the Annual Review Date, Developer shall provide a letter to the Planning Director confirming Developer's compliance with this Agreement.

5.2.2 City Compliance Review. If the Planning Director finds Developer is not in compliance with this Agreement, the Planning Director shall issue a Certificate of Non-Compliance. The City's failure to timely complete the annual review is not deemed to be a waiver of the right to do so at a later date within a given year, so long as the annual review is commenced on or before May 31st, as contemplated in Section 5.1.

6. AMENDMENT; TERMINATION; EXTENSION OF TERM

6.1 Amendment or Termination. Except as provided in Section XX (Changes in State and Federal Rules and Regulations) and Section XXX (Remedies), this Agreement may only be amended or terminated with the mutual written consent of the Parties. Except as provided in this Agreement to the contrary, the amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 56.

6.2 Extension Due to Legal Action, Referendum, or Excusable Delay.

6.2.1 If any litigation is filed challenging this Agreement or the validity of this Agreement or any of its provisions, then the Term shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension.

6.2.2 In the event of changes in state or federal laws or regulations, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, war, acts of terrorism, fire, acts of God, litigation, lack of availability of commercially-reasonable project financing (as a general matter and not specifically tied to Developer), or other circumstances beyond the control of Developer and not proximately caused by the acts or omissions of Developer that substantially interfere with carrying out the obligations under this Agreement (“**Excusable Delay**”), the Parties agree to extend the time periods for performance, as such time periods have been agreed to by Developer, of Developer’s obligations impacted by the Excusable Delay. In the event that an Excusable Delay occurs, Developer shall notify the City in writing of such occurrence and the manner in which such occurrence substantially interferes with the ability of Developer to perform under this Agreement. In the event of the occurrence of any such Excusable Delay, the time or times for performance of the obligations of Developer, will be extended for the period of the Excusable Delay if Developer cannot, through commercially reasonable and diligent efforts, make up for the Excusable Delay within the time period remaining before the applicable completion date; *provided, however*, within thirty (30) days after the beginning of any such Excusable Delay, Developer shall have first notified City of the cause or causes of such Excusable Delay and claimed an extension for the reasonably estimated period of the Excusable Delay. In the event that Developer stops any work as a result of an Excusable Delay, Developer must take commercially reasonable measures to ensure that the affected real property is returned to a safe condition and remains in a safe condition for the duration of the Excusable Delay.

6.2.3 The foregoing Section XXXX notwithstanding, Developer may not seek to delay the payment of the Affordable Housing Fee as a result of an Excusable Delay related to the lack of availability of commercially reasonable project financing.

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

7.1 Enforcement. The only Parties to this Agreement are the City and Developer. This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

7.2 Default. For purposes of this Agreement, the following shall constitute an event of default (an “**Event of Default**”) under this Agreement: (i) except as otherwise specified in this Agreement, the failure to make any payment within ninety (90) calendar days of when due; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant hereunder, including complying with all terms of the Conditions of Approval, attached hereto as Exhibit D, and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance (a “**Notice of Default**”); *provided, however*, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter.

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

7.4 Remedies.

7.4.1 Specific Performance; Termination. In the event of an Event of Default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity (subject to the limitation on damages set forth in Section XX below). In the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party setting forth the basis for the termination. The Party alleging a material breach shall provide a notice of termination to the breaching Party, which notice of termination shall state the material breach. The Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. The Party receiving the notice of termination may take legal action available at law or in equity if it believes the other Party’s decision to terminate was not legally supportable.

7.4.2 Actual Damages. Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) the City shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for (a) Developer's failure to pay sums to the City as and when due under this Agreement, but subject to any express conditions for such payment set forth in this Agreement, and (b) Developer's failure to make payment due under any Indemnity in this Agreement, and (2) either Party shall have the right to recover attorneys' fees and costs as set forth in Section XX, when awarded by an arbitrator or a court with jurisdiction. For purposes of the foregoing, "actual damages" shall mean the actual amount of the sum due and owing under this Agreement, with interest as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

7.5 Dispute Resolution. The Parties recognize that disputes may arise from time to time regarding application to the Project. Accordingly, in addition and not by way of limitation to all other remedies available to the Parties under the terms of this Agreement, including legal action, the Parties agree to follow the dispute resolution procedure in Section XX that is designed to expedite the resolution of such disputes. If, from time to time, a dispute arises between the Parties relating to application to the Project the dispute shall initially be presented by Planning Department staff to the Planning Director, for resolution. If the Planning Director decides the dispute to Developer's satisfaction, such decision shall be deemed to have resolved the matter. Nothing in this section shall limit the rights of the Parties to seek judicial relief in the event that they cannot resolve disputes through the above process.

7.6 Dispute Resolution Related to Changes in State and Federal Rules and Regulations. The Parties agree to follow the dispute resolution procedure in this Section XX for disputes regarding the effect of changes to State and federal rules and regulations to the Project pursuant to Section XX.

7.6.1 Good Faith Meet and Confer Requirement. The Parties shall make a good faith effort to resolve the dispute before non-binding arbitration. Within five (5) business days after a request to confer regarding an identified matter, representatives of the Parties who are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall immediately be submitted to the arbitration process set forth in Section XX.

7.6.2 Non-Binding Arbitration. The Parties shall mutually agree on the selection of an arbiter at JAMS in San Francisco or other mutually agreed to Arbiter to serve for the purposes of this dispute. The arbiter appointed must meet the Arbiters' Qualifications. The "**Arbiters' Qualifications**" shall be defined as at least ten (10) years of experience in a real property professional capacity, such as a real estate appraiser, broker, real estate economist, or attorney, in the Bay Area. The disputing Party(ies) shall, within ten (10) business days after submittal of the dispute to non-binding arbitration, submit a brief with

all supporting evidence to the arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within ten (10) business days after distribution of the initial brief. The arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within five (5) business days after the submittal of the last brief, unless the arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the arbiter shall be submitted to the arbiter (with copies to all Parties) within five (5) business days after the arbiter's request, and thereafter the arbiter shall hold a telephonic hearing and issue a decision promptly but in any event not sooner than two (2) business days after submission of such additional briefs, and no later than thirty-two (32) business days after initiation of the non-binding arbitration. Each Party will give due consideration to the arbiter's decision before pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

7.7 Attorneys' Fees. Should legal action be brought by either Party against the other for an Event of Default under this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "reasonable attorneys' fees and costs" shall mean the fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office 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 Office'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.

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

7.9 Future Changes to Existing Standards. Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is terminated by mutual agreement of the Parties or terminated for default as set forth in Section XX, either Party may enforce this Agreement notwithstanding any change in any applicable general or specific plan, zoning,

subdivision, or building regulation adopted by the City or the voters by initiative or referendum (excluding any initiative or referendum that successfully defeats the enforceability or effectiveness of this Agreement itself).

7.10 Joint and Several Liability. If Developer consists of more than one person or entity with respect to any real property within the Project Site or any obligation under this Agreement, then the obligations of each such person and/or entity shall be joint and several.

8. MISCELLANEOUS PROVISIONS

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

8.2 Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to Article XX above, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code section 1468.

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

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

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

8.5.1 The Agreement is to be undertaken by Developer the Project is a private development and no portion shall be deemed a public work. The City has no interest in, responsibility for, or duty to third persons concerning the Project. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

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

8.6 Recordation. Pursuant to Section 65868.5 of the Development Agreement Statute, the clerk of the Board shall cause a copy of this Agreement or any amendment thereto to be recorded in the Official Records within ten (10) business days after the Effective Date of this Agreement or any amendment thereto, as applicable, with costs to be borne by Developer.

8.7 Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

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

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

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

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

To Developer:

XXXXXX
XXXXXX

with a copy to:

Rachel B. Horsch
Pillsbury Winthrop Shaw Pittman LLP
4 Embarcadero Center, 22nd Floor
San Francisco, California, 94111

8.11 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

8.12 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or if any such term, provision, covenant, or condition does not become effective until the approval of any Non-City Responsible Agency, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. Notwithstanding the foregoing, the Developer and the City agree that the Agreement will terminate and be on no force or effect if Section 2.1 herein is found invalid, void or unenforceable.

8.13 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested

by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, Developer shall mark any such materials as such, . When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

[Remainder of Page Intentionally Blank;

Signature Page Follows]

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

CITY

CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation

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

By: _____
John Rahaim
Director of Planning

By: _____
Heidi Gewertz
Deputy City Attorney

Approved on _____
Board of Supervisors Ordinance No. _____

DEVELOPER

181 FREMONT STREET LLC, a Delaware
limited liability company

By: _____

Name: _____

Title: _____

DRAFT FOR NEGOTIATION PURPOSES ONLY – SUBJECT TO CHANGE

DRAFT

Exhibit C



THE CONCORD GROUP

251 KEARNY STREET, 6TH FLOOR
SAN FRANCISCO, CALIFORNIA 94108
PHONE 415.397.5490 FAX 415.397.5496

VALUE OF INCLUSIONARY HOUSING
EXEMPTION TO 181 FREMONT STREET, A
DEVELOPMENT SITE IN THE TRANSBAY
NEIGHBORHOOD OF SAN FRANCISCO

WORKING SESSION
OCTOBER 2013

PREPARED FOR:
TRANSBAY JOINT
POWERS AUTHORITY



LIST OF EXHIBITS

I. MARKET OPPORTUNITY ANALYSIS

1. Regional Location
2. Demographic Summary
3. Employment Trends
4. Employment Nodes
5. Commuting Patterns
6. Historical Building Permits
7. Historical Home Closings and Price Trends
8. Planned and Proposed For-Sale Residential Supply
 - A. Delivery Projection
 - B. Project Locations
9. Demand Summary – Household Growth
10. Submarket Demand Capture Scenarios
11. Supply Versus Demand
12. Demand Elasticity

II. COMPETITIVE SET

1. For-Sale Inventory
2. Comparable For-Sale Community Locations
3. Select Condominium Resales
4. Floor Premium Analysis

III. SITE-SPECIFIC ANALYSIS

1. Local Setting
2. Site Plan and Floor Plate
3. Product Program Positioning
4. Program and Positioning Rationale
5. Product Program Positioning Including Premiums
6. High Rise Condominium Sales and Listings by Floor

I. MARKET OPPORTUNITY ANALYSIS

EXHIBIT I-1
REGIONAL LOCATION
SAN FRANCISCO, CALIFORNIA
OCTOBER 2013

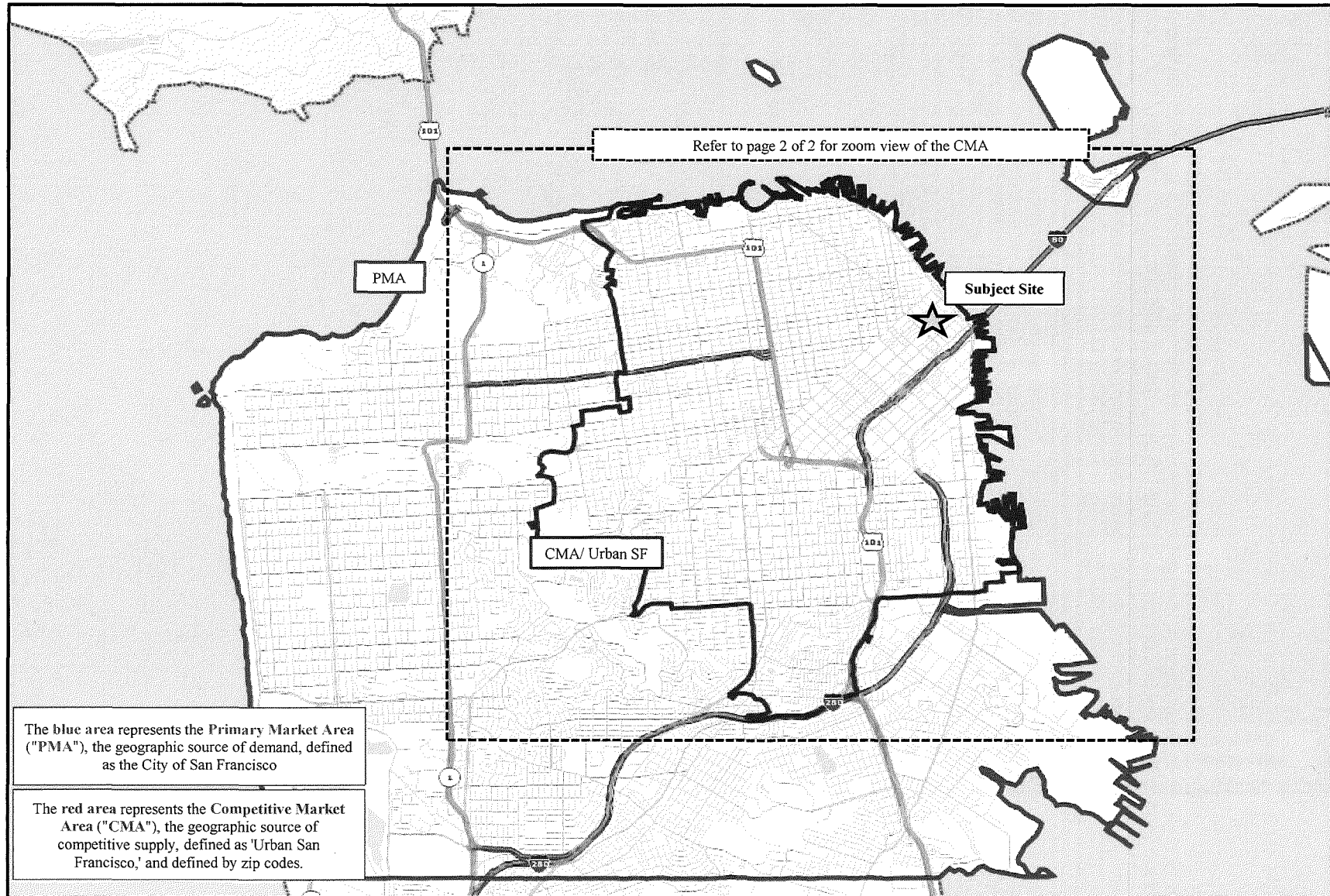


EXHIBIT I-1
REGIONAL LOCATION
SAN FRANCISCO, CALIFORNIA
OCTOBER 2013

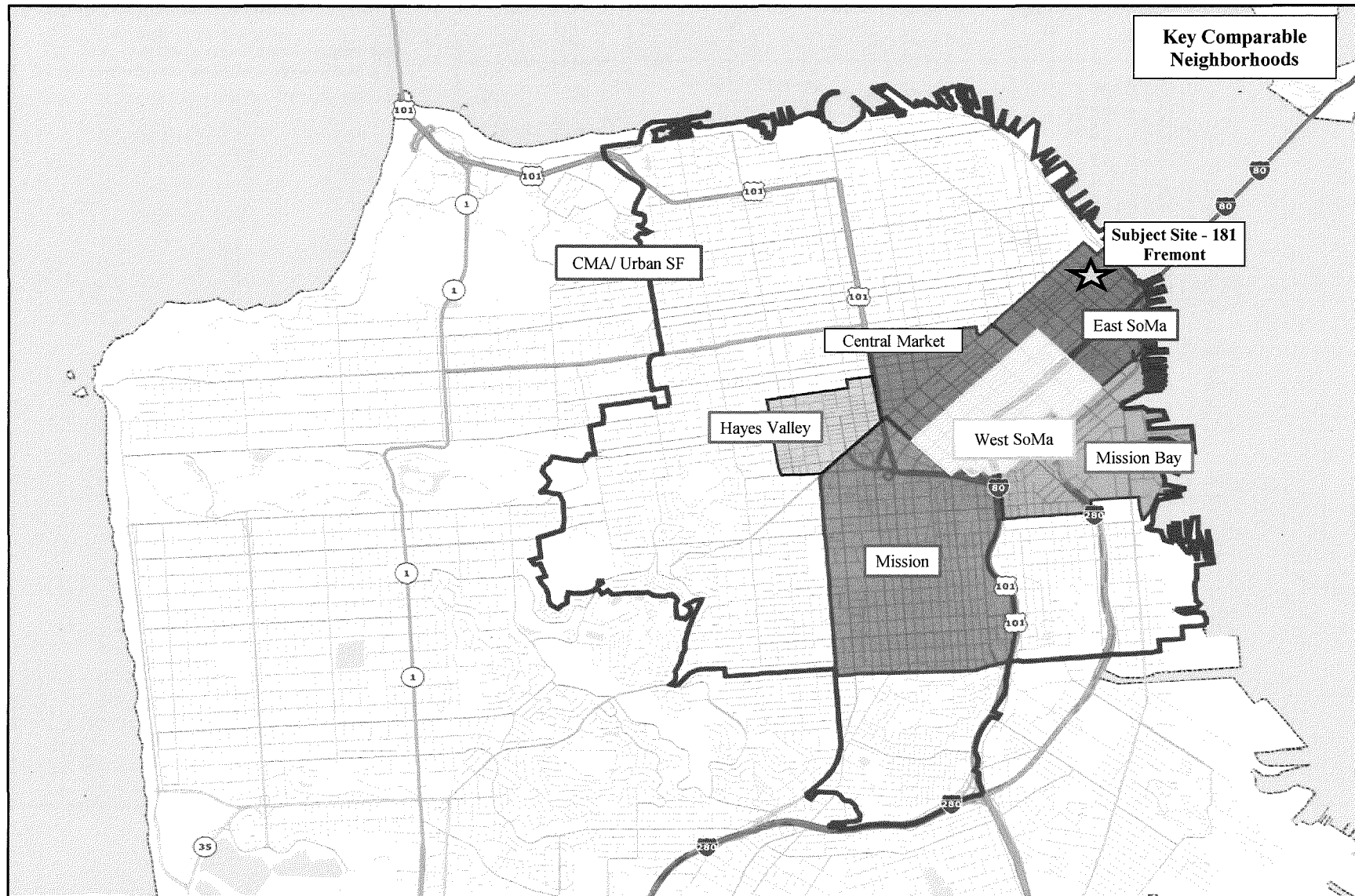


EXHIBIT I-2
DEMOGRAPHIC SUMMARY
PRIMARY MARKET AREA; SAN FRANCISCO, CALIFORNIA
OCTOBER 2013

Geography	Primary Market Area									
	Radius	CMA						PMA (1)		Bay Area (2)
	1-Mile	East SoMa	Mission	Mission Bay	Hayes Valley	West SoMa	Central Market	CMA (1)	PMA (1)	Bay Area (2)
General Information										
Population ('13)	60,854	12,932	58,648	10,423	13,679	12,929	27,146	403,298	825,538	7,352,834
Households ('13)	34,322	7,603	24,091	4,892	7,318	6,225	14,275	206,089	355,873	2,684,502
% PMA	9.6%	2.1%	6.8%	1.4%	2.1%	1.7%	4.0%	57.9%	100.0%	754.3%
Annual Growth (#, '13-'18)	532	226	266	158	80	109	238	2,287	3,423	26,347
% PMA	15.6%	6.6%	7.8%	4.6%	2.3%	3.2%	6.9%	66.8%	100.0%	769.7%
Over \$100k HH Growth	406	191	235	126	65	99	55	2,105	3,409	24,613
Under \$100k HH Growth	126	35	31	32	16	9	182	182	14	1,734
Annual Growth (% '13-'18)	1.5%	2.8%	1.1%	3.0%	1.1%	1.7%	1.6%	1.1%	0.9%	1.0%
Household Size ('13)	1.68	1.62	2.36	1.91	1.82	1.68	1.68	1.88	2.25	2.68
Household Breakdown ('13)										
1 Person	56%	52%	37%	41%	51%	54%	65%	48%	39%	26%
2 Person	31%	38%	30%	40%	31%	33%	19%	32%	31%	30%
3+ Person	14%	10%	33%	19%	18%	12%	16%	20%	30%	43%
Age Breakdown - HHs ('13)										
Median Age (Pop)	43.1	36.7	36.4	33.8	36.5	42.7	43.9	39.0	39.8	38.5
Under 25	4%	4%	3%	4%	3%	2%	4%	3%	3%	3%
25-34	23%	35%	26%	40%	31%	23%	17%	25%	21%	15%
35-44	18%	26%	25%	27%	23%	22%	17%	22%	20%	20%
45-54	16%	16%	18%	13%	18%	13%	22%	17%	18%	22%
55-64	15%	11%	13%	8%	13%	11%	20%	14%	16%	19%
65-74	11%	5%	8%	6%	7%	10%	11%	10%	11%	12%
75+	13%	2%	6%	3%	4%	19%	9%	9%	10%	10%
Income Breakdown ('13)										
Average Income	\$94,249	\$167,878	\$98,770	\$145,565	\$94,512	\$116,027	\$37,750	\$109,062	\$108,274	\$107,479
Median Income	\$43,734	\$116,029	\$66,317	\$110,601	\$61,905	\$71,642	\$18,830	\$69,301	\$72,656	\$74,423
vs. PMA	-40%	60%	-9%	52%	-15%	-1%	-74%	-5%	0%	2%
Under \$50K	53%	23%	41%	26%	43%	43%	77%	40%	38%	34%
\$50-\$75K	9%	9%	14%	11%	15%	8%	9%	13%	14%	16%
\$75-\$100K	7%	10%	12%	10%	12%	7%	6%	11%	12%	12%
\$100-\$150K	13%	21%	15%	20%	14%	19%	5%	15%	16%	17%
\$150-\$200K	6%	13%	9%	13%	7%	8%	1%	9%	9%	9%
\$200K+	11%	25%	10%	20%	9%	15%	2%	13%	12%	11%
Rental Housing ('11) (3)										
% Owner	36%	42%	26%	33%	17%	29%	4%	26%	37%	57%
Owner HHs ('13)	12,376	3,203	6,223	1,590	1,236	1,783	564	52,688	131,995	1,538,360
% PMA	9.4%	2.4%	4.7%	1.2%	0.9%	1.4%	0.4%	39.9%	100.0%	1165.5%
Annual New Owner HHs ('13-'18)	192	95	69	51	14	31	9	585	1,270	15,098

(1) The CMA is defined by zip code and identified as 'Urban San Francisco', while the PMA is defined as San Francisco City/County. Refer to Exhibit I-1 for details.
(2) The 9-County Bay Area is defined by the following counties: San Francisco, Marin, San Mateo, Santa Clara, Alameda, Contra Costa, Napa, Solano and Sonoma.
(3) 2011 American Community Survey 5-year estimates used. 1-mile radius census data based on closest available census tracts

Sources: Claritas, U.S. Census 2011

EXHIBIT I-2

DEMOGRAPHIC COMPARISON - NEIGHBORHOOD COMPARISON
PRIMARY MARKET AREA; SAN FRANCISCO, CALIFORNIA
OCTOBER 2013

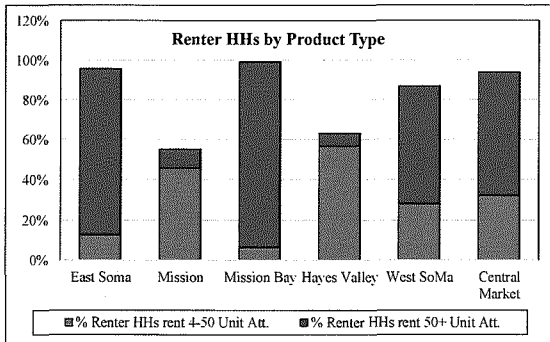
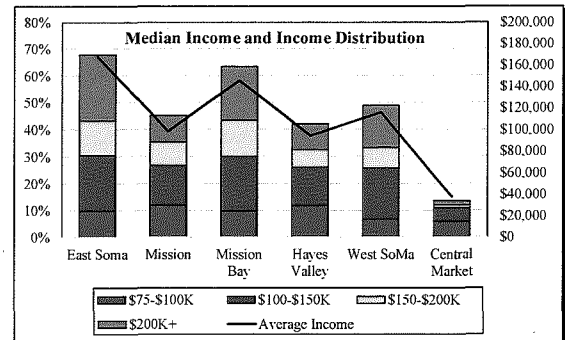
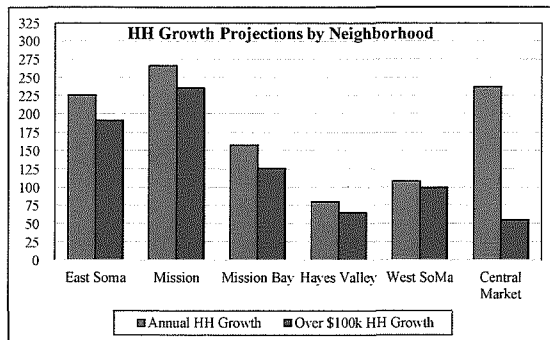
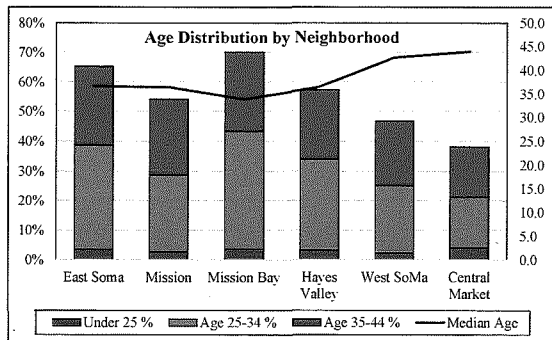
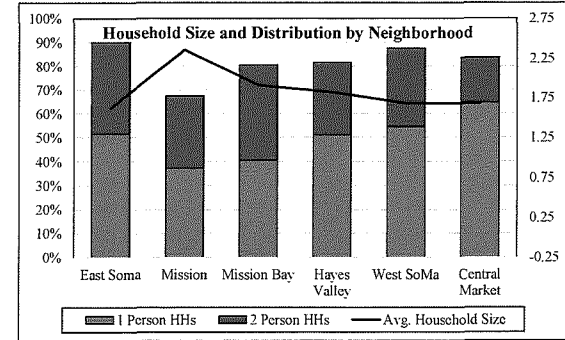
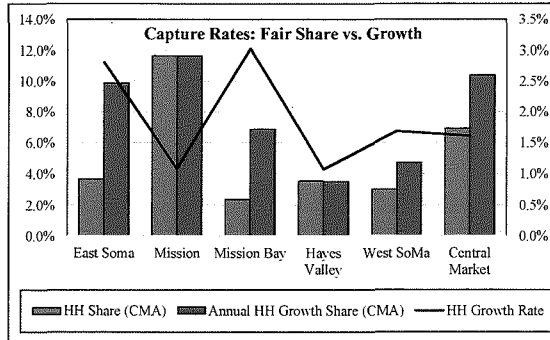
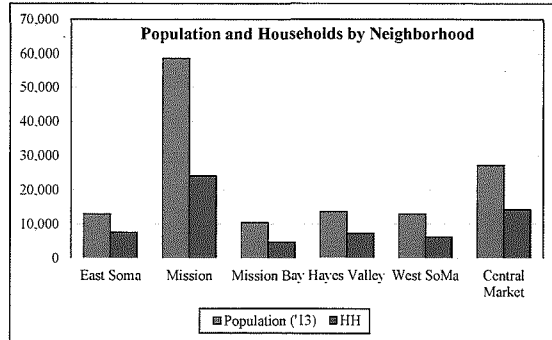
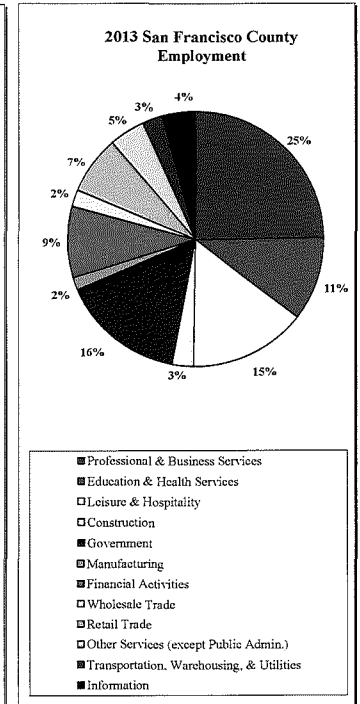
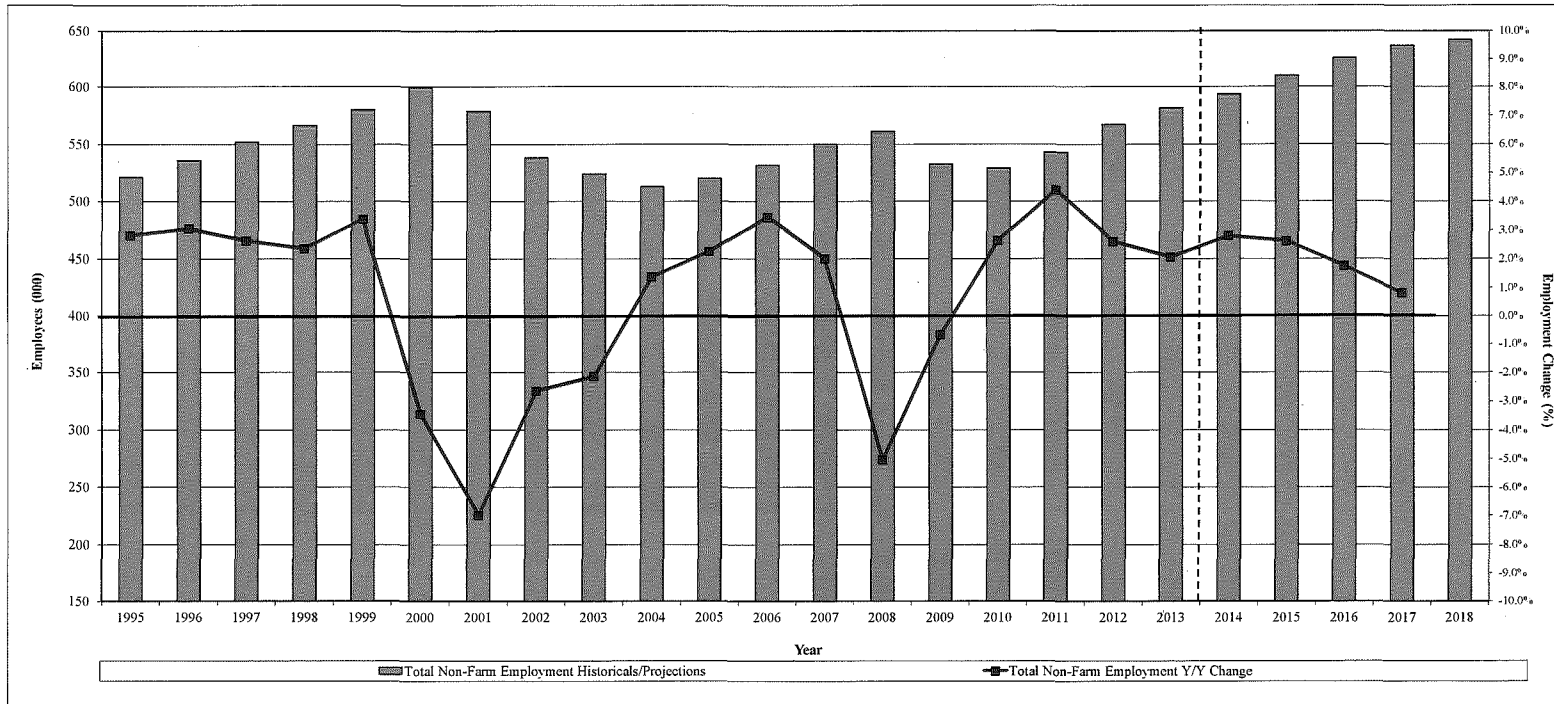


EXHIBIT I-3

HISTORICAL EMPLOYMENT TRENDS
SAN FRANCISCO COUNTY
1995 THROUGH 2018

Employment Industry	Annual Employment (000s)																		Forecast					Ann. Growth			% County Employment									
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	'08-'13	13-'18	#	2013	2018	Nominal	%					
San Francisco County																																				
Professional & Business Services	106.6	113.5	117.6	121.7	125.5	132.7	125.7	111.2	104.6	101.2	106.8	113.7	121.1	125.1	118.7	119.0	128.0	138.5	144.1	148.2	154.2	160.1	164.5	166.7	2.9%	3.0%	22.6	25%	26%	1.2%	4.8%					
Education & Health Services	48.9	49.1	51.5	55.7	56.8	53.3	52.4	52.0	52.4	53.4	54.4	55.3	56.5	57.8	57.8	58.1	58.6	60.8	61.9	63.5	65.7	67.8	69.4	70.3	1.4%	2.6%	8.5	11%	11%	0.3%	3.0%					
Leisure & Hospitality	60.8	63.3	66.9	69.3	71.4	73.3	72.7	69.4	69.8	70.8	72.0	74.0	76.4	79.1	75.7	76.6	79.2	82.8	86.4	88.7	91.3	94.1	96.3	97.7	1.8%	2.5%	11.3	15%	15%	0.4%	2.5%					
Construction	12.6	13.5	15.6	17.1	18.7	19.5	19.7	18.0	17.7	16.5	16.3	17.3	18.7	19.0	15.3	14.1	13.4	14.6	15.8	16.8	17.9	18.8	19.3	19.3	-3.6%	4.1%	3.5	3%	3%	0.3%	10.7%					
Government	84.5	84.1	83.3	81.6	83.7	87.9	86.6	88.2	88.6	88.0	89.6	91.0	92.3	94.2	92.4	92.8	92.7	91.7	91.3	91.8	93.8	95.1	95.6	95.9	-0.6%	1.0%	4.5	16%	15%	-0.8%	-5.0%					
Manufacturing	27.9	27.7	27.4	26.6	24.7	22.2	17.9	15.0	13.4	12.3	11.7	11.2	10.9	10.6	9.2	8.6	8.5	9.2	9.1	9.1	9.2	9.2	9.2	9.0	-2.9%	-0.2%	-0.1	2%	1%	-0.2%	-10.3%					
Financial Activities	60.1	61.7	60.8	62.6	64.1	66.1	69.3	63.2	59.7	57.0	57.3	57.8	58.5	58.1	52.8	51.2	50.2	51.2	52.2	53.0	54.0	55.3	56.5	57.1	-2.1%	1.8%	4.9	9%	9%	-0.1%	-0.9%					
Wholesale Trade	15.4	15.7	15.5	15.3	15.0	14.6	13.9	12.8	12.7	12.2	11.9	11.8	12.2	12.3	10.8	10.3	10.8	11.9	12.3	12.4	12.6	12.6	12.6	12.5	-0.1%	0.3%	0.2	2%	2%	-0.2%	-8.0%					
Retail Trade	39.1	40.9	43.0	44.1	45.2	47.4	46.0	43.5	43.3	42.8	43.2	43.1	44.1	44.3	41.2	40.0	40.8	42.3	42.9	43.3	43.6	43.8	43.8	43.7	-0.6%	0.3%	0.8	7%	7%	-0.6%	-7.9%					
Other Services (except Public Admin.)	22.6	22.8	24.7	25.4	25.4	25.4	25.5	23.8	23.4	23.0	23.2	23.4	24.2	25.5	24.9	24.8	25.3	26.2	26.4	26.8	27.2	27.8	28.1	28.0	0.7%	1.2%	1.7	5%	4%	-0.2%	-3.7%					
Transportation, Warehousing, & Utilities	23.4	23.5	23.9	22.9	20.6	20.1	19.3	17.6	17.6	16.2	16.2	15.8	15.4	15.5	14.6	14.1	13.9	14.1	14.7	14.8	15.1	15.5	15.7	15.7	-1.0%	1.3%	1.0	3%	2%	-0.1%	-3.4%					
Information	19.2	19.7	21.7	23.8	28.3	36.7	29.6	23.4	20.7	19.2	17.0	17.2	19.5	19.5	19.2	19.3	21.4	23.5	24.4	24.9	25.3	25.7	26.0	26.1	4.6%	1.3%	1.7	4%	4%	-0.1%	-3.2%					
Natural Resources & Mining	0.1	0.1	0.1	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-16.4%	-1.5%	0.0	0%	0%	0.0%	-16.2%					
3Q 2013 Total Non-Farm (000)	521.0	535.6	551.9	566.4	579.7	599.3	578.6	538.2	523.9	512.7	519.8	531.5	549.8	560.8	532.6	528.9	542.9	566.7	581.4	593.4	609.9	625.9	636.9	642.0	0.7%	2.0%	66.6	100%	100%							
Y/Y Change (000)		14.6	16.3	14.4	13.3	19.6	-20.6	-40.4	-14.3	-11.3	7.1	11.7	18.3	11.0	-28.3	-3.6	13.9	23.8	14.7	12.0	16.6	15.9	11.0	5.2												
% Change		2.8%	3.0%	2.6%	2.3%	3.4%	-3.4%	-7.0%	-2.6%	-2.1%	1.4%	2.3%	3.4%	2.0%	-5.0%	-0.7%	2.6%	4.4%	2.6%	2.1%	2.8%	2.6%	1.8%	0.8%												
Cumulative Loss:						15.0%				-14.4%			9.4%		-5.7%									19.3%												
4Q 2012 Total Non-Farm (000)	521	535.6	551.9	566.4	579.7	599.3	578.6	538.2	523.9	512.7	519.8	531.5	549.8	561.0	532.0	526.6	536.2	553.6	565.5	579.5	597.9	614.5	623.3													
% Change																																				
																				11.9	14.0	18.5	16.6	8.8												
																				2.2%	2.5%	3.2%	2.8%	1.4%												
4Q 2012 vs. 3Q 2013 Projection Change:																				2.8%	2.4%	2.0%	1.9%	2.2%												

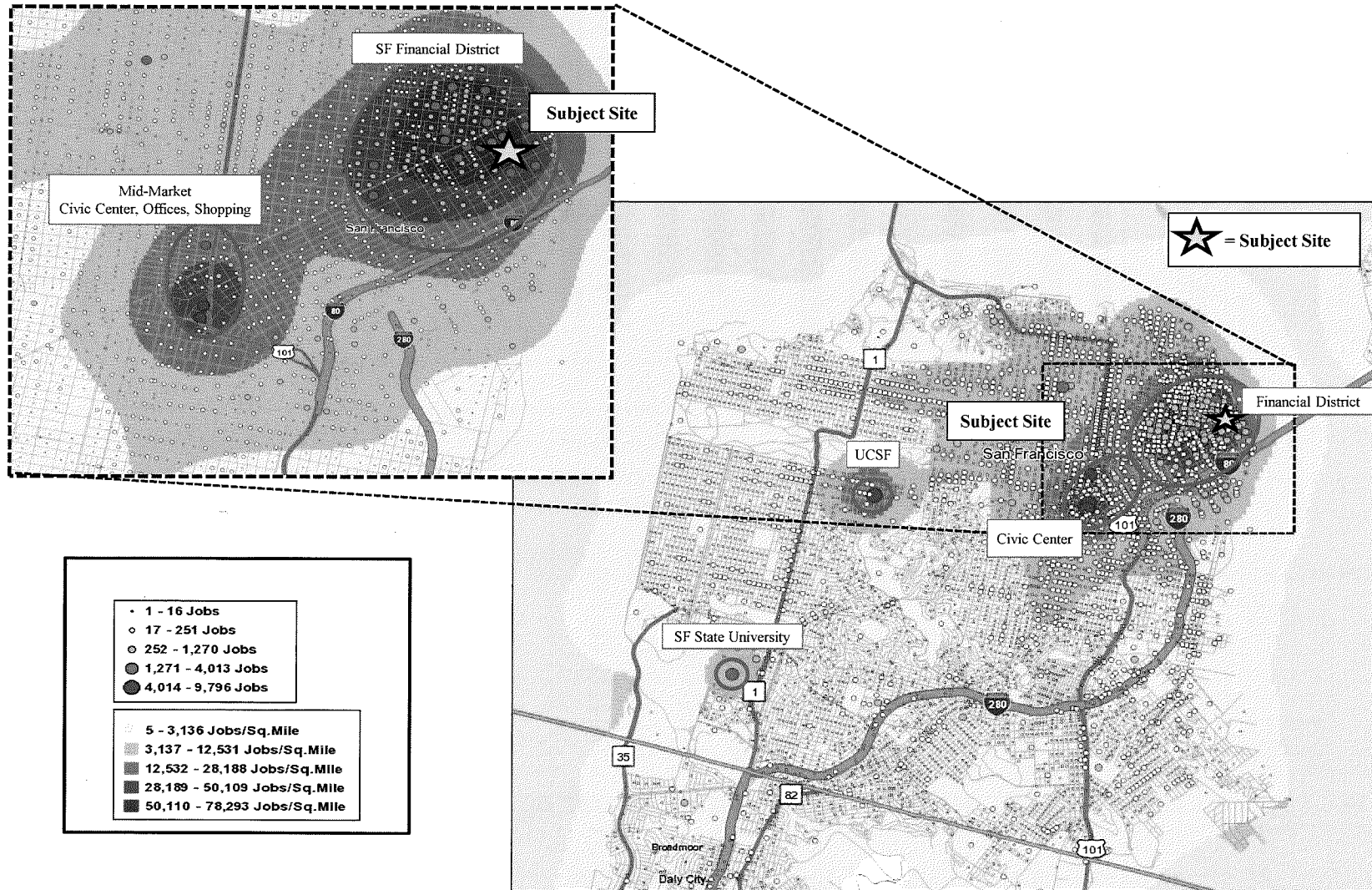
4Q 2012 vs. 3Q 2013 Projection Change: 2.8% 2.4% 2.0% 1.9% 2.2%



Note: All employment figures represent year end
Sources: Moody's Economy.com last updated September 25, 2013
07316.17 Employment Trends.xlsxExhibit - Oct

THE CONCORD GROUP

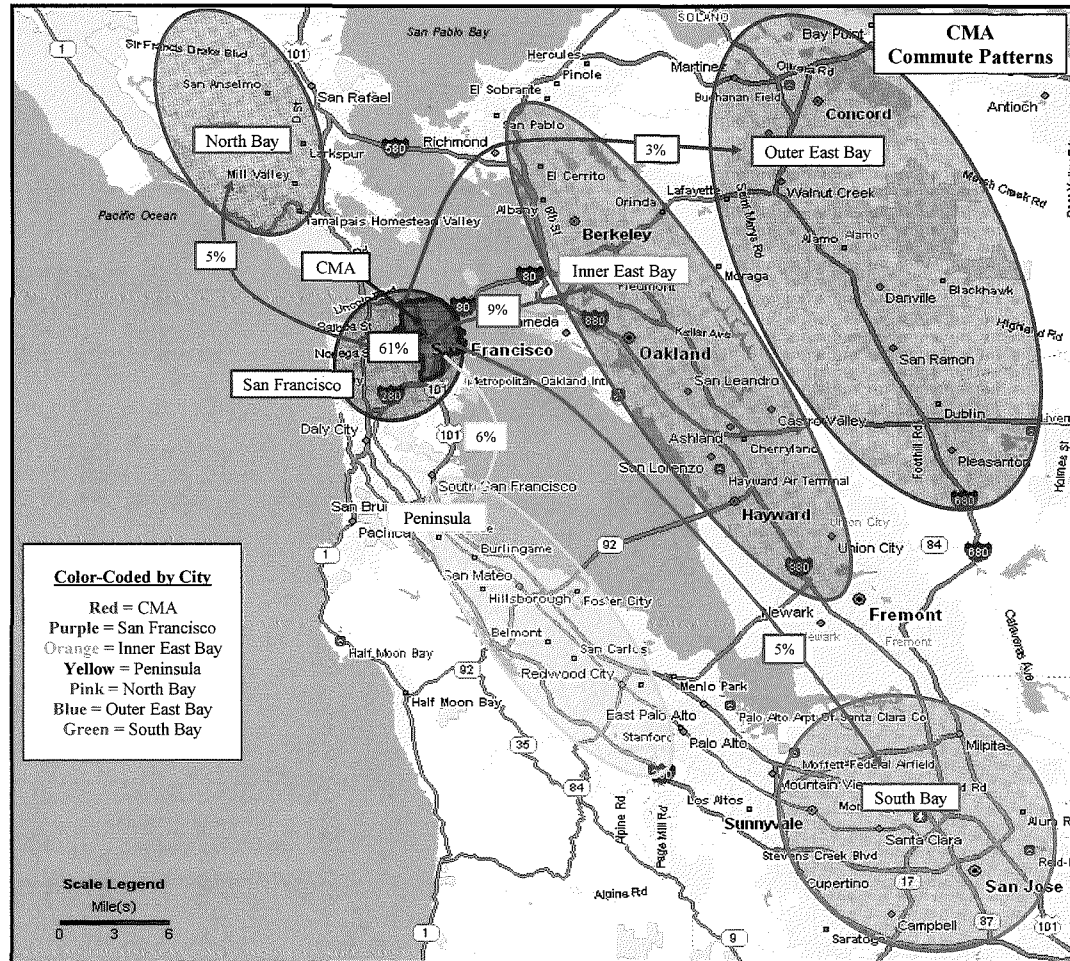
EXHIBIT I-4
EMPLOYMENT NODES
PRIMARY MARKET AREA
2011



Source: Longitudinal Employer-Household Dynamics, U.S. Census Bureau, 2010

EXHIBIT I-5

COMMUTING PATTERNS AND SUBMARKET CHARACTERISTICS COMPETITIVE MARKET AREA (1) 2011



CMA Commute Patterns					
CMA Employment Base (Employees):					
Commute from:	% Δ	2011		2010	
		Share	Number	Share	Number
San Francisco	7%	39%	170,470	40%	159,911
Inner East Bay	5%	14%	63,447	15%	60,654
Peninsula	8%	11%	49,671	11%	46,026
North Bay	15%	7%	30,047	6%	26,111
Outer East Bay	6%	6%	27,248	6%	25,675
South Bay	14%	4%	17,323	4%	15,191
Sacramento Area	39%	2%	6,916	1%	4,982
Other	20%	17%	77,071	16%	64,123
Total:	10%	100%	442,193	100%	402,673

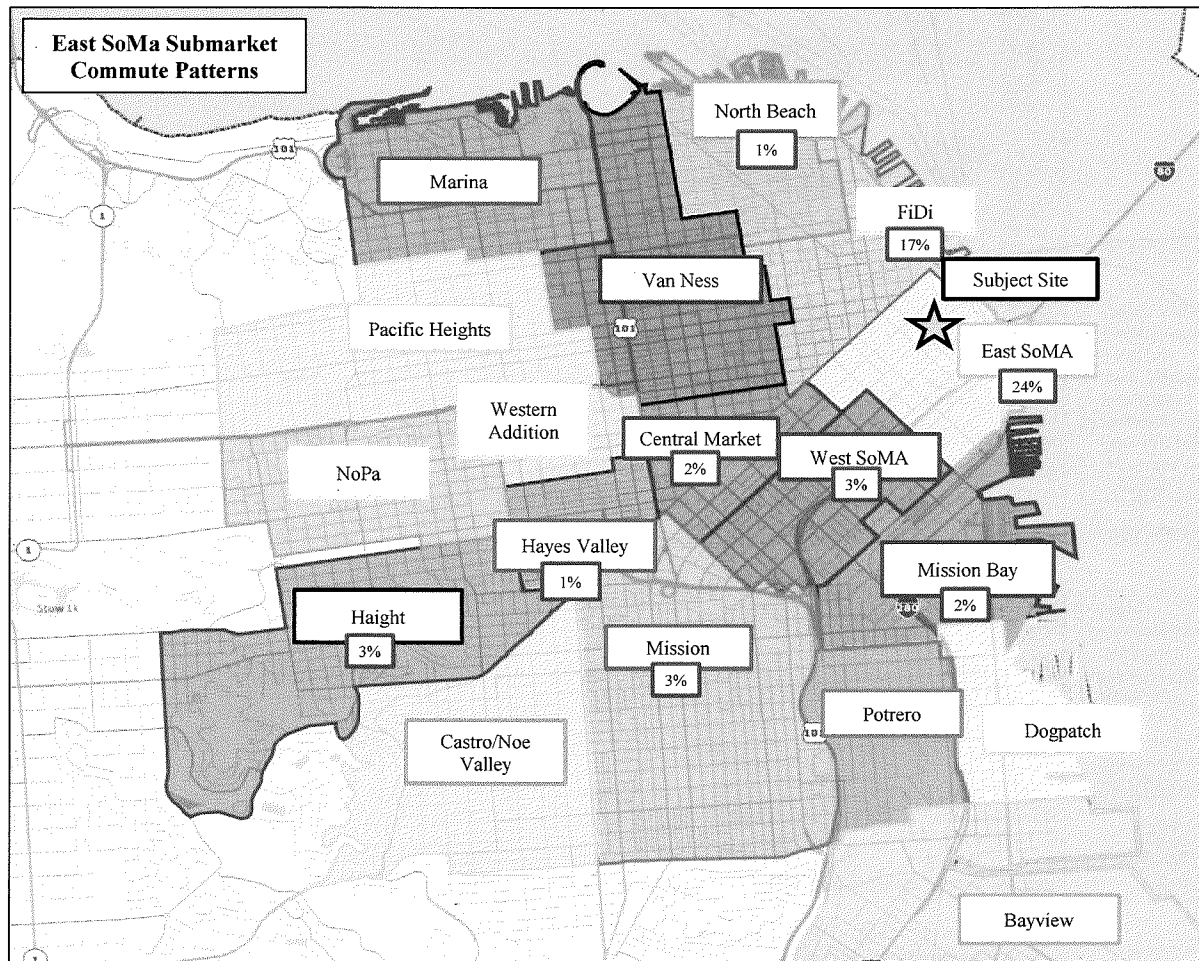
CMA Employed Population (Residents):					
Commute to:	% Δ	2011		2010	
		Share	Number	Share	Number
San Francisco	8%	61%	108,474	61%	100,034
Inner East Bay	7%	9%	16,144	9%	15,030
Peninsula	10%	6%	10,590	6%	9,603
North Bay	-3%	5%	9,475	6%	9,786
Outer East Bay	8%	3%	5,847	3%	5,392
South Bay	9%	5%	8,497	5%	7,816
Sacramento Area	27%	1%	2,013	1%	1,588
Other	31%	10%	18,189	9%	13,871
Total:	10%	100%	179,229	100%	163,120

(1) CMA defined as 'Urban San Francisco, and comprised of zip codes. See Exhibit I-1 for market area delineation map.

Source: Longitudinal Employer-Household Dynamics, U.S. Census Bureau

EXHIBIT I-5

COMMUTING PATTERNS AND SUBMARKET CHARACTERISTICS EAST SOMA; SAN FRANCISCO, CALIFORNIA 2011



Note: Star indicates Subject Site Location

Source: Longitudinal Employer-Household Dynamics, U.S. Census Bureau

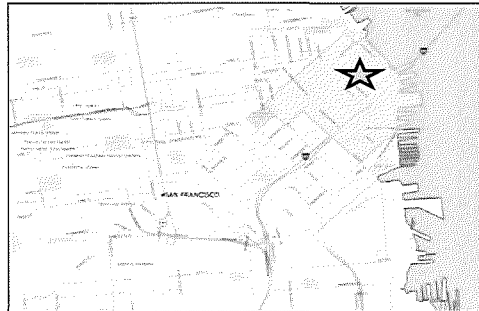
2011 East SoMa Commute Patterns		
East SoMa Employed Population:		
Commute to:	Share	Number
San Francisco	59%	2,822
Central Market	2%	86
FiDi	17%	809
East SoMa	24%	1,159
Mission	3%	149
West SoMa	3%	137
Haight	3%	121
North Beach	1%	62
Hayes Valley	1%	44
Mission Bay	2%	113
Other SF	3%	142
Outside SF	41%	1,943
Total:	100%	4,765

2011 East SoMa Commute Patterns		
East SoMa Employment Base:		
Commute from:	Share	Number
San Francisco	29%	25,406
Van Ness	4%	3,133
Mission	2%	2,001
Haight	2%	1,630
Castro	2%	1,595
Pac Heights	2%	1,526
Marina	2%	1,578
NoPa	1%	1,132
North Beach	1%	919
East SoMa	1%	1,159
Other SF	12%	10,733
Outside SF	71%	63,080
Total:	100%	88,486

EXHIBIT I-5

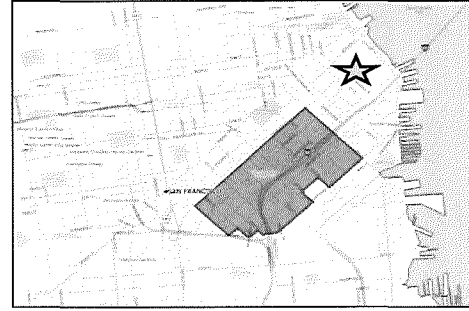
COMMUTING PATTERNS - KEY SUBMARKETS
COMPETITIVE MARKET AREA
2011

East SoMa Submarket



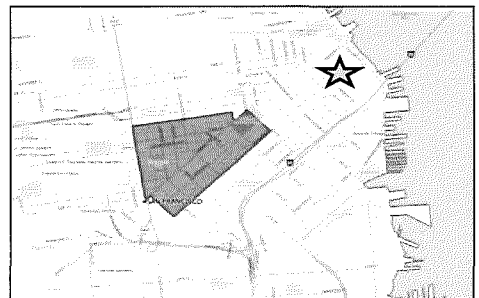
Commute to:	#	%
San Francisco	3,123	66%
Oakland	232	5%
Palo Alto	128	3%
San Jose	99	2%
South San Francisco	98	2%
Emeryville	68	1%
Redwood City	55	1%
Santa Clara	53	1%
Mountain View	52	1%
Burlingame	51	1%
Other	806	17%
Total:	4,765	100%

West SoMa Submarket



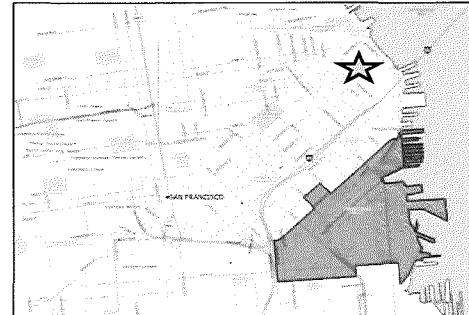
Commute to:	#	%
San Francisco	4,477	48%
Los Angeles	338	4%
Oakland	287	3%
Sacramento	169	2%
San Jose	169	2%
Palo Alto	167	2%
South San Francisco	131	1%
San Diego	112	1%
Redwood City	87	1%
Santa Rosa	78	1%
Other	3,248	35%
Total:	9,263	100%

Central Market Submarket



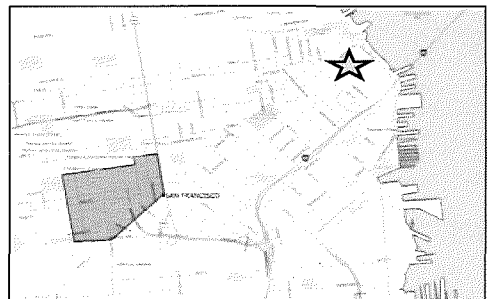
Commute to:	#	%
San Francisco	4,566	49%
Oakland	284	3%
Los Angeles	238	3%
Palo Alto	218	2%
San Jose	212	2%
Sacramento	173	2%
Redwood City	125	1%
South San Francisco	111	1%
Burlingame	107	1%
San Mateo	104	1%
Other	3,216	34%
Total:	9,354	100%

Mission Bay Submarket



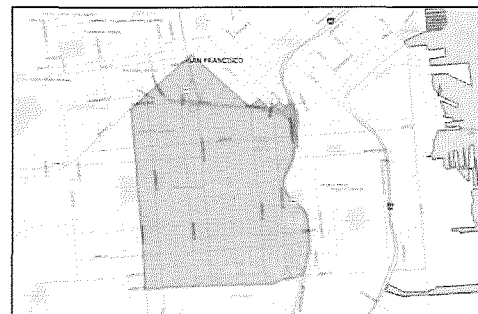
Commute to:	#	%
San Francisco	2,269	66%
Oakland	142	4%
South San Francisco	96	3%
San Jose	85	2%
Palo Alto	80	2%
Mountain View	49	1%
San Mateo	43	1%
Menlo Park	39	1%
Redwood City	34	1%
Berkeley	31	1%
Other	594	17%
Total:	3,462	100%

Hayes Valley Submarket



Commute to:	#	%
San Francisco	4,536	71%
Oakland	281	4%
Palo Alto	113	2%
South San Francisco	107	2%
San Jose	98	2%
Emeryville	68	1%
San Mateo	68	1%
Berkeley	64	1%
Daly City	62	1%
Burlingame	58	1%
Other	923	14%
Total:	6,378	100%

Mission Submarket



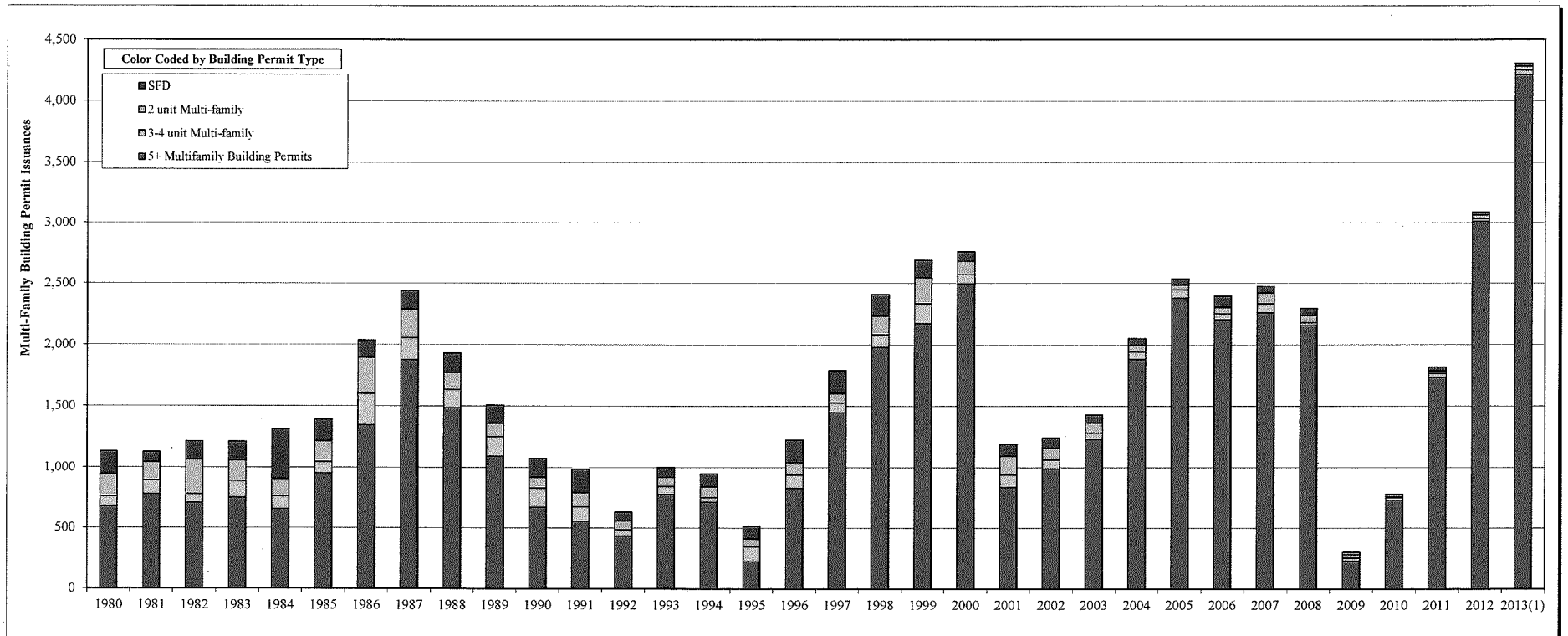
Commute to:	#	%
San Francisco	15,246	59%
Oakland	1,094	4%
Los Angeles	477	2%
Palo Alto	461	2%
San Jose	457	2%
South San Francisco	423	2%
Redwood City	267	1%
Berkeley	261	1%
Sacramento	225	1%
Mountain View	222	1%
All Other Locations	6,815	26%
Total:	25,948	100%

Source: On the Map Census Data

EXHIBIT I-6

RESIDENTIAL BUILDING PERMIT ISSUANCES
PRIMARY MARKET AREA; SAN FRANCISCO, CALIFORNIA
1980 THROUGH 2013

Product Type	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013(1)	Annual Average	
																									10-Yr	20-Yr
Building Permit Issuances by Product Type																										
SFD	161	195	70	82	107	106	183	189	178	146	81	94	82	63	58	51	95	55	57	17	22	31	22	24	53	88
2 unit Multi-family	88	118	74	76	90	64	104	76	152	214	106	156	96	84	52	38	50	86	60	30	10	20	34	33	53	82
3-4 unit Multi-family	158	119	52	67	38	121	109	80	102	162	81	105	74	52	61	68	51	72	19	25	14	31	19	38	47	69
5+ unit Multi-family	670	555	433	776	713	224	830	1,447	1,979	2,172	2,498	836	991	1,231	1,880	2,381	2,202	2,262	2,159	228	733	1,736	3,014	4,214	1,580	1,386
Total Permits	1,077	987	629	1,001	948	515	1,226	1,792	2,411	2,694	2,766	1,191	1,243	1,430	2,051	2,538	2,398	2,475	2,295	300	779	1,818	3,089	4,308	2,222	1,964
5+ Change (#)		-115	-122	343	-63	-489	606	617	532	193	326	-1,662	155	240	649	501	-179	60	-103	-1,931	505	1,003	1,278			
5+ Change (%)		-17%	-22%	79%	-8%	-69%	271%	74%	37%	10%	15%	-67%	19%	24%	53%	27%	-8%	3%	-5%	-89%	221%	137%	74%			
5+ % of Total	62%	56%	69%	78%	75%	43%	68%	81%	82%	81%	90%	70%	80%	86%	92%	94%	92%	91%	94%	76%	94%	95%	98%	98%	71%	71%



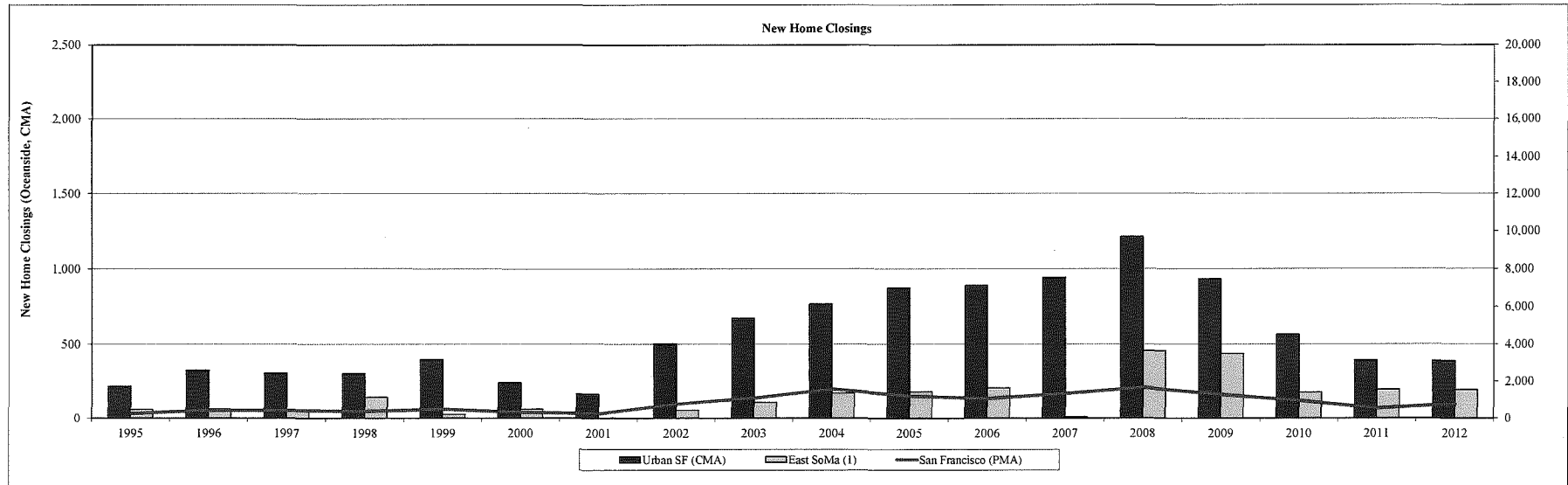
(1) YTD issuances annualized through September 2013

Source: U.S. Department of Housing and Urban Development

EXHIBIT I-7

HISTORICAL HOME SALES AND PRICE TRENDS
PRIMARY MARKET AREA
1995 THROUGH 2Q 2013

Period:	Annual																		Average 10-Yr	L4Q				Total
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012		3Q12	4Q12	1Q13	2Q13	
New Home Closings																								
East SoMa (1)	58	61	48	142	28	59	1	54	107	171	179	204	10	456	436	176	194	192	213	43	32	18	9	102
Growth (%)		5%	-21%	196%	-80%	111%	-98%	5300%	98%	60%	5%	14%	-93%	4460%	-4%	-60%	10%	-1%		-39%	-26%	-55%	-72%	
% New of Total Sales	74%	66%	50%	69%	25%	50%	2%	35%	55%	64%	63%	62%	7%	81%	79%	55%	54%	41%	61%	36%	30%	22%	10%	26%
% of Urban SF (CMA)	27%	19%	16%	47%	7%	25%	1%	11%	16%	22%	21%	23%	1%	38%	47%	31%	49%	50%	28%	43%	63%	51%	32%	47%
Urban SF (CMA)	216	323	303	301	396	239	161	503	672	766	872	887	941	1,209	930	563	392	385	762	101	51	35	28	215
Growth (%)		50%	-6%	-1%	32%	-40%	-53%	212%	34%	14%	14%	2%	6%	28%	-23%	-39%	-30%	-2%		-33%	-50%	-65%	-45%	
% New of Total Sales	13%	14%	12%	12%	15%	11%	9%	18%	21%	22%	25%	28%	29%	39%	33%	20%	14%	11%	24%	11%	6%	6%	3%	6%
% of San Francisco (PMA)	88%	79%	74%	84%	82%	77%	67%	66%	62%	49%	74%	84%	71%	73%	74%	60%	74%	52%	67%	37%	25%	45%	65%	36%
San Francisco (PMA)	245	409	411	358	481	309	239	764	1,082	1,573	1,174	1,052	1,327	1,656	1,259	942	527	747	1,134	270	204	81	43	598
Growth (%)		67%	0%	-13%	34%	-36%	-23%	220%	42%	45%	-25%	-10%	26%	25%	-24%	-25%	-44%	42%		62%	-24%	-70%	-79%	
% New of Total Sales	6%	8%	7%	6%	7%	5%	5%	12%	15%	19%	16%	16%	20%	28%	22%	17%	10%	11%	17%	15%	11%	6%	2%	9%
Resale Closings																								
East SoMa (1)	20	31	48	64	84	59	49	101	88	98	98	127	128	109	115	146	168	274	135	75	74	64	84	297
Growth (%)		55%	53%	33%	31%	-30%	-17%	106%	-13%	11%	0%	30%	1%	-15%	6%	27%	15%	63%		-10%	-1%	-15%	14%	
% of Urban SF (CMA)	1%	2%	2%	3%	4%	3%	3%	5%	4%	4%	4%	6%	5%	6%	6%	7%	7%	9%	6%	10%	9%	11%	9%	10%
Urban SF (CMA)	1,493	1,908	2,275	2,308	2,272	1,963	1,642	2,219	2,500	2,732	2,629	2,279	2,345	1,924	1,874	2,189	2,356	2,970	2,380	788	804	574	929	3,095
Growth (%)		28%	19%	1%	-2%	-14%	-16%	35%	13%	9%	-9%	-13%	3%	-18%	-3%	17%	8%	26%		-6%	2%	-27%	16%	
% of San Francisco (PMA)	36%	38%	40%	35%	37%	37%	37%	40%	40%	40%	42%	42%	44%	45%	43%	47%	47%	50%	44%	51%	51%	49%	53%	51%
San Francisco (PMA)	4,127	5,018	5,725	6,045	6,217	5,343	4,436	5,606	6,200	6,835	6,332	5,377	5,283	4,322	4,373	4,667	4,964	5,918	5,427	1,531	1,591	1,182	1,750	6,054
Growth (%)		22%	14%	6%	3%	-14%	-17%	26%	11%	10%	-7%	-15%	-2%	-18%	1%	7%	6%	19%		-7%	4%	-23%	10%	



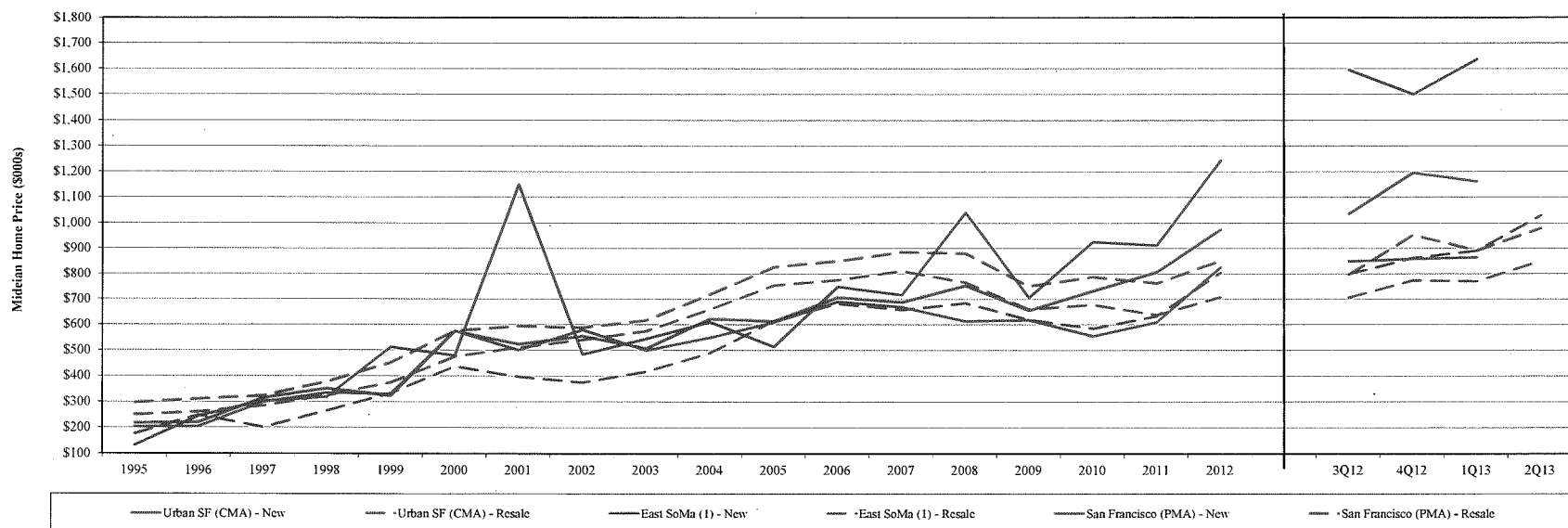
Note: Includes detached and attached product types

Source: DataQuick

(1) Mission Bay district approximated by zip codes 94107

EXHIBIT I-7
HISTORICAL HOME SALES AND PRICE TRENDS
PRIMARY MARKET AREA
1995 THROUGH 2Q 2013

Period:	Annual																		Wtd Avg.						L4Q
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	10-Yr	3Q12	4Q12	1Q13	2Q13	Total	
Median New Home Price (\$000s)																									
East SoMa (1)	\$132	\$246	\$304	\$319	\$512	\$479	\$1,150	\$484	\$545	\$610	\$513	\$749	\$717	\$1,041	\$706	\$925	\$913	\$1,244	\$836	\$1,595	\$1,501	\$1,638	na	\$1,571	
Growth (%)		87%	24%	5%	61%	-7%	140%	-58%	13%	12%	-16%	46%	-4%	43%	-32%	31%	29%	34%		36%	-6%	3%	N/A		
vs. Urban SF (CMA)	60%	111%	96%	91%	158%	83%	220%	87%	108%	98%	84%	106%	104%	138%	108%	126%	113%	128%	121%	154%	126%	141%	N/A	142%	
Urban SF (CMA)	\$218	\$221	\$316	\$351	\$324	\$574	\$524	\$554	\$507	\$622	\$614	\$707	\$688	\$753	\$656	\$732	\$806	\$974	\$689	\$1,036	\$1,195	\$1,161	na	\$1,103	
Growth (%)		1%	43%	11%	-8%	77%	-9%	6%	-9%	23%	-1%	15%	-3%	9%	-13%	12%	23%	33%		7%	13%	12%	N/A		
vs. San Francisco (PMA)	107%	108%	106%	105%	98%	100%	105%	96%	102%	113%	101%	102%	103%	123%	106%	132%	132%	118%	112%	122%	139%	134%	N/A	139%	
San Francisco (PMA)	\$204	\$205	\$299	\$335	\$330	\$575	\$500	\$579	\$499	\$550	\$609	\$691	\$668	\$613	\$618	\$554	\$608	\$825	\$616	\$849	\$859	\$864	na	\$793	
Growth (%)		0%	46%	12%	-1%	74%	-13%	16%	-14%	10%	11%	13%	-3%	-8%	1%	-10%	-1%	49%		2%	1%	2%	N/A		
Median Resale Price (\$000s)																									
East SoMa (1)	\$177	\$249	\$202	\$266	\$334	\$437	\$397	\$375	\$417	\$490	\$615	\$682	\$638	\$684	\$619	\$584	\$634	\$804	\$647	\$799	\$863	\$891	\$1,030	\$900	
Growth (%)		41%	-19%	32%	26%	31%	-9%	-6%	11%	17%	26%	11%	-4%	4%	-10%	-6%	2%	38%		-4%	8%	12%	19%		
vs. Urban SF (CMA)	59%	80%	62%	70%	74%	76%	67%	64%	68%	68%	74%	80%	74%	78%	82%	74%	83%	94%	82%	100%	91%	100%	105%	99%	
Urban SF (CMA)	\$297	\$311	\$323	\$378	\$452	\$576	\$593	\$588	\$616	\$719	\$827	\$851	\$885	\$880	\$751	\$788	\$762	\$852	\$792	\$797	\$952	\$891	\$980	\$910	
Growth (%)		4%	4%	17%	20%	27%	3%	-1%	5%	17%	15%	3%	4%	-1%	-15%	5%	2%	8%		-7%	20%	12%	3%		
vs. San Francisco (PMA)	119%	119%	113%	116%	120%	121%	116%	109%	107%	109%	110%	110%	109%	115%	114%	116%	120%	120%	113%	113%	123%	116%	115%	117%	
San Francisco (PMA)	\$250	\$261	\$285	\$325	\$375	\$475	\$510	\$540	\$575	\$660	\$755	\$776	\$811	\$765	\$660	\$678	\$638	\$708	\$701	\$706	\$774	\$770	\$850	\$778	
Growth (%)		4%	9%	14%	15%	27%	7%	6%	6%	15%	14%	3%	5%	-6%	-14%	3%	-3%	40%		0%	10%	9%	10%	7%	



Note: Includes detached and attached product types
Source: DataQuick

(1) Mission Bay district approximated by zip codes 94107

EXHIBIT 1-8A

PLANNED AND PROPOSED FOR-SALE DEVELOPMENT
SAN FRANCISCO, CALIFORNIA
OCTOBER 2013

I. Overview by Submarket - Market Rate Units Planned

Status (1)	Urban SF Neighborhoods									Remainder SF	Large-Scale SF	PMA Total
	Mission Bay	Dogpatch	East SoMa	West SoMa	Central Market	Hayes Valley	Mission	Other CMA	CMA Total			
<i>Future (Non-Subject Site)</i>												
Under Construction	300	16	975	0	0	49	147	124	1,611	746	0	2,357
Approved	350	60	811	0	33	71	102	242	1,669	138	0	1,807
Pending	0	0	520	0	0	236	175	751	1,683	0	0	1,683
Conceptual	0	103	624	147	140	0	53	202	1,269	124	9,619	11,012
Inactive	140	0	301	31	47	0	0	287	806	0	1,590	2,396
Total Supply	790	179	3,231	178	220	356	477	1,606	7,037	1,008	11,224	19,269

II. Urban SF For-Sale Delivery Projection

Status	Delivery Likelihood	Near Term Planned and Proposed Delivery Projection					
		2013	2014	2015	2016	2017	2018
Under Construction	100%	2%	79%	19%	0%	0%	0%
Approved	93%	0%	19%	52%	6%	5%	18%
Pending	73%	0%	8%	35%	19%	12%	25%
Conceptual	55%	0%	0%	14%	11%	42%	34%
Inactive	35%	0%	0%	21%	0%	25%	54%

Status	Projected Units Completed	2013	2014	2015	2016	2017	2018
		36	1,275	300	0	0	0
Under Construction	1,611						
Approved	1,547	0	295	798	95	76	283
Pending	1,230	0	102	435	238	148	306
Conceptual	696	0	0	98	75	289	234
Inactive	284	0	0	60	0	71	153
Urban SF Total:	5,367	36	1,672	1,690	409	584	977

5-Year Near Term Deliveries:

5,367

Note: Totals include Long Term Projects (Treasure Island, Hunter's Point, Park Merced, Sunnydale)

III. East SoMa New Home Delivery Projection

Status	Projected Units Completed	2013	2014	2015	2016	2017	2018
		0%	100%	0%	0%	0%	0%
Under Construction	100%						
Approved	95%	0%	9%	50%	9%	0%	32%
Pending	80%	0%	12%	36%	22%	31%	0%
Conceptual	60%	0%	0%	0%	0%	64%	36%
Inactive	35%	0%	0%	0%	0%	21%	79%

Status	Projected Units Completed	2013	2014	2015	2016	2017	2018
		0	975	0	0	0	0
Under Construction	975						
Approved	770	0	70	389	68	0	243
Pending	416	0	50	148	91	128	0
Conceptual	374	0	0	0	0	240	134
Inactive	105	0	0	0	0	22	83
Central Market Total:	2,641	0	1,095	537	159	390	461

5-Year Near Term Deliveries:

2,641

EXHIBIT I-8B

PLANNED AND PROPOSED FOR-SALE RESIDENTIAL PROJECT LOCATIONS
SAN FRANCISCO, CALIFORNIA
OCTOBER 2013

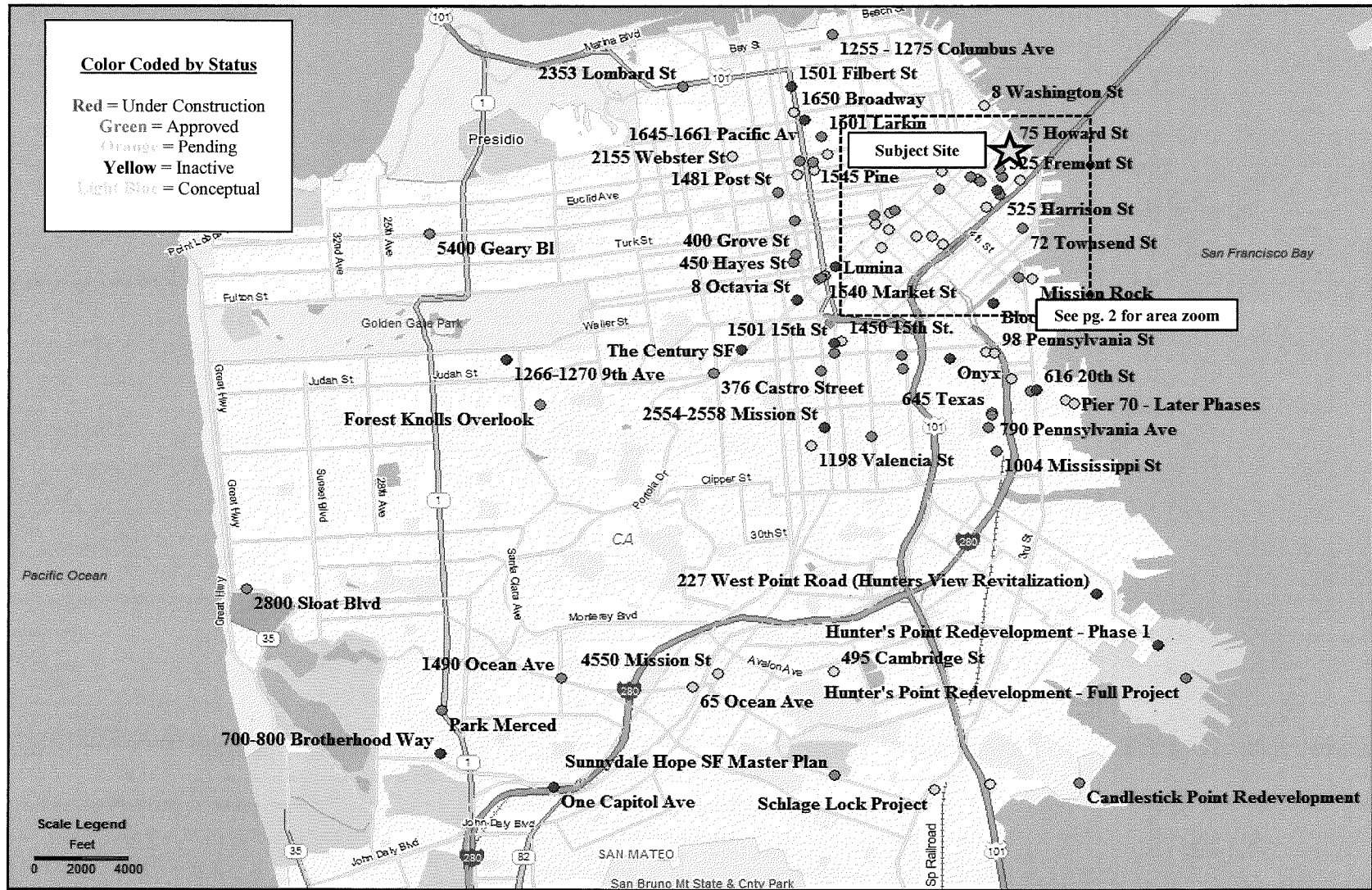


EXHIBIT I-8B

PLANNED AND PROPOSED FOR-SALE RESIDENTIAL PROJECT LOCATIONS
SAN FRANCISCO, CALIFORNIA
OCTOBER 2013

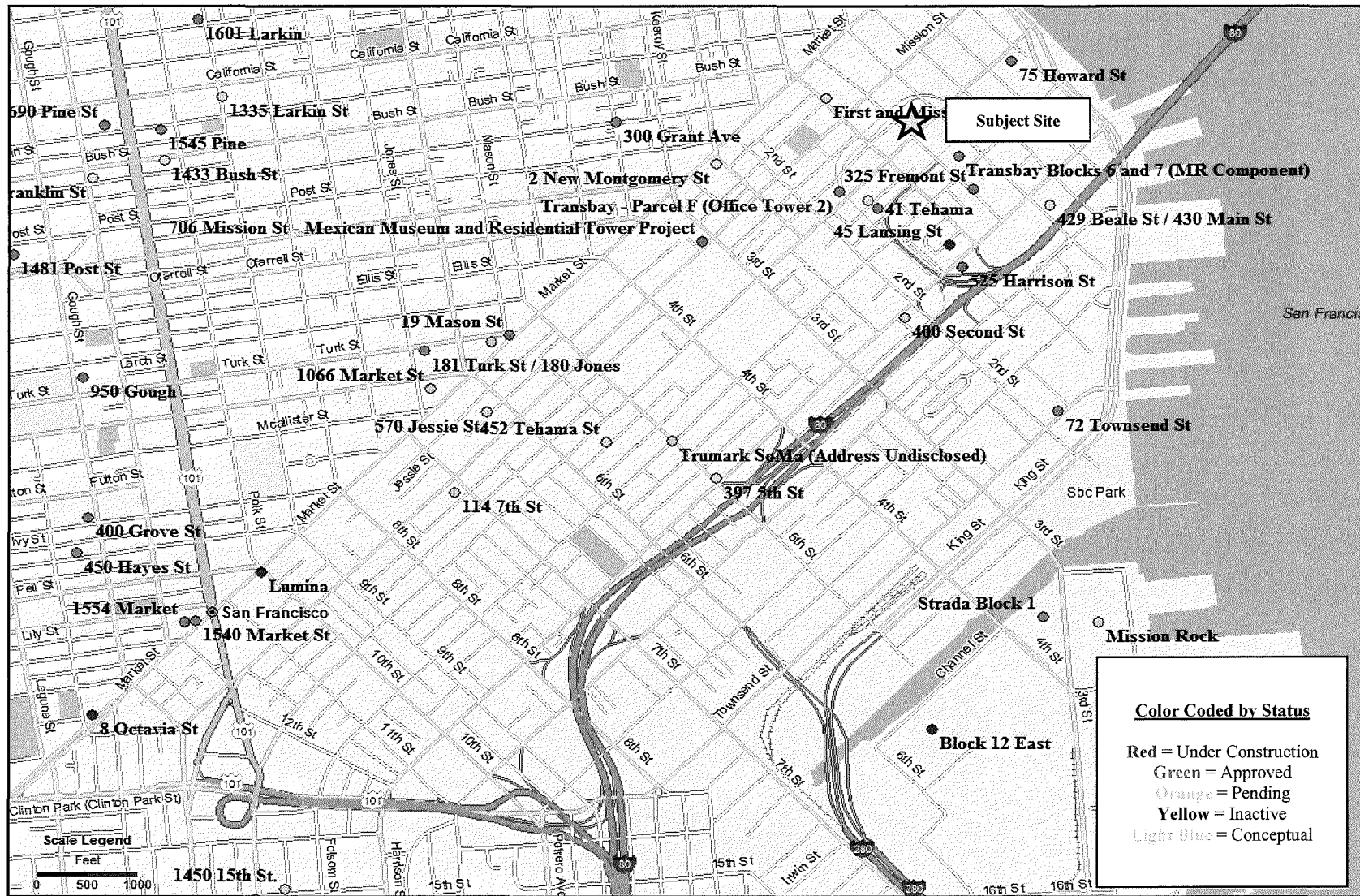
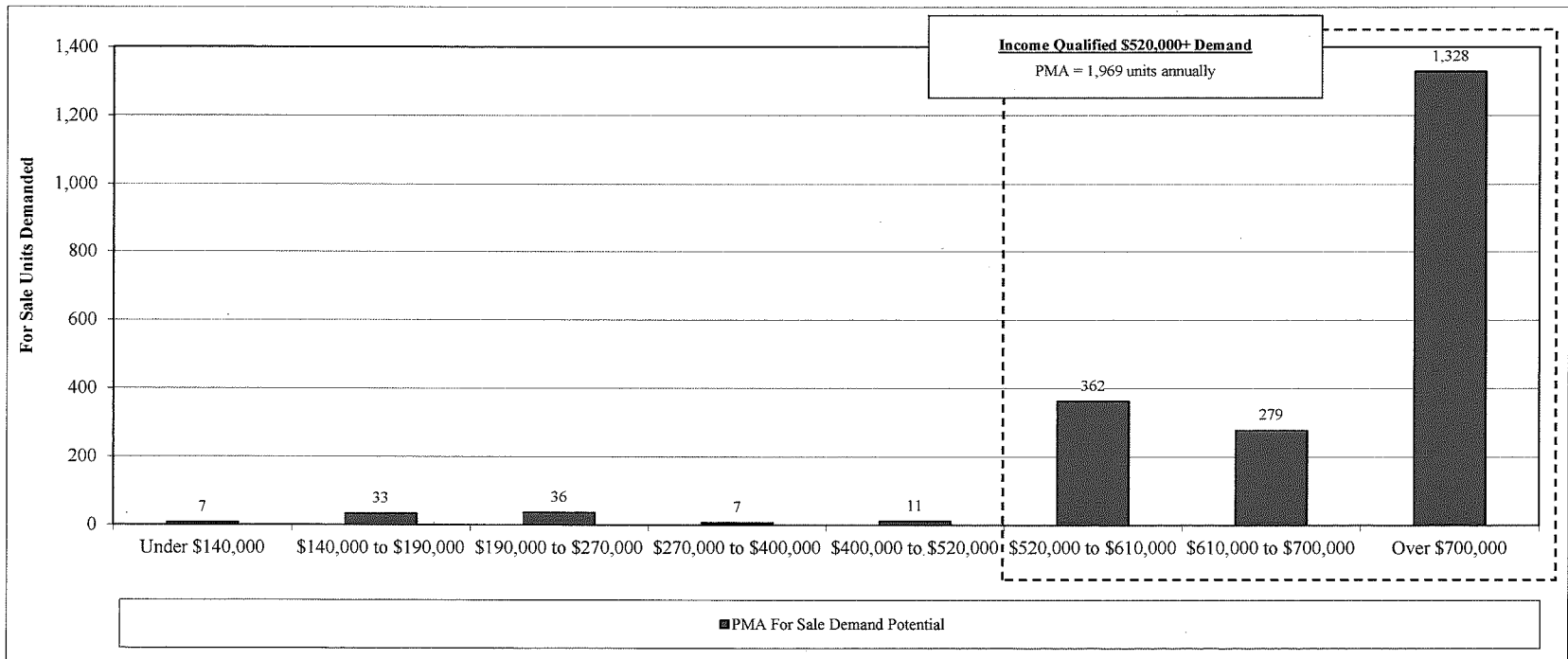


EXHIBIT I-9

PROJECTED FOR-SALE DEMAND
PRIMARY MARKET AREA
2013 THROUGH 2018

Household Income Range	Income to Housing	Affordable Home Price	Total Households		Percent Buy	Buyer Households	Annual Turnover of Existing Buyer HHs	Annual Pool from Turnover	Annual Effective New HHs	Annual CMA Demand	
			2013 (2)	2018						All Homes (3)	New Homes (3)
\$0 - \$25,000	60%	\$0 - \$140,000	75,370	75,370	15%	11,306	12%	1,357	0	1,357	7
25,000 - 35,000	50%	140,000 - 190,000	25,146	25,902	20%	5,029	10%	503	151	533	33
35,000 - 50,000	45%	190,000 - 270,000	32,256	32,895	25%	8,064	10%	806	128	838	36
50,000 - 75,000	40%	270,000 - 400,000	48,309	48,309	30%	14,493	9%	1,304	0	1,304	7
75,000 - 100,000	36%	400,000 - 520,000	41,507	41,574	35%	14,527	9%	1,307	13	1,312	11
100,000 - 150,000	27%	520,000 - 610,000	58,268	62,679	40%	23,307	8%	1,865	882	2,217	362
150,000 - 200,000	23%	610,000 - 700,000	31,553	34,030	55%	17,354	7%	1,215	495	1,487	279
200,000 +	20%	700,000 +	42,074	52,230	65%	27,348	6%	1,641	2,031	2,961	1,328
Subtotal/Wtd. Avg.:	39%		354,483	372,989	34%	121,428	8%	9,998	3,701	12,011	2,063
Income Qualified (\$520,000+):			131,895	148,939	52%	68,009	7%	4,720	3,409	6,666	1,969



(1) For full demand model, see Appendix D

(2) Effective existing HHs - current household base less projected loss

(3) All homes include all owner HHs looking for a home in any given year; New Homes reflects demand for additional for sale units in market, including demand from new HHs and obsolescence rate of 0.5% per year.

EXHIBIT I-10

SUBMARKET DEMAND CAPTURE SCENARIOS
PRIMARY MARKET AREA: SAN FRANCISCO, CALIFORNIA
2013 THROUGH 2018

Inputs and Assumptions:

- Annual I. Q. New Home Demand Potential over Next Five Years =

		1,969 units							
Capture Metrics	PMA (1)	East SoMa	Mission	Mission Bay	Hayes Valley	West SoMa	Central Market	Other CMA	Remaining PMA
Current Households (2013)	355,873	7,603	24,091	4,892	7,318	6,225	14,275	149,288	142,181
Share of PMA	100%	2%	7%	1%	2%	2%	4%	42%	40%
Projected HH Growth (2013-2018)	17,116	1,129	1,331	788	402	543	1,188	7,184	4,551
Share of PMA	100%	7%	8%	5%	2%	3%	7%	42%	27%
1 and 2 Person Households (2013)	249,417	6,843	16,257	3,942	5,983	5,448	11,964	115,075	83,905
Share of PMA	100%	3%	7%	2%	2%	2%	5%	46%	34%
Current Owner Households	131,995	3,203	6,223	1,590	1,236	1,783	564	38,089	79,307
Share of PMA	100%	2%	5%	1%	1%	1%	0%	29%	60%
2000-2013 Housing Unit Growth	26,174	4,094	2,439	4,652	638	2,616	3,305	2,116	6,314
Share of PMA	100%	16%	9%	18%	2%	10%	13%	8%	24%
2011 Employment	537,861	92,648	56,337	13,887	15,295	23,235	26,192	214,599	95,668
Share of PMA	100%	17%	10%	3%	3%	4%	5%	40%	18%
Pipeline For Sale Units	8,045	3,231	477	790	356	178	220	1,785	1,008
Share of PMA	100%	40%	6%	10%	4%	2%	3%	22%	13%
Near-Term Pipeline Deliveries	6,306 (2)	2,641	383	664	278	86	132	1,184	939
Share of PMA	100%	42%	6%	11%	4%	1%	2%	19%	15%
Affluent Young Households	90,709	3,573	7,135	2,381	2,141	1,993	1,122	41,296	31,068
Share of PMA	100%	4%	8%	3%	2%	2%	1%	46%	34%
Key Owner PRIZM Types (Currently Live)	282,056	7,581	16,793	4,887	2,740	4,454	1,508	106,554	137,539
Share of PMA	100%	3%	6%	2%	1%	2%	1%	38%	49%
Key Owner PRIZM Types (Currently Work)	404,630	57,150	25,760	6,506	4,889	17,296	23,817	161,695	107,517
Share of PMA	100%	14%	6%	2%	1%	4%	6%	40%	27%
Imputed Capture									
Minimum Implied		2%	5%	1%	1%	1%	0%	8%	13%
Maximum Implied		42%	10%	18%	4%	10%	13%	46%	60%
Average		14%	7%	5%	2%	3%	4%	34%	31%
TCG Concluded Submarket Capture:		35%	5%	10%	4%	2%	4%	20%	20%
Units Demanded:		689	98	197	79	39	79	394	394
TCG Concluded CMA Total Capture:		80%							
CMA Units Demanded:		1,575							

(1) See Exhibit I-1 for map of market area definitions

(2) Does not include units currently for sale or in Large-Scale Projects category, see exhibit I-4A for details

EXHIBIT I-10

RENTAL DEMAND CAPTURE SCENARIOS
PRIMARY MARKET AREA: SAN FRANCISCO, CALIFORNIA
2013 THROUGH 2018

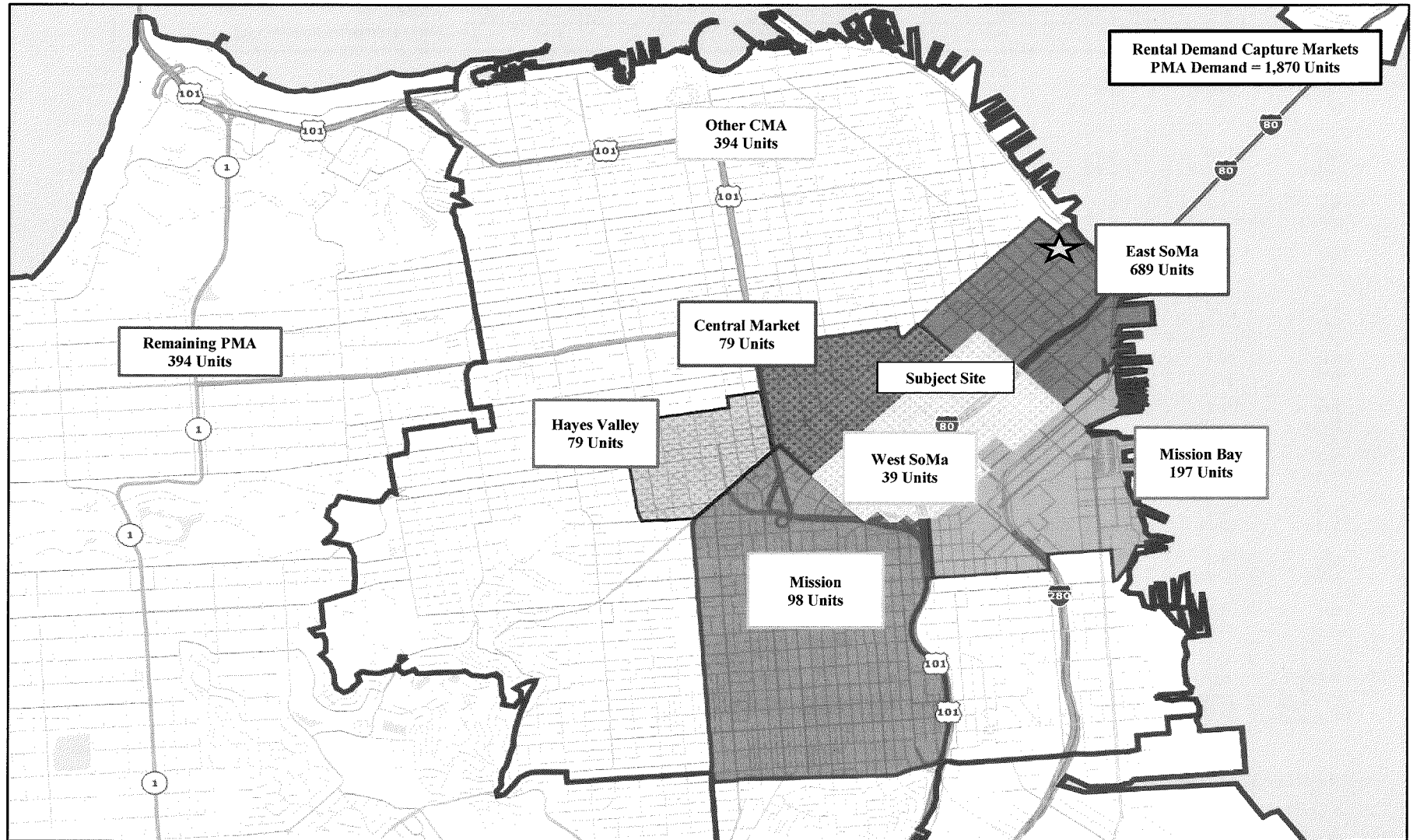


EXHIBIT I-11

PROJECTED FOR-SALE HOUSING: SUPPLY VERSUS POTENTIAL DEMAND
SAN FRANCISCO, CALIFORNIA
OCTOBER 2013

	PMA						PMA
	2013	2014	2015	2016	2017	2018	Total
Unit Deliveries by Geography							
CMA :	65	1,818	1,690	409	584	977	5,543
Remaining PMA :	221	362	280	14	0	62	939
Large Scale SF :	0	0	561	561	561	561	2,245
Assumes Large-Scale Projects Begin Delivering 5% of Total Units in 2015							
Projected Deliveries :	286	2,180	2,532	985	1,145	1,600	8,727
Demand							
HH Growth Model	328	1,969	1,969	1,969	1,969	1,969	10,174
Under/Oversupply :	42	(211)	(562)	985	824	369	1,447

	CMA						CMA Total
	2013	2014	2015	2016	2017	2018	
East SoMa :	0	1,095	537	159	390	461	2,641
West SoMa :	0	0	60	14	0	12	86
Mission Bay :	0	0	615	0	49	0	664
Central Market :	0	31	0	0	0	100	132
Hayes Valley :	0	49	114	115	0	0	278
Dogpatch :	0	73	0	62	0	0	135
Mission :	0	216	50	0	110	8	383
Other CMA :	36	208	315	60	35	396	1,049
	36	1,672	1,690	409	584	977	5,367
Current Inventory :	29	147	0	0	0	0	176
HH Growth Model	263	1,575	1,575	1,575	1,575	1,575	8,139
Under/Oversupply :	197	(243)	(115)	1,166	992	599	2,596

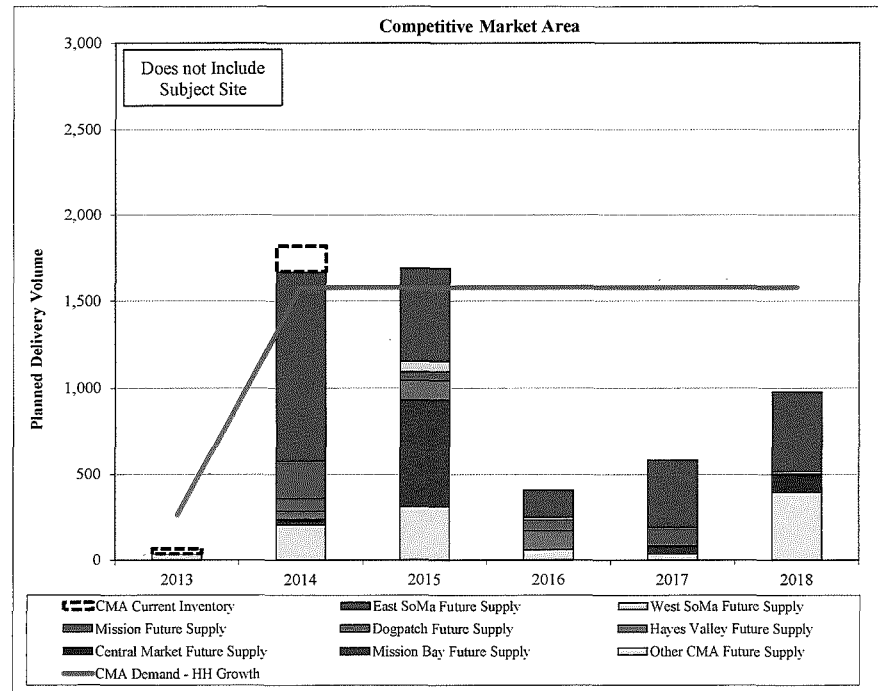
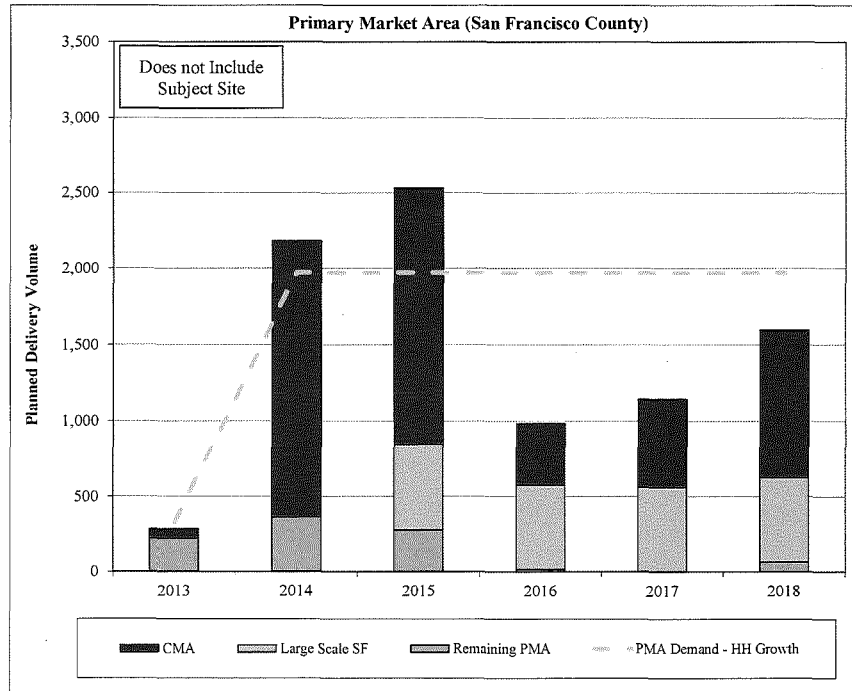


EXHIBIT I-11

PROJECTED FOR-SALE HOUSING: SUPPLY VERSUS POTENTIAL DEMAND
SAN FRANCISCO, CALIFORNIA
OCTOBER 2013

	CMA						CMA
	2013	2014	2015	2016	2017	2018	Total
Unit Deliveries by Geography							
East SoMa :	0	1,095	537	159	390	461	2,641
West SoMa :	0	0	60	14	0	12	86
Mission Bay :	0	0	615	0	49	0	664
Central Market :	0	31	0	0	0	100	132
Hayes Valley :	0	49	114	115	0	0	278
Dogpatch :	0	73	0	62	0	0	135
Mission :	0	216	50	0	110	8	383
Other CMA :	36	208	315	60	35	396	1,049
Projected Deliveries :	36	1,672	1,690	409	584	977	5,367
Current Inventory :	29	147	0	0	0	0	176
HH Growth Model	263	1,575	1,575	1,575	1,575	1,575	8,139
Under/Oversupply :	197	(243)	(115)	1,166	992	599	2,596

	East SoMa						E. SoMa
	2013	2014	2015	2016	2017	2018	Total
East SoMa :	0	1,095	537	159	390	461	2,641
Projected Deliveries :	0	1,095	537	159	390	461	2,641
Current Inventory :	1	0	0	0	0	0	1
HH Growth Model	115	689	689	689	689	689	3,561
Under/Oversupply :	114	(406)	153	530	299	229	919

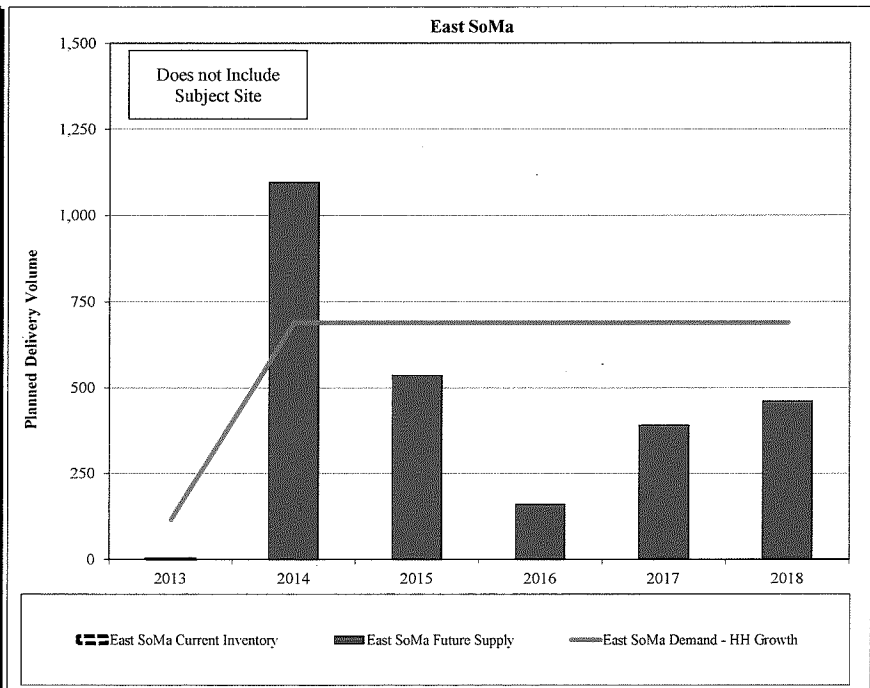
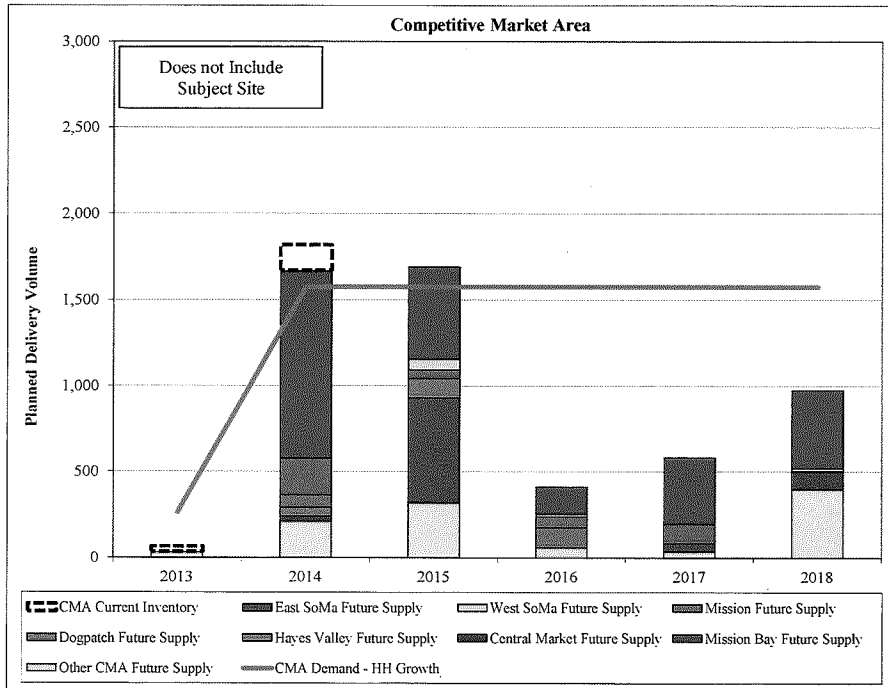
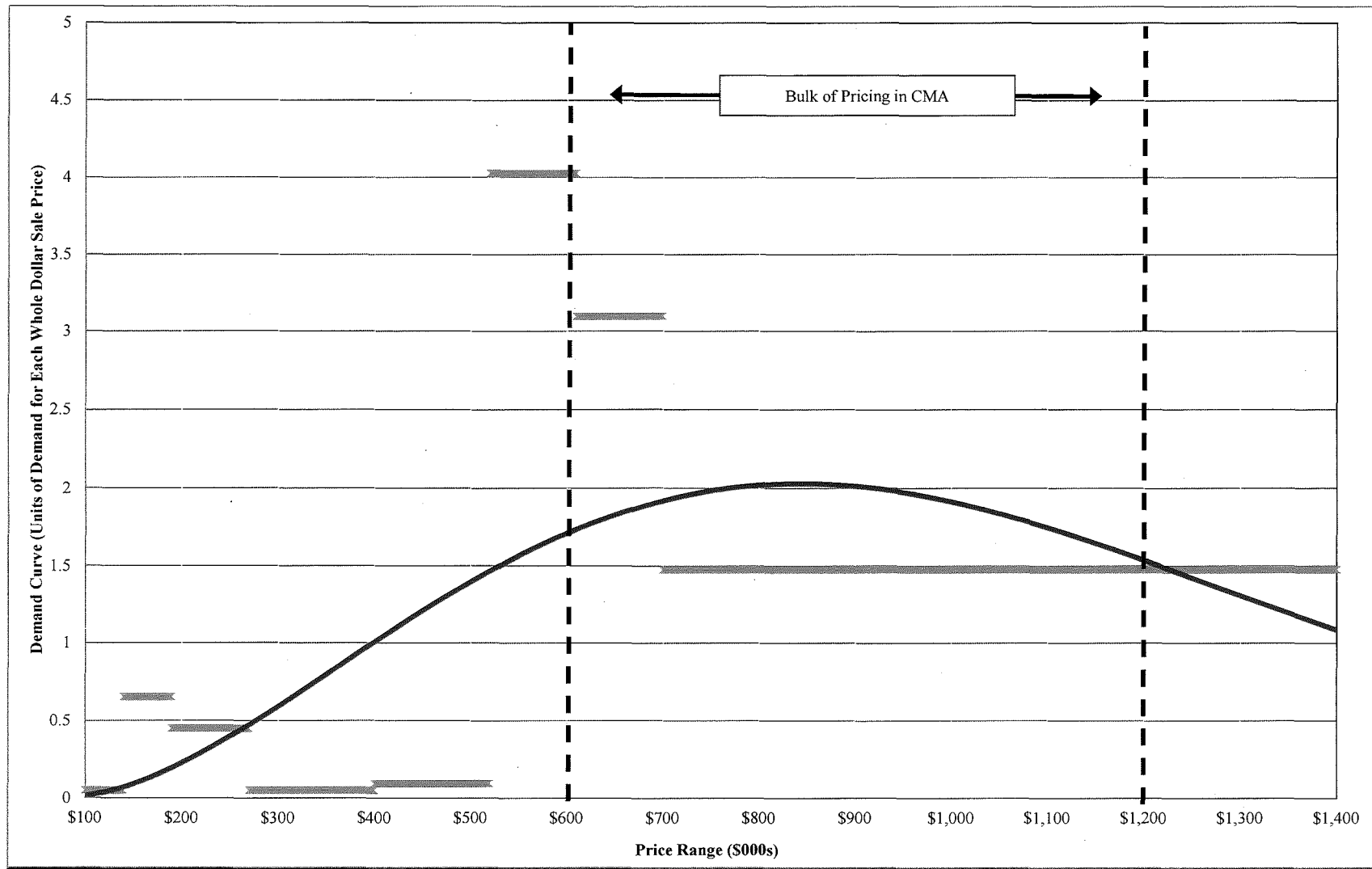


EXHIBIT I-12
ELASTICITY OF DEMAND
PRIMARY MARKET AREA
2013 THROUGH 2018



II. COMPETITIVE SET

EXHIBIT II-1

NEW CONSTRUCTION FOR SALE INVENTORY
COMPETITIVE MARKET AREA
OCTOBER 2013

Community Name	Address	Builder	City	Product/ Height	Open Date	Sold Out	Units			Unit Size	Price		Absorption			
							Total	Sold	Rem.		Base		Net		L3M	Life
											\$	PSF	\$	PSF		
CMA - Actively Selling																
750 2nd Street	750 2nd St	Morgan Creek Ventures	San Francisco	9s	Nov-12	--	14	13	1	1,591	\$1,950,000	1,226	\$1,950,000	1,226	0.7	1.1
3500 19th St	3500 19th St	Sternberg/Benjamin (design/arch)	San Francisco	5s	Oct-13	--	17	0	17	1,488	1,749,000	1,175	1,749,000	1,175	--	--
Marlow	1788 Clay St	Oyster Development	San Francisco	8s	Apr-13	--	83	58	25	1,128	1,238,211	1,097	1,238,211	1,097	5.0	9.5
Linea	8 Buchanan Street	Paragon Real Estate	San Francisco	9s	Jul-13	--	115	29	86	778	845,400	1,086	845,400	1,086	9.7	11.5
Icon	2299 Market St	Paragon Real Estate	San Francisco	4s	Jun-13	--	18	10	8	1,193	1,146,333	961	1,146,333	961	3.3	2.6
300 Ivy	401 Grove St	Pocket Development	San Francisco	5s	May-13	--	63	62	1	1,210	1,150,000	950	1,150,000	950	15.0	12.0
616 20th St	616 20th St	Natoma Architects, Inc.	San Francisco	5s	Oct-13	--	16	0	16	770	697,000	905	697,000	905	--	--
Blanc	1080 Sutter St	JS Sullivan	San Francisco	11s	Aug-13	--	35	15	20	1,291	1,088,833	844	1,088,833	844	5.0	7.5
CMA - Actively Selling Total/Weighted Average:							361	187	174	982	\$1,026,391	\$1,045	\$1,026,391	\$1,045	7.79	9.98
PMA - Actively Selling																
Candlestick Cove	101 Executive Park Blvd	Signature Properties	San Francisco	2s	Oct-07	--	150	148	2	1,450	\$730,900	504	\$730,900	504	2.0	2.1
PMA - Actively Selling Total/Weighted Average:							150	148	2	1,450	\$730,900	\$504	\$730,900	\$504	2.00	2.08
San Francisco - Sold Out 2013 (1)																
One Hawthorne	1 Hawthorne Ave.	Jackson Pacific Ventures	San Francisco	Condo	Apr-10	Jul-12	165	165	0	1,368	\$1,510,000	1,104	\$1,510,000	1,104	--	6.1
The Heights	2829 California Street	Ray Steffen / Charles Castro	San Francisco	Condo	Jan-13	May-13	13	13	0	1,627	1,616,667	994	1,616,667	994	--	3.4
411 Valencia	411 Valencia Street	411 Valencia Street, LLC	San Francisco	Condo	Oct-12	Feb-13	14	14	0	650	600,000	923	600,000	923	--	3.5
2020 Ellis Phase 1	2020 Ellis Street	John McImemy	San Francisco	Condo	Aug-12	Feb-13	12	12	0	650	549,000	845	549,000	845	--	1.8
The Madrone	420 Mission Bay Blvd.	Bosa Development	San Francisco	Condo	Jun-11	Jan-13	329	329	0	1,243	1,024,600	824	1,024,600	824	--	16.6
200 Dolores	200 Dolores St	NA	San Francisco	Condo	Jul-13	Sep-13	13	13	0	1,600	1,298,333	811	1,298,333	811	4.3	8.4
San Francisco - Sold Out 2013 (1) Total/Weighted Average:							546	546	0	1,270	\$1,170,561	\$922	\$1,170,561	\$922	4.33	12.26
San Francisco - Sold Out 2012 (1)																
The Artani	818 Van Ness Ave	George McNabb et al	San Francisco	Condo	Jan-12	Dec-12	53	53	0	812	\$619,000	762	\$619,000	762	--	4.8
299 Valencia	299 Valencia St	J.S. Sullivan	San Francisco	Condo	Mar-12	Jun-12	36	36	0	814	618,500	760	618,500	760	--	10.3
Millwheel South	1301 Indiana Street	Raymond Lyons	San Francisco	Condo	Apr-12	Jul-12	32	32	0	1,131	689,200	609	689,200	609	--	10.2
Esprit Park - North Court	850 Minnesota St.	Macquarie Holdings	San Francisco	Condo	Nov-11	Jul-12	67	67	0	1,318	756,750	574	734,048	557	--	7.9
5800 3rd St	5800 3rd Street	Holliday Development	San Francisco	Condo	Sep-10	Jan-13	137	137	0	1,041	450,000	432	450,000	432	--	4.8
Total/Weighted Average:							325	325	0	1,044	\$583,014	\$558	\$578,334	\$554	0.00	6.58

Note: Averages for actively selling communities weighted by units remaining; sold out communities weighted by total units

(1) Price from last remaining units at time of sell out

EXHIBIT II-2

COMPARABLE FOR SALE COMMUNITY LOCATIONS COMPETITIVE MARKET AREA OCTOBER 2013

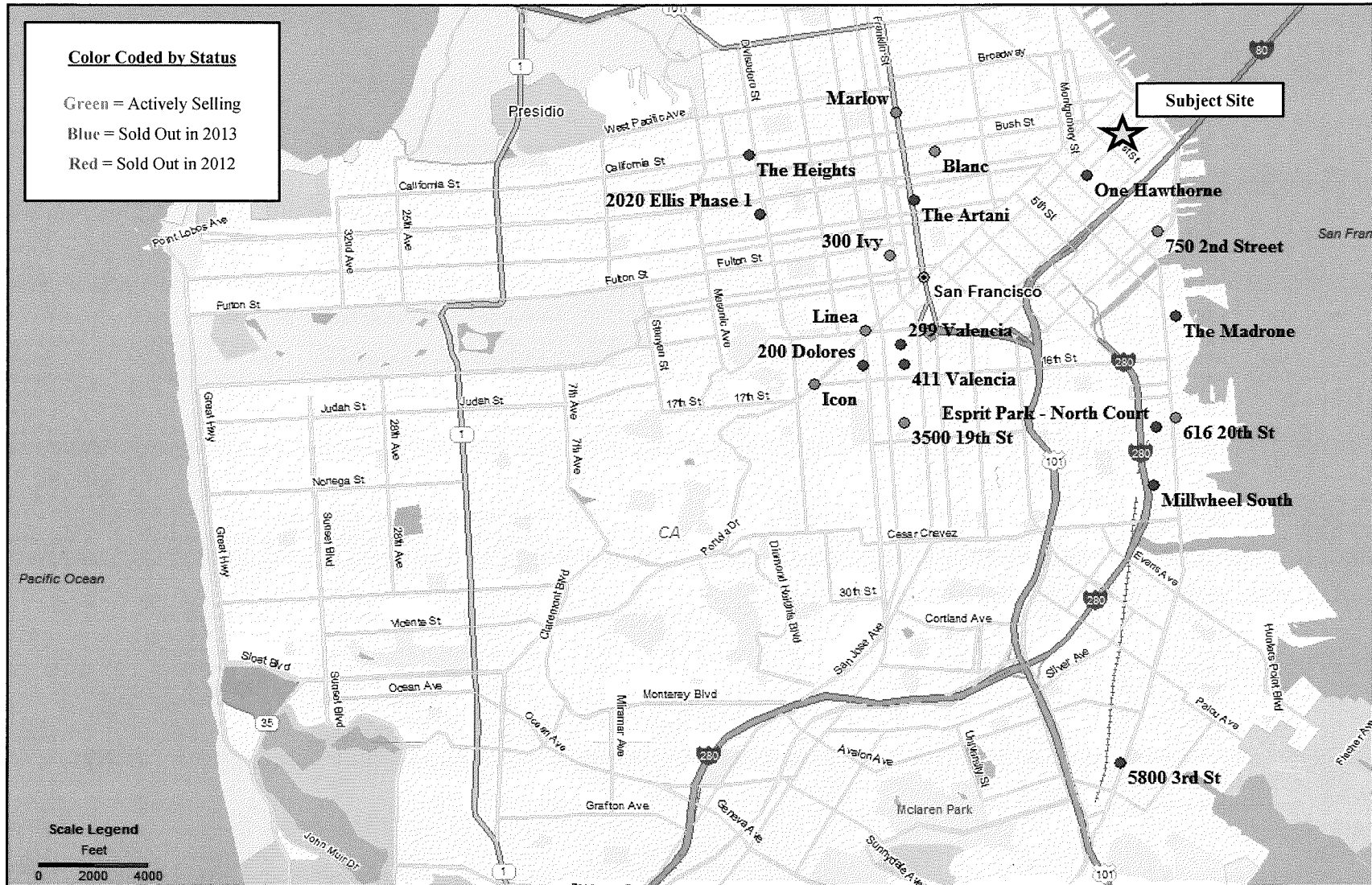


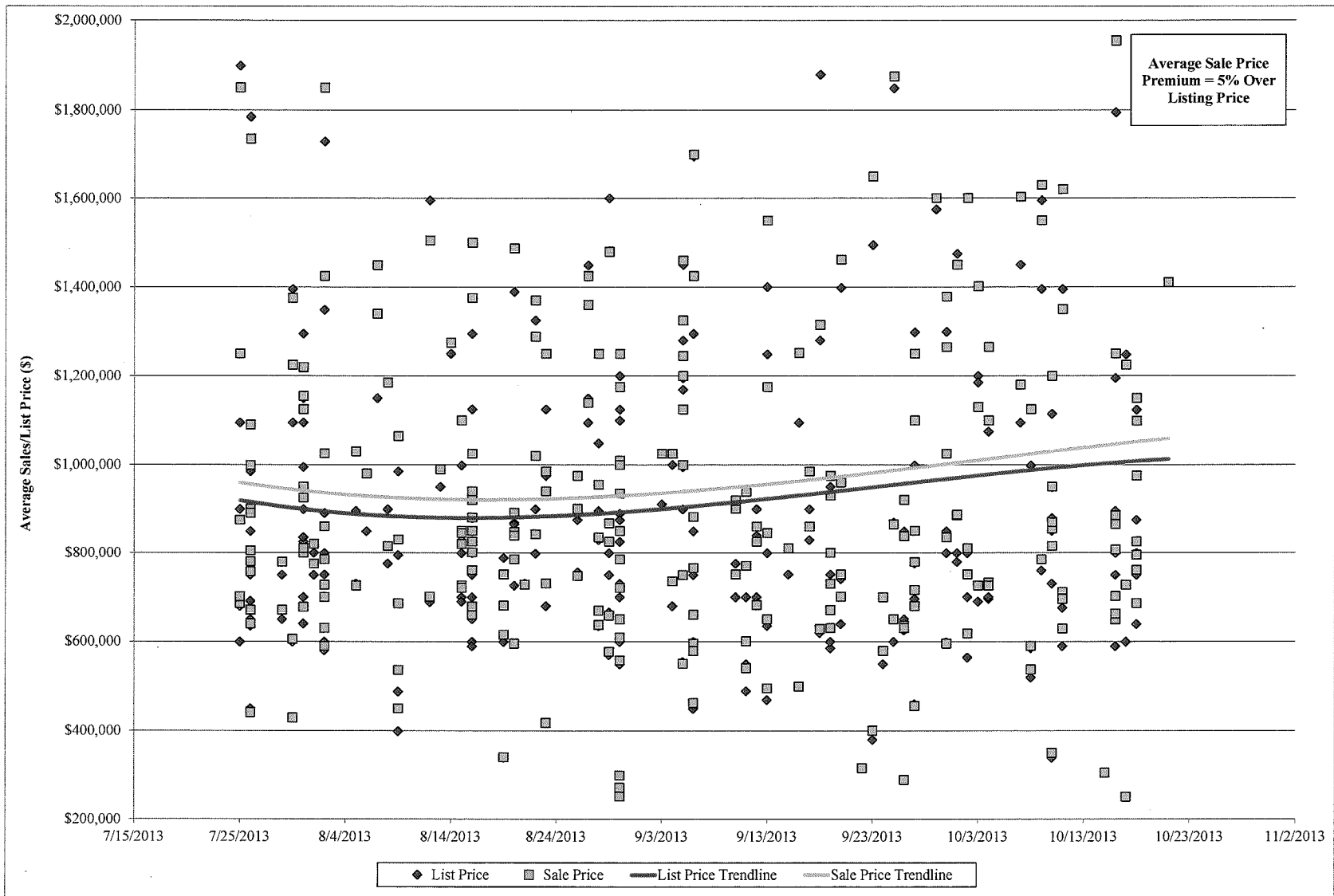
EXHIBIT II-3

RECENTLY BUILT CONDO COMMUNITY RESALES
SAN FRANCISCO, CALIFORNIA
OCTOBER 2013

Project Name	Total Units	Year Built	# Stories	Recently Sold							Active MLS Listings						
				L3M Sales		Home Size	Average List		Average Sale		Sale v. List	Listings		Home Size	Average List		DOM
				#	% Total		\$	PSF	\$	PSF		#	% Total		\$	PSF	
50+ Unit Condo Buildings Built Post-2000																	
St. Regis Residences	100	2005	40	1	1%	1,527	\$2,400,000	\$1,572	\$2,400,000	\$1,572	0%	0	0%	--	--	--	--
Radiance	99	2008	15	1	1%	1,814	1,595,000	879	1,550,000	854	-3%	0	0%	--	--	--	--
235 Berry ST	99	2007	6	1	1%	1,700	1,398,000	822	1,462,000	860	5%	0	0%	--	--	--	--
200 Dolores	13	2013	4	9	69%	1,297	1,382,778	1,066	1,421,667	1,096	3%	0	0%	--	--	--	--
Infinity Tower	650	2008	42	9	1%	1,187	1,247,222	1,051	1,253,222	1,056	0%	6	1%	1,389	\$2,024,667	\$1,457	49
The Brannan	390	2000	17	5	1%	1,198	1,224,600	1,022	1,225,400	1,023	0%	3	1%	1,395	1,845,296	1,323	50
One Hawthorne	165	2010	24	2	1%	915	1,172,500	1,281	1,170,000	1,279	0%	1	1%		1,950,000	--	40
Millenium Tower	425	2009	58	1	0%	1,027	1,150,000	1,120	1,220,000	1,188	6%	2	0%	2,318	3,972,500	1,714	19
Pacific Place	152	2001	9	1	1%	1,109	1,095,000	987	1,180,000	1,064	8%	1	1%	789	759,000	962	19
200 Brannan	191	2004	5	5	3%	1,430	1,057,978	740	1,119,333	783	6%	4	2%	1,311	1,174,000	895	55
The Lansing	82	2006	6	4	5%	1,174	1,020,750	869	1,068,750	910	5%	2	2%	1,282	1,045,000	815	15
Yerba Buena Lofts	200	2001	5	1	1%	1,288	998,500	775	1,002,000	778	0%	0	0%	--	--	--	--
246 2nd St	94	2000	17	2	2%	1,038	987,000	951	987,500	951	0%	0	0%	--	--	--	--
One Rincon	374	2008	60	9	2%	912	939,100	1,030	935,333	1,026	0%	9	2%	1,130	1,513,111	1,339	42
829 Folsom	69	2010	10	5	7%	960	874,200	911	912,000	950	4%	1	1%	1,462	1,450,000	992	22
SOMA Grand	246	2008	22	7	3%	982	865,143	881	886,857	903	3%	4	2%	761	809,000	1,063	52
The Hayes	128	2008	8	9	7%	984	842,322	856	901,667	916	7%	0	0%	--	--	--	--
The BridgeView	248	2001	26	6	2%	1,005	839,333	835	850,333	846	1%	5	2%	1,076	1,000,039	930	27
The Metropolitan	342	2004	26	8	2%	815	837,625	1,028	843,625	1,035	1%	3	1%	795	759,000	955	10
The Palms	300	2007	7	7	2%	820	728,643	888	722,429	881	-1%	4	1%	801	709,250	886	29
199 New Montgomery	168	2004	16	3	2%	765	684,667	895	712,117	930	4%	0	0%	--	--	--	--
The Beacon	595	2004	15	13	2%	1,015	667,161	657	667,141	657	0%	8	1%	916	881,125	962	72
2020 Ellis	21	2013	4	6	29%	652	653,333	1,003	653,333	1,003	0%	0	0%	--	--	--	--
The Village At Petrini Plac	134	2002	3	3	2%	637	652,667	1,025	666,667	1,047	2%	5	4%	751	590,400	786	53
Harrison Court	46	2000	2	0	0%	977	609,000	624	686,500	703	13%	0	0%	--	--	--	--
140 South Van Ness	212	2002	11	5	2%	843	604,200	717	628,800	746	4%	2	1%	690	387,652	562	10
1325 Indiana	48	2002	4	1	2%	948	599,000	632	726,000	766	21%	0	0%	--	--	--	--
Symphony Towers	130	2008	13	4	3%	744	524,000	705	530,500	714	1%	4	3%	712	605,000	850	39
170 Off Third	198	2007	8	2	1%	--	510,425	--	498,925	--	-2%	0	0%	--	--	--	--
888 7th St	224	2007	5	0	0%	516	351,894	683	377,394	732	7%	0	0%	--	--	--	--
Cubix	98	2008	8	2	2%	244	339,000	1,392	345,000	1,417	2%	0	0%	--	--	--	--
Total:	6,241			132	2%							64	1%				
Straight Average:	201	2006	16			1,017	\$930,679	\$915	\$954,984	\$939	3%			1,099	\$1,263,238	\$1,150	35

Source: RedFin

EXHIBIT II-3
RECENTLY BUILT CONDO COMMUNITY RESALES
SAN FRANCISCO, CALIFORNIA
OCTOBER 2013



Source: RedFin

EXHIBIT II-4

FLOOR PREMIUM ANALYSIS SELECT COMPARABLE PROPERTIES OCTOBER 2013

Case Study: Millenium Tower **City:** San Francisco
Tenure: For-Sale **Developer:** Millenium Partners
Study Period: Apr '09 - Sep '11 **Units:** 419 units
Floors: 3-58; (58s total) **Notes:** 150 closings during study period

Floor	Total SF Closed	Total Revenue	Rev/SF	% Prem over Floor	% Prem over Base
3	7,425	\$6,247,500	\$841	--	--
4	5,471	4,348,000	795	-5.5%	-5.5%
5	1,441	1,135,000	788	-0.9%	-6.4%
6	2,851	2,332,000	818	3.8%	-2.8%
7	3,286	2,559,000	779	-4.8%	-7.4%
8	2,769	2,181,000	788	1.1%	-6.4%
9	5,935	5,112,000	861	9.4%	2.4%
10	7,529	6,196,500	823	-4.4%	-2.2%
11	6,851	5,651,500	825	0.2%	-2.0%
12	4,930	4,332,000	879	6.5%	4.4%
14	2,252	1,905,000	846	-3.7%	0.5%
15	2,041	2,003,000	981	16.0%	16.6%
16	1,501	1,473,000	981	0.0%	16.6%
17	4,221	3,981,500	943	-3.9%	12.1%
18	5,433	5,190,500	955	1.3%	13.5%
19	4,420	4,324,000	978	2.4%	16.3%
41	1,952	2,750,000	1,409	12.2%	67.4%
42	3,666	4,933,500	1,346	-4.5%	59.9%
45	3,733	4,522,500	1,211	-10.0%	44.0%
47	4,122	5,580,000	1,354	11.7%	60.9%
48	9,089	12,205,500	1,343	-0.8%	59.6%
49	2,230	3,000,000	1,345	0.2%	59.9%
50	2,230	3,005,000	1,348	0.2%	60.2%
51	2,230	3,025,000	1,357	0.7%	61.2%
52	6,021	7,925,000	1,316	-3.0%	56.4%
53	5,545	8,100,000	1,461	11.0%	73.6%
54	3,315	5,083,000	1,533	5.0%	82.2%
55	2,819	4,326,500	1,535	0.1%	82.4%
56	5,525	7,650,000	1,385	-9.8%	64.6%
57	6,134	9,674,500	1,577	13.9%	87.4%
PH	1,633	2,400,000	1,470	-6.8%	74.7%
55 Floors	Chng in PSF:	\$628	1.5%	1.7%	

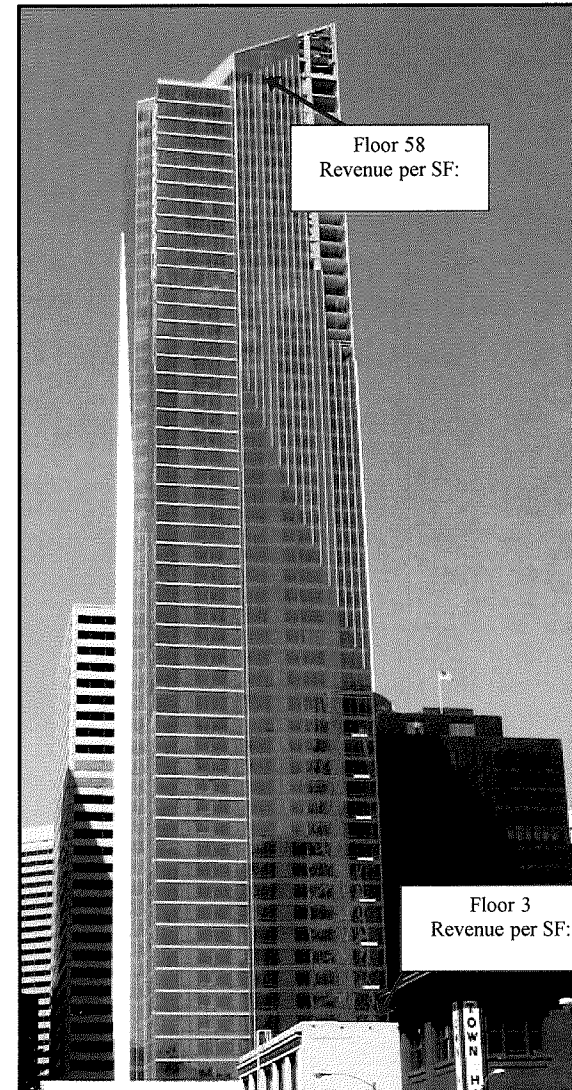


EXHIBIT II-4

FLOOR PREMIUM ANALYSIS SELECT COMPARABLE PROPERTIES OCTOBER 2013

Case Study: One Rincon Hill **City:** San Francisco
Tenure: For-Sale **Developer:** Urban West Associates
Study Period: Feb to June 2008 **Units:** 410 units
Floors: 8-42; (60s total) **Notes:** 156 closings during study period (26/mo)

Floor	Total SF Closed	Total Revenue	Rev/SF	% Prem over Floor	% Prem over Base
8	6,714	\$5,368,587	\$800	--	--
9	5,476	4,594,590	839	4.9%	4.9%
10	5,004	4,070,792	814	-3.0%	1.7%
11	5,004	4,271,375	854	4.9%	6.8%
12	7,551	6,326,475	838	-1.8%	4.8%
13	5,405	4,671,544	864	3.2%	8.1%
14	6,714	5,501,167	819	-5.2%	2.5%
15	6,732	5,547,572	824	0.6%	3.1%
16	5,487	4,542,724	828	0.5%	3.5%
17	7,551	6,539,591	866	4.6%	8.3%
18	5,476	4,782,601	873	0.8%	9.2%
19	5,708	4,946,126	867	-0.8%	8.4%
20	7,551	6,625,713	877	1.3%	9.7%
21	7,551	6,808,878	902	2.8%	12.8%
22	6,313	5,623,457	891	-1.2%	11.4%
23	6,714	6,092,674	907	1.9%	13.5%
24	6,242	5,675,261	909	0.2%	13.7%
25	3,152	2,749,982	872	-4.0%	9.1%
26	5,035	4,595,658	913	4.6%	14.1%
27	4,871	4,395,596	902	-1.1%	12.9%
28	6,285	5,770,737	918	1.7%	14.8%
31	1,449	1,260,000	870	-5.3%	8.7%
32	3,675	3,630,709	988	13.6%	23.6%
33	4,254	4,440,006	1,044	5.6%	30.5%
34	5,372	5,417,621	1,008	-3.4%	26.1%
35	1,278	1,289,900	1,009	0.1%	26.2%
36	1,309	1,291,734	987	-2.2%	23.4%
37	1,238	1,315,273	1,062	7.7%	32.9%
39	2,064	2,398,177	1,162	9.4%	45.3%
42	819	984,846	1,202	3.5%	50.4%
34 Floors	Chng in PSF:	\$403		1.5%	1.7%

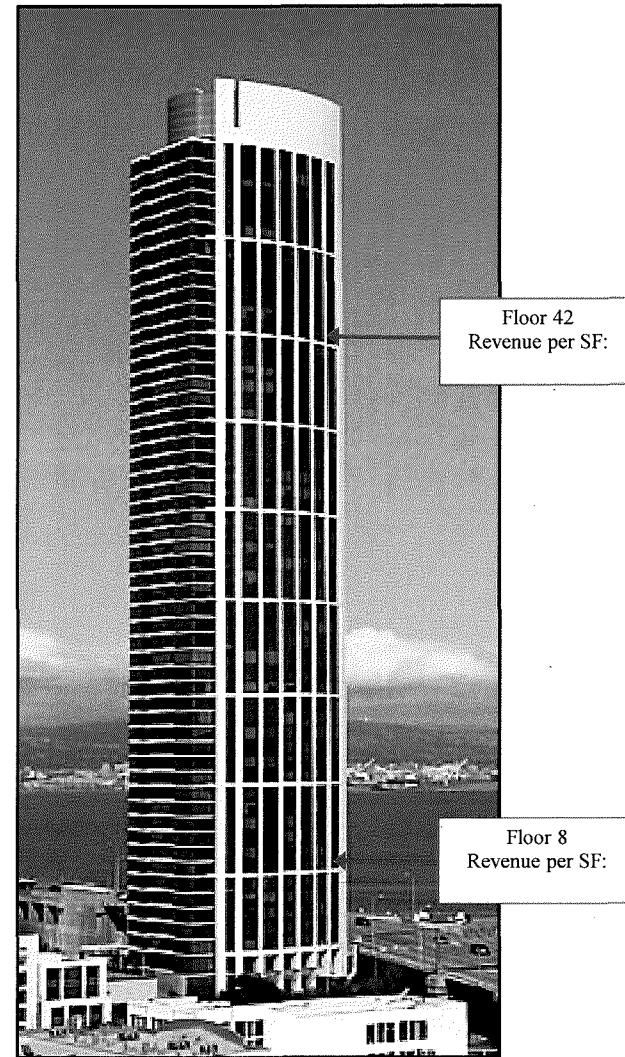
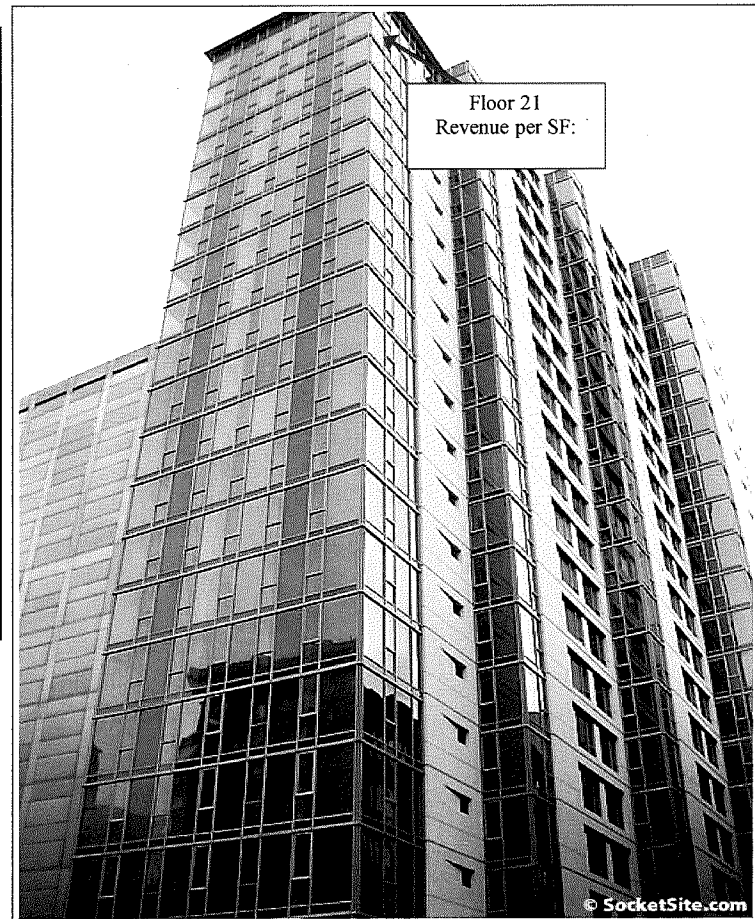


EXHIBIT II-4

FLOOR PREMIUM ANALYSIS SELECT COMPARABLE PROPERTIES OCTOBER 2013

Case Study: Blu
Tenure: For-Sale
Study Period: May '09 - Sep '11
Floors: 2-21; (21s total)
City: San Francisco
Developer: Lennar
Units: 114 units
Notes:

Floor	Total SF Closed	Total Revenue	Rev/SF	% Prem over Floor	% Prem over Base
3	6,664	\$3,795,000	\$569	--	--
4	6,664	\$4,433,225	\$665	16.8%	16.8%
5	6,614	\$3,920,612	\$593	-10.9%	4.1%
6	6,614	\$4,050,000	\$612	3.3%	7.5%
7	5,546	\$3,456,600	\$623	1.8%	9.4%
8	6,664	\$4,114,000	\$617	-0.9%	8.4%
9	6,614	\$4,313,000	\$652	5.6%	14.5%
10	6,664	\$4,498,000	\$675	3.5%	18.5%
11	6,614	\$4,599,000	\$695	3.0%	22.1%
12	6,614	\$4,879,000	\$738	6.1%	29.5%
14	6,614	\$5,031,500	\$761	3.1%	33.6%
15	6,664	\$5,028,000	\$755	-0.8%	32.5%
16	5,733	\$4,615,000	\$805	6.7%	41.4%
17	6,614	\$5,415,000	\$819	1.7%	43.8%
18	6,614	\$5,560,000	\$841	2.7%	47.6%
19	6,614	\$5,785,000	\$875	4.0%	53.6%
20	6,654	\$5,970,000	\$897	2.6%	57.5%
PH	9,816	\$10,186,308	\$1,038	15.7%	82.2%
21 Floors		Chng in PSF:	\$468	3.8%	4.8%



III. SITE SPECIFIC ANALYSIS AND RECOMMENDATIONS

EXHIBIT III-1

LOCAL SETTING
181 FREMONT STREET; SAN FRANCISCO, CALIFORNIA
OCTOBER 2013

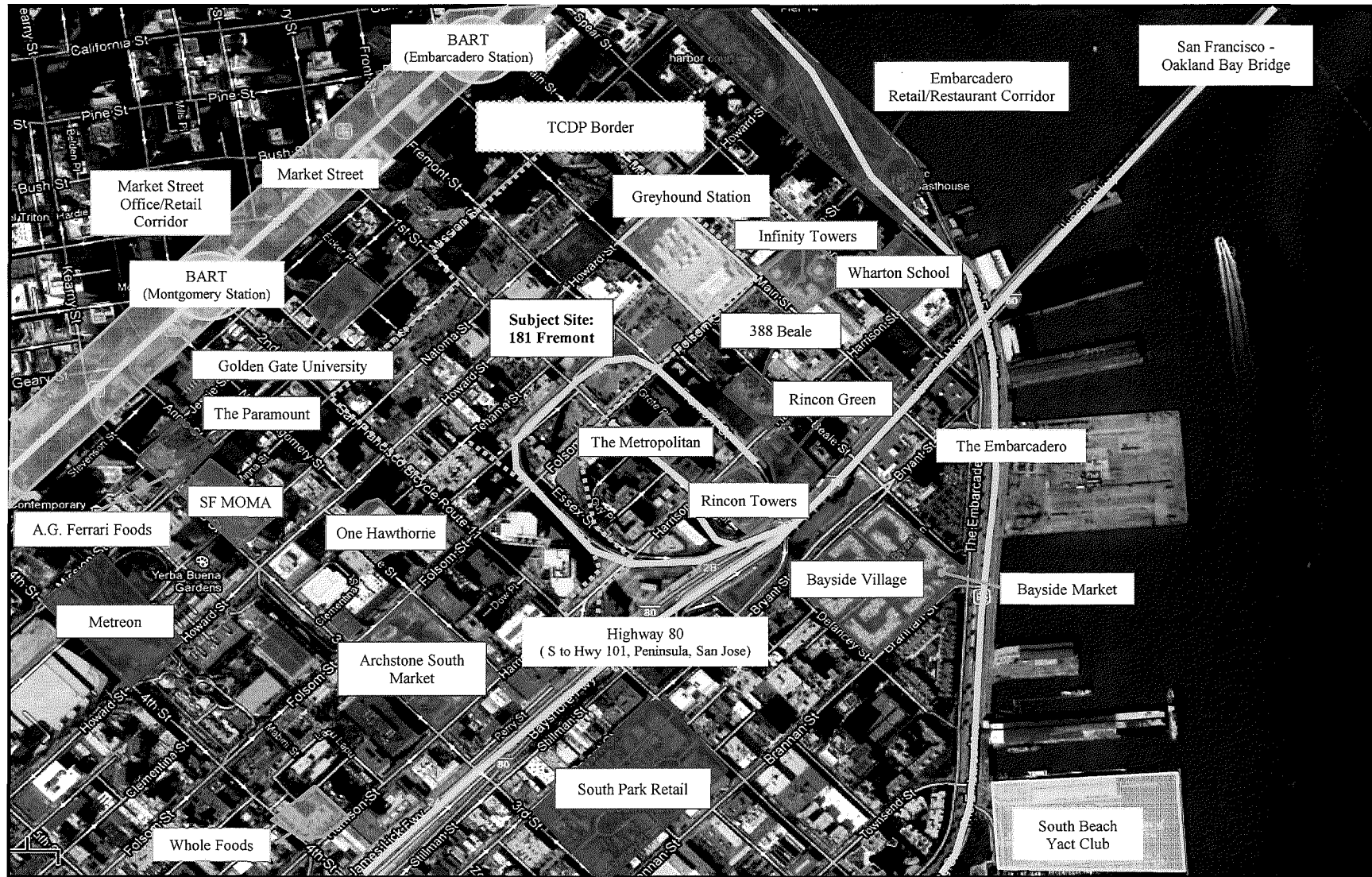


EXHIBIT III-2

SITE PLAN
181 FREMONT STREET, SAN FRANCISCO, CALIFORNIA

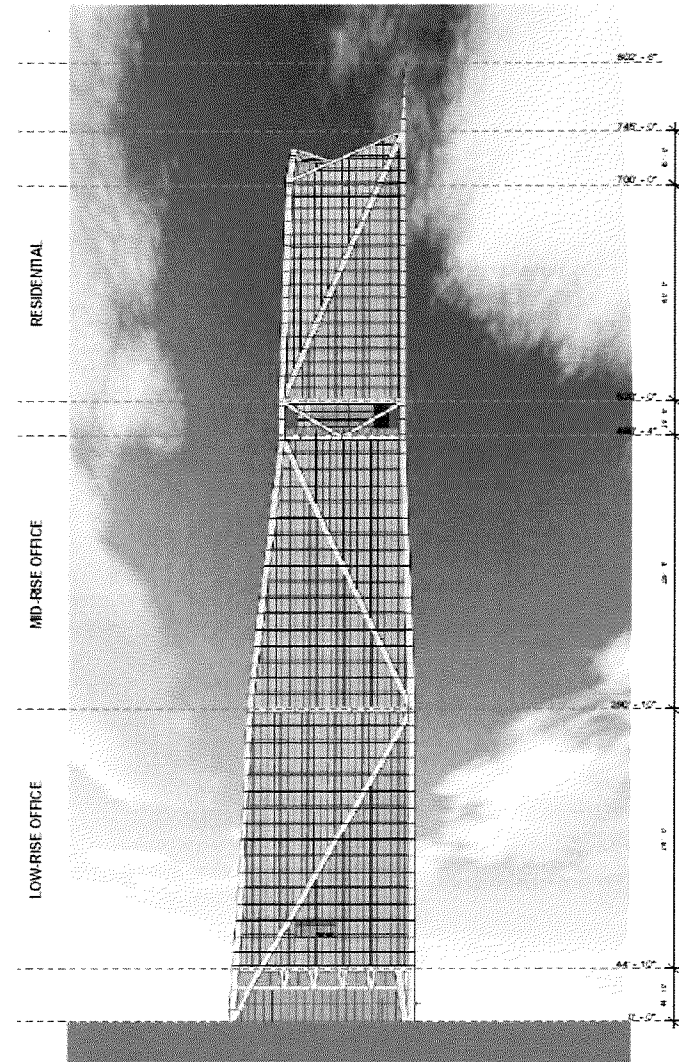


EXHIBIT III-2

SITE PLAN
181 FREMONT STREET, SAN FRANCISCO, CALIFORNIA

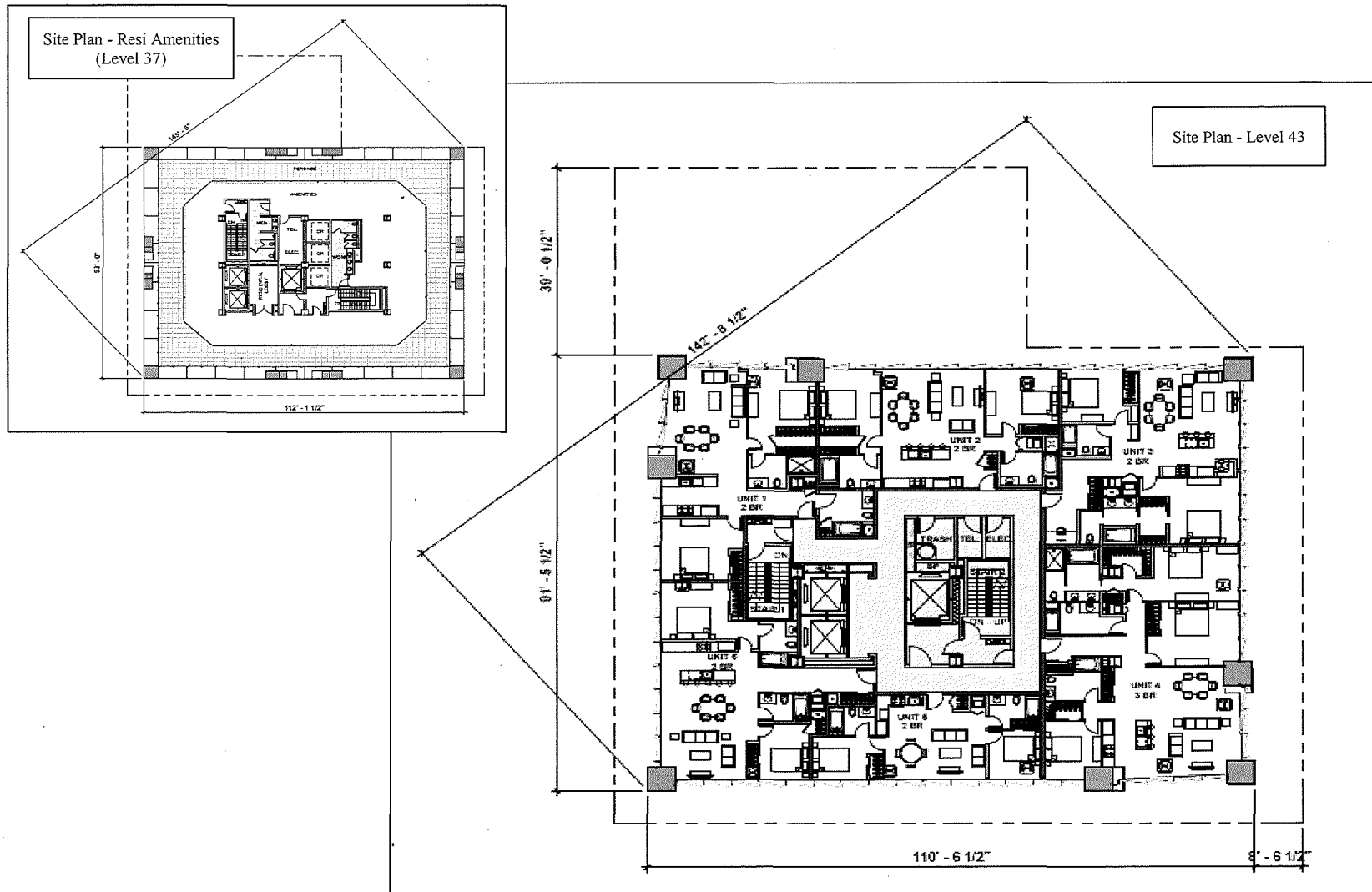
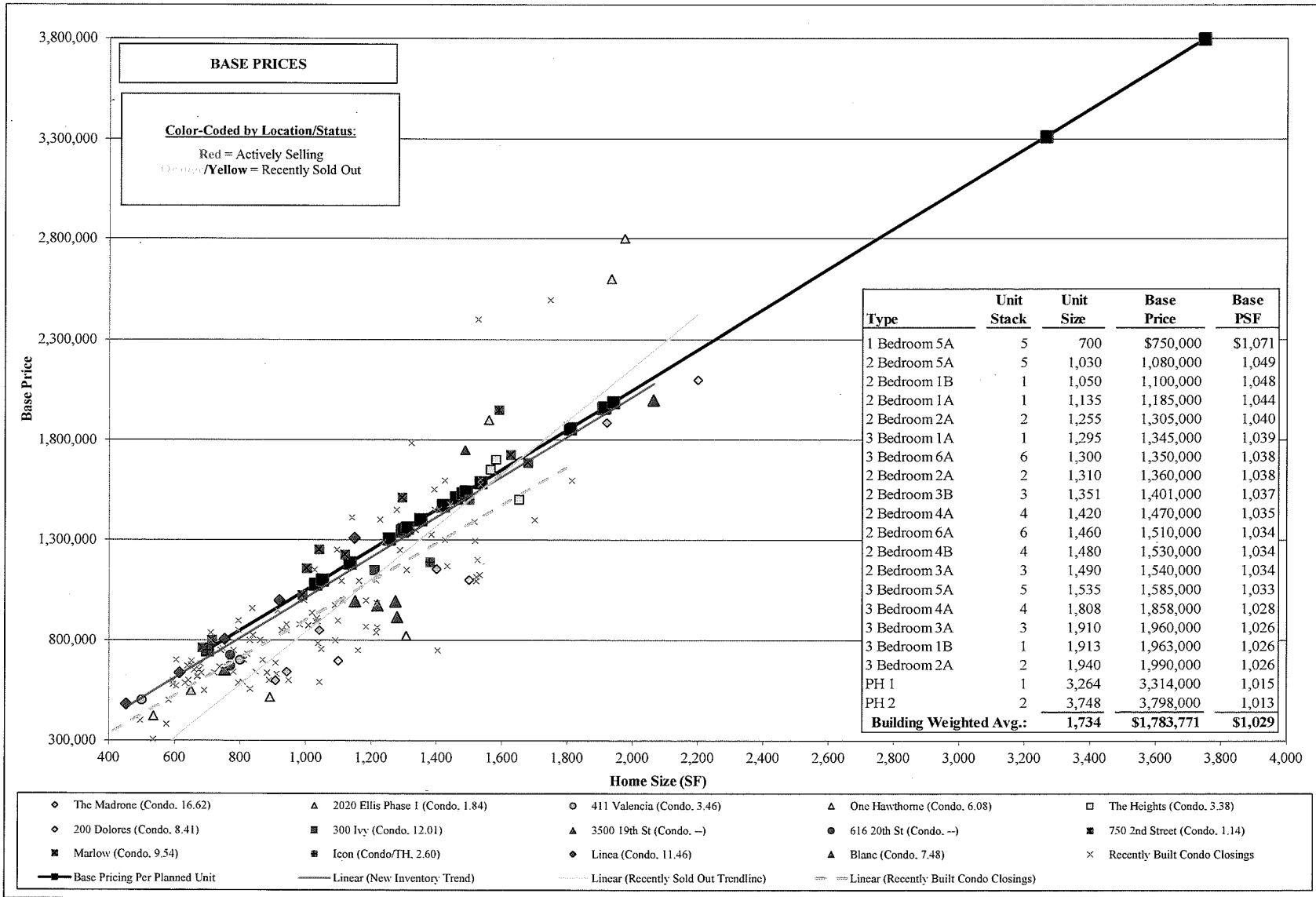


EXHIBIT III-3
FOR-SALE PRODUCT PROGRAM POSITIONING
SAN FRANCISCO, CALIFORNIA
OCTOBER 2013



Note: The numbers in parentheses represent lot size and absorption, respectively.

EXHIBIT III-4
PROGRAM AND PRICING RATIONALE
181 FREMONT STREET, SAN FRANCISCO, CALIFORNIA
OCTOBER 2013

I. Building Pricing Matrix (Market Rate Unit Values: 74 Total Units)

Unit One							Unit Two							Unit Three							Unit Four							Unit Five							Unit Six						
Floor	Unit Type	Unit Size	Unit Base Price	Cumulative Prem	Unit Total Price	PSF	Unit Type	Unit Size	Unit Base Price	Cumulative Prem	Unit Total Price	PSF	Unit Type	Unit Size	Unit Base Price	Cumulative Prem	Unit Total Price	PSF	Unit Type	Unit Size	Unit Base Price	Cumulative Prem	Unit Total Price	PSF	Unit Type	Unit Size	Unit Base Price	Cumulative Prem	Unit Total Price	PSF	Unit Type	Unit Size	Unit Base Price	Cumulative Prem	Unit Total Price	PSF					
54	PH	3,264	\$3,314,000	39.0%	\$4,631,315	\$1,419	PH	3,748	\$3,798,000	39.0%	\$5,307,705	\$1,416	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--						
53	PH	3,264	\$3,314,000	39.0%	\$4,606,460	1,419	PH	3,748	\$3,798,000	39.0%	\$5,279,220	1,409	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--						
52	3BR	1,913	\$1,963,000	38.3%	\$2,713,848	1,419	3BR	1,940	\$1,990,000	38.3%	\$2,751,175	1,418	2BR	1,351	\$1,401,000	38.3%	\$1,936,883	\$1,434	3BR	1,808	\$1,858,000	38.3%	\$2,568,685	\$1,421	--	--	--	--	--	--	--	--	--	--	--	--					
51	3BR	1,913	\$1,963,000	37.5%	\$2,699,125	1,411	3BR	1,940	\$1,990,000	37.5%	\$2,736,250	1,410	2BR	1,351	\$1,401,000	37.5%	\$1,926,375	1,426	3BR	1,808	\$1,858,000	37.5%	\$2,554,750	1,413	--	--	--	--	--	--	--	--	--	--	--	--					
50	3BR	1,913	\$1,963,000	36.8%	\$2,684,403	1,403	3BR	1,940	\$1,990,000	36.8%	\$2,721,325	1,403	2BR	1,351	\$1,401,000	36.8%	\$1,915,868	1,418	3BR	1,808	\$1,858,000	36.8%	\$2,540,815	1,405	--	--	--	--	--	--	--	--	--	--	--	--					
49	2BR	1,050	\$1,100,000	36.0%	\$1,496,000	1,425	2BR	1,310	\$1,360,000	36.0%	\$1,849,600	1,412	3BR	1,910	\$1,960,000	36.0%	\$2,665,600	1,396	2BR	1,480	\$1,530,000	36.0%	\$2,080,800	1,406	2BR	1,535	\$1,585,000	36.0%	\$2,135,600	\$1,404	--	--	--	--	--	--	--				
48	2BR	1,050	\$1,100,000	35.3%	\$1,487,500	1,417	2BR	1,310	\$1,360,000	35.3%	\$1,839,400	1,404	3BR	1,910	\$1,960,000	35.3%	\$2,650,400	1,392	2BR	1,480	\$1,530,000	35.3%	\$2,069,325	1,398	2BR	1,535	\$1,585,000	35.3%	\$2,143,375	1,397	--	--	--	--	--	--	--				
47	2BR	1,050	\$1,100,000	34.5%	\$1,479,500	1,409	2BR	1,310	\$1,360,000	34.5%	\$1,829,200	1,396	3BR	1,910	\$1,960,000	34.5%	\$2,634,200	1,380	2BR	1,480	\$1,530,000	34.5%	\$2,057,850	1,390	2BR	1,535	\$1,585,000	34.5%	\$2,131,825	1,389	--	--	--	--	--	--	--				
46	2BR BMR	1,050	\$1,100,000	33.8%	\$1,471,250	1,401	2BR	1,310	\$1,360,000	33.8%	\$1,819,000	1,389	3BR	1,910	\$1,960,000	33.8%	\$2,621,500	1,373	2BR	1,480	\$1,530,000	33.8%	\$2,046,375	1,383	2BR	1,535	\$1,585,000	33.8%	\$2,119,938	1,381	--	--	--	--	--	--	--				
45	2BR BMR	1,050	\$1,100,000	33.0%	\$1,463,000	1,393	2BR	1,310	\$1,360,000	33.0%	\$1,808,800	1,381	3BR	1,910	\$1,960,000	33.0%	\$2,606,800	1,365	2BR	1,480	\$1,530,000	33.0%	\$2,034,900	1,375	2BR	1,535	\$1,585,000	33.0%	\$2,108,050	1,373	--	--	--	--	--	--	--				
44	2BR BMR	1,050	\$1,100,000	32.3%	\$1,454,750	1,385	2BR	1,310	\$1,360,000	32.3%	\$1,798,600	1,373	3BR	1,910	\$1,960,000	32.3%	\$2,592,100	1,357	2BR	1,480	\$1,530,000	32.3%	\$2,023,425	1,367	2BR	1,535	\$1,585,000	32.3%	\$2,096,163	1,366	--	--	--	--	--	--	--				
43	2BR BMR	1,050	\$1,100,000	31.5%	\$1,446,300	1,378	2BR	1,310	\$1,360,000	31.5%	\$1,788,400	1,365	3BR	1,910	\$1,960,000	31.5%	\$2,577,400	1,349	2BR	1,480	\$1,530,000	31.5%	\$2,011,950	1,359	2BR	1,535	\$1,585,000	31.5%	\$2,084,425	1,358	--	--	--	--	--	--	--				
42	2BR BMR	1,050	\$1,100,000	30.8%	\$1,438,250	1,370	2BR	1,310	\$1,360,000	30.8%	\$1,778,200	1,357	3BR	1,910	\$1,960,000	30.8%	\$2,562,700	1,342	2BR	1,480	\$1,530,000	30.8%	\$2,006,475	1,352	2BR	1,535	\$1,585,000	30.8%	\$2,072,388	1,350	--	--	--	--	--	--	--				
41	2BR BMR	1,295	\$1,345,000	30.0%	\$1,748,500	1,350	2BR	1,255	\$1,305,000	30.0%	\$1,696,500	1,352	3BR	1,490	\$1,540,000	30.0%	\$2,002,000	1,344	2BR	1,420	\$1,470,000	30.0%	\$1,911,000	1,346	2BR BMR	700	\$750,000	30.0%	\$975,000	1,393	2BR	1,460	\$1,510,000	30.0%	\$1,963,000	\$1,345					
40	2BR	1,135	\$1,185,000	29.3%	\$1,531,613	1,349	2BR	1,255	\$1,305,000	29.3%	\$1,686,713	1,344	2BR	1,490	\$1,540,000	29.3%	\$1,990,450	1,336	2BR	1,420	\$1,470,000	29.3%	\$1,899,975	1,338	2BR BMR	1,030	\$1,080,000	29.3%	\$1,385,900	1,355	2BR BMR	1,300	\$1,350,000	29.3%	\$1,744,875	1,342					
39	2BR	1,135	\$1,185,000	28.5%	\$1,522,725	1,342	2BR	1,255	\$1,305,000	28.5%	\$1,676,925	1,336	2BR	1,490	\$1,540,000	28.5%	\$1,978,900	1,328	2BR	1,420	\$1,470,000	28.5%	\$1,888,950	1,330	2BR BMR	1,030	\$1,080,000	28.5%	\$1,387,800	1,347	2BR BMR	1,300	\$1,350,000	28.5%	\$1,734,750	1,334					
38				27.8%						27.8%						27.8%					27.8%							27.8%													
37				27.0%						27.0%						27.0%					27.0%							27.0%													
36				26.3%						26.3%						26.3%					26.3%							26.3%													
35				25.5%						25.5%						25.5%					25.5%							25.5%													
34				24.8%						24.8%						24.8%					24.8%							24.8%													
33				24.0%						24.0%						24.0%					24.0%							24.0%													
32				23.3%						23.3%						23.3%					23.3%							23.3%													
31				22.5%						22.5%						22.5%					22.5%							22.5%													
30				21.8%						21.8%						21.8%					21.8%							21.8%													
29				21.0%						21.0%						21.0%					21.0%							21.0%													
28				20.3%						20.3%						20.3%					20.3%							20.3%													
27				19.5%						19.5%						19.5%					19.5%							19.5%													
26				18.8%						18.8%						18.8%					18.8%							18.8%													
25				18.0%						18.0%						18.0%					18.0%							18.0%													
24				17.3%						17.3%						17.3%					17.3%							17.3%													
23				16.5%						16.5%						16.5%					16.5%							16.5%													
22				15.8%						15.8%						15.8%					15.8%							15.8%													
21				15.0%						15.0%						15.0%					15.0%							15.0%													
20				14.3%						14.3%						14.3%					14.3%							14.3%													
19				13.5%						13.5%						13.5%					13.5%							13.5%													
18				12.8%						12.8%						12.8%					12.8%							12.8%													
17				12.0%						12.0%						12.0%					12.0%							12.0%													
16				11.3%						11.3%						11.3%					11.3%							11.3%													
15				10.5%						10.5%						10.5%					10.5%							10.5%													
14				9.8%						9.8%						9.8%					9.8%							9.8%													
13				9.0%						9.0%						9.0%					9.0%							9.0%													
12				8.3%						8.3%						8.3%					8.3%							8.3%													
11				7.5%						7.5%						7.5%					7.5%							7.5%													
10				6.8%						6.8%						6.8%					6.8%							6.8%													
9				6.0%						6.0%						6.0%					6.0%							6.0%													
8				5.3%						5.3%																															

EXHIBIT III-5
FOR-SALE PRODUCT PROGRAM POSITIONING INCLUDING PREMIUMS
SAN FRANCISCO, CALIFORNIA
OCTOBER 2013

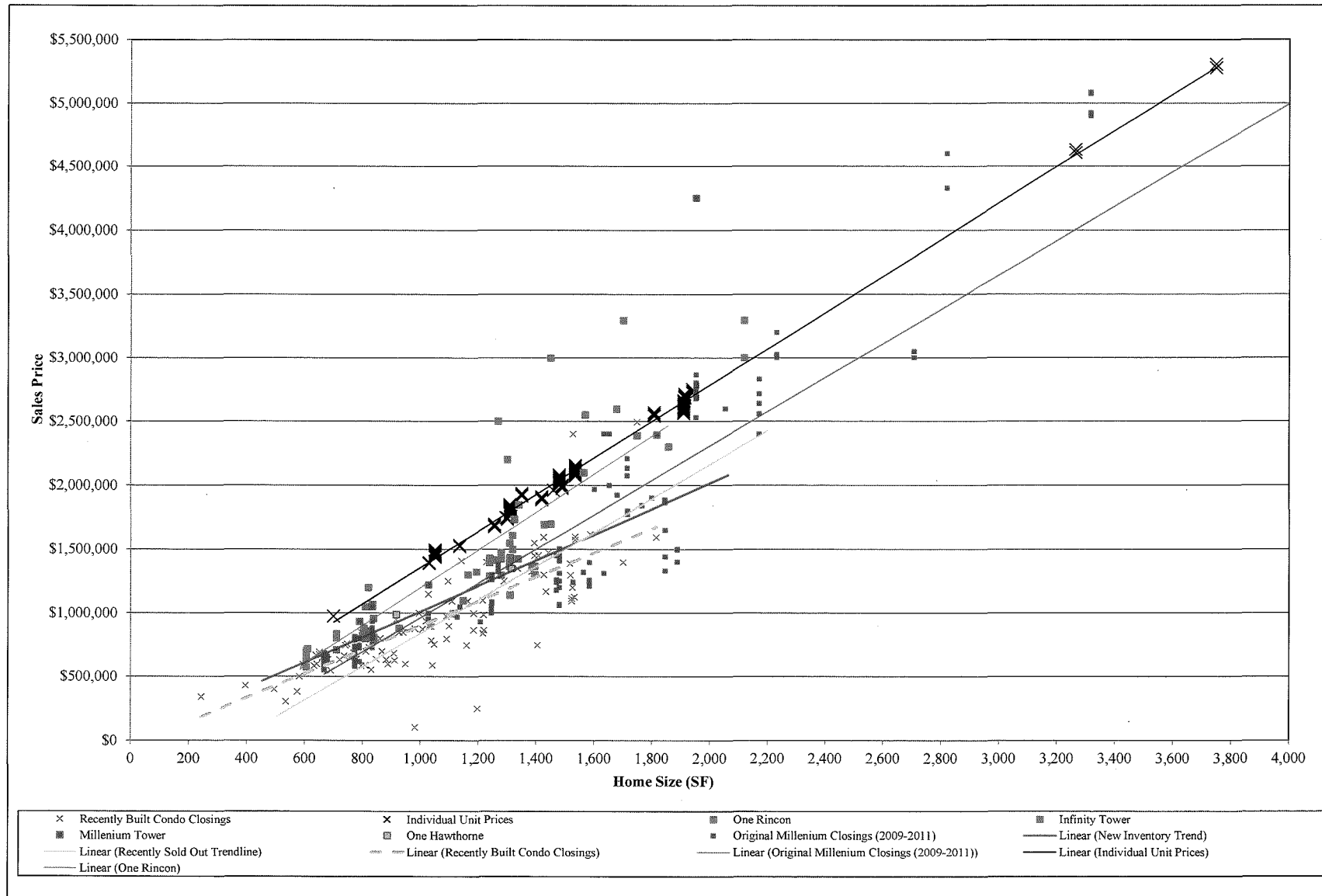


EXHIBIT III-6
HIGH RISE CONDOMINIUM SALES AND LISTINGS BY FLOOR
SAN FRANCISCO, CALIFORNIA
LAST SIX MONTHS

Floor	181 Fremont Recommendations				Millennium Tower				Infinity Tower				One Rincon				St. Regis Residences				The Metropolitan			
	#	Size	Price	PSF	#	Size	Price	PSF	#	Size	Price	PSF	#	Size	Price	PSF	#	Size	Price	PSF	#	Size	Price	PSF
54	2	3,506	4,969,510	\$1,417	--	--	--	--	--	--	--	--	1	1,449	\$2,999,000	\$2,070	--	--	--	--	--	--	--	--
53	2	3,506	4,942,840	1,410	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
52	4	1,753	2,492,648	1,422	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
51	4	1,753	2,479,125	1,414	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
50	4	1,753	2,465,603	1,407	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
49	5	1,457	2,049,520	1,407	1	2,819	\$5,550,000	\$1,969	--	--	--	--	1	610	718,000	1,177	--	--	--	--	--	--	--	--
48	5	1,457	2,038,218	1,399	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
47	5	1,457	2,026,915	1,391	--	--	--	--	--	--	--	--	1	819	1,200,000	1,465	--	--	--	--	--	--	--	--
46	5	1,457	2,015,613	1,383	--	--	--	--	--	--	--	--	1	1,278	1,469,000	1,149	--	--	--	--	--	--	--	--
45	5	1,457	2,004,310	1,376	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
44	5	1,457	1,993,008	1,368	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
43	5	1,457	1,981,705	1,360	1	1,952	4,250,000	2,177	--	--	--	--	1	605	699,000	1,155	--	--	--	--	--	--	--	--
42	5	1,457	1,970,403	1,352	--	--	--	--	2	2,117	\$3,147,500	\$1,487	1	710	838,000	1,180	--	--	--	--	--	--	--	--
41	6	1,270	1,716,000	1,351	--	--	--	--	--	--	--	--	1	710	810,000	1,141	--	--	--	--	--	--	--	--
40	6	1,272	1,708,254	1,343	--	--	--	--	--	--	--	--	2	721	820,500	1,138	--	--	--	--	--	--	--	--
39	6	1,272	1,698,342	1,336	--	--	--	--	1	1,300	2,200,000	1,692	2	658	767,000	1,167	--	--	--	--	--	--	--	--
38	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
37	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
36	--	--	--	--	--	--	--	--	1	1,700	3,295,000	1,938	1	1,278	1,425,000	1,115	--	--	--	--	--	--	--	--
35	--	--	--	--	--	--	--	--	2	1,332	1,792,500	1,346	--	--	--	--	--	--	--	--	--	--	--	--
34	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
33	--	--	--	--	--	--	--	--	1	1,268	2,500,000	1,972	1	1,309	1,435,000	1,096	--	--	--	--	--	--	--	--
32	--	--	--	--	--	--	--	--	1	1,563	2,100,000	1,344	--	--	--	--	--	--	--	--	--	--	--	--
31	--	--	--	--	--	--	--	--	1	1,563	2,100,000	1,344	--	--	--	--	1	1,731	\$1,699,000	\$982	--	--	--	--
30	--	--	--	--	--	--	--	--	1	804	880,000	1,095	1	1,856	2,300,000	1,239	--	--	--	--	--	--	--	--
29	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
28	--	--	--	--	--	--	--	--	1	1,748	2,388,000	1,366	2	1,355	1,557,500	1,149	--	--	--	--	--	--	--	--
27	--	--	--	--	--	--	--	--	--	--	--	--	1	1,238	1,430,000	1,155	1	1,767	2,250,000	1,273	--	--	--	--
26	--	--	--	--	--	--	--	--	2	1,058	1,299,500	1,228	1	710	710,000	1,000	1	1,527	2,400,000	1,572	--	--	--	--
25	--	--	--	--	--	--	--	--	1	1,193	1,323,000	1,109	--	--	--	--	--	--	--	--	--	--	--	--
24	--	--	--	--	1	789	935,000	1,185	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
23	--	--	--	--	--	--	--	--	--	--	--	--	1	1,238	1,395,000	1,127	--	--	--	--	--	--	--	--
22	--	--	--	--	--	--	--	--	1	1,163	1,300,000	1,118	--	--	--	--	1	1,147	1,250,000	1,090	--	--	--	--
21	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
20	--	--	--	--	1	1,027	1,220,000	1,188	1	1,307	1,400,000	1,071	--	--	--	--	--	--	--	--	2	981	\$1,112,500	\$1,135
20+ Avg:	74	1,734	\$2,409,501	\$1,390	4	1,647	\$2,988,750	\$1,815	16	1,394	\$1,978,885	\$1,420	19	1,034	\$1,285,813	\$1,244	4	1,543	\$1,899,750	\$1,231	2	981	\$1,112,500	\$1,135
19	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	795	859,000	1,081
18	--	--	--	--	--	--	--	--	1	1,317	1,499,000	1,138	--	--	--	--	--	--	--	--	1	795	860,000	1,082
17	--	--	--	--	--	--	--	--	1	1,307	1,365,000	1,044	--	--	--	--	--	--	--	--	2	599	683,000	1,141
16	--	--	--	--	1	833	1,070,000	1,285	--	--	--	--	1	605	650,000	1,074	--	--	--	--	1	506	588,000	1,162
15	--	--	--	--	--	--	--	--	1	1,317	1,610,000	1,222	--	--	--	--	--	--	--	--	--	--	--	--
14	--	--	--	--	--	--	--	--	--	--	--	--	3	887	929,667	1,048	--	--	--	--	--	--	--	--
13	--	--	--	--	--	--	--	--	--	--	--	--	1	1,278	1,295,000	1,013	--	--	--	--	--	--	--	--
12	--	--	--	--	--	--	--	--	--	--	--	--	1	1,238	1,288,000	1,040	--	--	--	--	--	--	--	--
11	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	995	1,025,000	1,030
10	--	--	--	--	--	--	--	--	2	973	962,500	989	--	--	--	--	--	--	--	--	1	675	678,000	1,004
9	--	--	--	--	--	--	--	--	--	--	--	--	1	1,309	1,140,000	871	--	--	--	--	1	506	495,000	978
8	--	--	--	--	--	--	--	--	3	1,381	1,321,667	957	--	--	--	--	--	--	--	--	--	--	--	--
7	--	--	--	--	--	--	--	--	1	1,113	999,000	898	--	--	--	--	--	--	--	--	--	--	--	--
6	--	--	--	--	1	833	1,050,000	1,261	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
5	--	--	--	--	--	--	--	--	1	1,394	1,365,000	979	--	--	--	--	--	--	--	--	--	--	--	--
4	--	--	--	--	--	--	--	--	3	1,020	971,667	953	--	--	--	--	--	--	--	--	--	--	--	--
3	--	--	--	--	1	1,816	2,395,000	1,319	4	990	965,250	975	--	--	--	--	--	--	--	--	--	--	--	--
2	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	963	930,000	966
1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Below 20 Avg:	0	--	--	--	3	1,161	\$1,505,000	\$1,297	17	1,201	\$1,228,787	\$1,023	8	987	\$979,944	\$993	0	--	--	--	9	729	\$764,750	\$1,049

EXHIBIT III-6
HIGH RISE CONDOMINIUM SALES AND LISTINGS BY FLOOR
SAN FRANCISCO, CALIFORNIA
LAST SIX MONTHS

Floor	181 Fremont Recommendations				SoMa Grand				The Beacon				The Watermark				The Brannan				The Bridgeview				One Hawthorne			
	#	Size	Price	PSF	#	Size	Price	PSF	#	Size	Price	PSF	#	Size	Price	PSF	#	Size	Price	PSF	#	Size	Price	PSF	#	Size	Price	PSF
54	2	3,506	4,969,510	\$1,417	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
53	2	3,506	4,942,840	1,410	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
52	4	1,753	2,492,648	1,422	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
51	4	1,753	2,479,125	1,414	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
49	4	1,753	2,465,603	1,407	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
48	5	1,457	2,049,520	1,407	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
47	5	1,457	2,038,218	1,399	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
46	5	1,457	2,026,915	1,391	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
45	5	1,457	2,015,613	1,383	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
44	5	1,457	2,004,310	1,376	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
43	5	1,457	1,993,008	1,368	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
42	5	1,457	1,981,705	1,360	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
41	5	1,457	1,970,403	1,352	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
40	6	1,270	1,716,000	1,351	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
39	6	1,272	1,708,254	1,343	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
38	6	1,272	1,698,342	1,336	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
37	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
36	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
35	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
34	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
33	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
32	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
31	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
30	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
29	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
28	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
27	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
26	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
25	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	2,106	\$2,750,000	\$1,306	--	--	--	--
24	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	832	775,000	931	--	--	--	--
23	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
22	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
21	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--	1,950,000	--
20	--	--	--	--	--	1	764	825,000	1,080	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
20+ Avg:	74	1,734	\$2,409,501	\$1,398	1	764	\$825,000	\$1,080	0	--	--	--	1	1,259	\$1,695,000	\$1,346	0	--	--	--	2	1,469	\$1,762,500	\$1,200	1	--	\$1,950,000	--
19	--	--	--	--	1	756	725,000	959	--	--	--	--	--	--	--	--	--	--	--	--	1	1,321	1,690,888	1,280	--	--	--	--
18	--	--	--	--	1	1,146	1,289,000	1,125	--	--	--	--	--	--	--	--	--	--	--	--	1	1,215	1,099,000	905	--	--	--	--
17	--	--	--	--	1	1,201	1,245,000	1,037	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
16	--	--	--	--	1	664	596,000	898	1	822	725,000	882	--	--	--	--	2	1,244	1,852,500	1,489	--	--	--	--	--	--	--	--
15	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
14	--	--	--	--	1	756	670,000	886	1	982	104,077	106	--	--	--	--	--	--	--	--	1	1,102	969,888	880	1	1,313	1,350,000	1,028
13	--	--	--	--	--	--	--	--	2	943	819,000	869	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
12	--	--	--	--	2	765	794,500	1,039	1	868	729,000	840	--	--	--	--	1	1,425	1,505,000	1,056	2	1,052	914,000	869	--	--	--	--
11	--	--	--	--	1	765	649,000	848	1	1,286	1,050,000	816	--	--	--	--	--	--	--	--	1	669	620,000	927	1	915	990,000	1,082
10	--	--	--	--	2	761	650,000	855	1	868	699,000	805	--	--	--	--	--	--	--	--	1	669	615,000	919	--	--	--	--
9	--	--	--	--	2	1,184	974,000	823	1	862	699,000	811	--	--	--	--	1	1,516	1,487,000	981	--	--	--	--	--	--	--	--
8	--	--	--	--	3	850	786,333	925	2	1,215	1,066,000	878	--	--	--	--	1	1,516	1,550,000	1,022	--	--	--	--	--	--	--	--
7	--	--	--	--	--	--	--	--	2	839	633,500	756	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
6	--	--	--	--	--	--	--	--	4	985	724,000	735	--	--	--	--	--	--	--	--	1	675	334,411	495	--	--	--	--
5	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
4	--	--	--	--	--	--	--	--	4	1,135	662,753	584	1	1,019	1,010,000	991	1	981	870,000	887	--	--	--	--	--	--	--	--
3	--	--	--	--	--	--	--	--	1	1,518	1,218,750	803	--	--	--	--	--	--	--	--	1	826	325,897	395	--	--	--	--
2	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	927	855,000	922	1	1,038	785,000	756	--	--	--	--
1	--	--	--	--	--	--	--	--	1	592	489,000	826	1	831	699,000	841	--	--	--	--	--	--	--	--	--	--	--	--
Below 20 Avg:	0	--	--	--	15	885	\$840,883	\$950	22	993	\$739,929	\$745	2	925	\$854,500	\$924	8	1,276	\$1,401,484	\$1,099	9	906	\$707,900	\$782	2	1,114	\$1,170,000	\$1,050



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- | | |
|---|---|
| <input checked="" type="checkbox"/> Affordable Housing (Sec. 415) | <input checked="" type="checkbox"/> First Source Hiring (Admin. Code) |
| <input checked="" type="checkbox"/> Jobs Housing Linkage Program (Sec. 413) | <input checked="" type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input checked="" type="checkbox"/> Downtown Park Fee (Sec. 412) | <input checked="" type="checkbox"/> Other |

1650 Mission St.
Suite 400
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CA 94103-2479

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Planning
Information:
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Planning Commission Motion 19262 Section 309

HEARING DATE: OCTOBER 16, 2014

Date: October 2, 2014
Case No.: 2014.1399WX
Project Address: 181 Fremont Street
Project Site Zoning: C-3-O (SD) (Downtown, Office: Special Development)
700-S-2 Height and Bulk District
Transit Center C-3-O (SD) Commercial Special Use District
Transbay C-3 Special Use District
Block/Lot: 3719/010, 011 (181 Fremont Street)
Project Sponsor: Janette D'Elia
c/o Jay Paul Company, LLC
Four Embarcadero Center, Suite 3620
San Francisco, CA 94111
Staff Contact: Kevin Guy – (415) 558-6163
kevin.guy@sfgov.org

ADOPTING FINDINGS RELATED TO THE APPROVAL OF A DOWNTOWN PROJECT AUTHORIZATION UNDER PLANNING CODE SECTION 309 TO AMEND THE CONDITIONS OF APPROVAL FOR A PREVIOUSLY-APPROVED PROJECT TO DEMOLISH AN EXISTING THREE STORY BUILDING AND AN EXISTING TWO-STORY BUILDING AND CONSTRUCT A NEW 52-STORY BUILDING REACHING A MAXIMUM HEIGHT OF APPROXIMATELY 700 FEET, WITH A DECORATIVE SCREEN REACHING A MAXIMUM HEIGHT OF APPROXIMATELY 745 FEET AND A SPIRE REACHING A MAXIMUM HEIGHT OF APPROXIMATELY 800 FEET, CONTAINING APPROXIMATELY 404,000 SQUARE FEET OF OFFICE USES, APPROXIMATELY 74 DWELLING UNITS, APPROXIMATELY 2,000 SQUARE FEET OF RETAIL SPACE, AND APPROXIMATELY 68,000 SQUARE FEET OF SUBTERRANEAN AREA WITH OFF-STREET PARKING, LOADING, AND MECHANICAL SPACE. THE PROJECT SITE IS LOCATED WITHIN THE C-3-O(SD) (DOWNTOWN OFFICE, SPECIAL DEVELOPMENT) DISTRICT, THE 700-S-2 HEIGHT AND BULK DISTRICT, THE TRANSIT CENTER C-3-O(SD) COMMERCIAL SPECIAL USE DISTRICT, AND THE TRANSBAY C-3 SPECIAL USE DISTRICT.

PREAMBLE

On December 6, 2012, the Planning Commission ("Commission") conducted a duly noticed public hearing at a regularly scheduled meeting and approved a Downtown Project Authorization and Requests for Exceptions pursuant to Planning Code Section ("Section") 309 (Motion No. 18765), an allocation of office space pursuant to Sections 320 through 325 (Annual Office Development Limitation Program (Motion No. 18764)), and findings regarding shadow impacts to Union Square (Motion No. 18763), in connection with a proposal to demolish an existing three-story building and an existing two-story building, and to construct a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space, located at 181 Fremont Street, Lots 010 and 011 in Assessor's Block 3719 ("Project Site"), within the C-3-O (SD) (Downtown Office, Special Development) District, the 700-S-2 Height and Bulk District, the Transbay C-3 Special Use District, and the Transit Center C-3-O(SD) Commercial Special Use District. At the same hearing on December 6, 2012, the Zoning Administrator indicated an intent to grant a requested Variance from Section 140 to allow dwelling units on the north, east, and south portions of the proposed building without the required dwelling unit exposure. On March 15, 2013, the Zoning Administrator issued a Variance Decision Letter formally granting the requested Variance (collectively, "Project", Case No. 2007.0456EBKXV). A site permit has been issued for the Project, and the building is currently under construction.

Pursuant to the requirements of Section 249.28, a minimum of 15% of the dwelling units in the project would have been required to be affordable to, and occupied by, qualifying persons and families as defined by the Transbay Redevelopment Plan. On September 18, 2014, Janette D'Elia, acting on behalf of Jay Paul Company, LLC ("Project Sponsor") applied for a Downtown Project Authorization, pursuant to Section 309, in order to amend the conditions of approval for the previously-granted Downtown Project Authorization (Motion No. 18765) to enable the payment of an in-lieu fee toward the development of affordable housing in the Transbay Redevelopment Project Area. In addition the Project Sponsor proposes to enter into a Development Agreement (pursuant to Chapter 56 of the San Francisco Administrative Code) to exempt the Project from the requirements of Section 249.28 to provide affordable dwelling units on-site (collectively, "Proposed Amendment", Case No. 2014.1399WX).

On May 24, 2012, the Planning Commission held a duly advertised public hearing and recommended approval of the Transit Center District Plan ("TCDP" or "Plan") and related implementing Ordinances to the Board of Supervisors. The result of a multi-year public and cooperative interagency planning process that began in 2007, the Plan is a comprehensive vision for shaping growth on the southern side of Downtown to respond to and support the construction of the new Transbay Transit Center project, including the Downtown Rail Extension. Implementation of the Plan would result in generation of up to \$590 million for public infrastructure, including over \$400 million for the Downtown Rail Extension. Adoption of the Plan included height reclassification of numerous parcels in the area to increase height limits, including a landmark tower site in front of the Transit Center with a height limit of 1,000 feet and several other nearby sites with height limits ranging from 600 to 850 feet.

On July 24, 2012, the Board of Supervisors held a duly noticed public hearing, affirmed the Final EIR and approved the Plan, as well as the associated ordinances to implement the Plan on first reading.

On July 31, 2012, the Board of Supervisors held a duly noticed public hearing, and approved the Plan, as well as the associated ordinances to implement the Plan on final reading.

On August 8, 2012, Mayor Edwin Lee signed into law the ordinances approving and implementing the Plan, which subsequently became effective on September 7, 2012.

The environmental effects of the original Project were determined by the Department to have been fully reviewed under the Transit Center District Plan Environmental Impact Report (hereinafter "EIR"). The EIR was prepared, circulated for public review and comment, and, at a public hearing on May 24, 2012, by Motion No. 18628, certified by the Commission as complying with the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., (hereinafter "CEQA"). The Commission has reviewed the Final EIR, which has been available for this Commission's review as well as public review.

The Transit Center District Plan EIR is a Program EIR. Pursuant to CEQA Guideline 15168(c)(2), if the lead agency finds that no new effects could occur or no new mitigation measures would be required of a proposed project, the agency may approve the project as being within the scope of the project covered by the program EIR, and no additional or new environmental review is required. In approving the Transit Center District Plan, the Commission adopted CEQA Findings in its Motion No. 18629 and hereby incorporates such Findings by reference.

Additionally, State CEQA Guidelines Section 15183 provides a streamlined environmental review for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, except as might be necessary to examine whether there are project-specific effects which are peculiar to the project or its site. Section 15183 specifies that examination of environmental effects shall be limited to those effects that (a) are peculiar to the project or parcel on which the project would be located, (b) were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent, (c) are potentially significant off-site and cumulative impacts which were not discussed in the underlying EIR, or (d) are previously identified in the EIR, but which are determined to have a more severe adverse impact than that discussed in the underlying EIR. Section 15183(c) specifies that if an impact is not peculiar to the parcel or to the proposed project, then an EIR need not be prepared for that project solely on the basis of that impact.

On November 9, 2012, the Department determined that the application for the original Project did not require further environmental review under Section 15183 of the CEQA Guidelines and Public Resources Code Section 21083.3. The Project was consistent with the adopted zoning controls in the Transit Center District Plan and was encompassed within the analysis contained in the Transit Center District Plan Final EIR. Since the Transit Center District Plan Final EIR was finalized, there were no substantial changes to the Transit Center District Plan and no substantial changes in circumstances that would require major revisions to the Final EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIR. The file for this project,

including the Transit Center District Plan Final EIR and the previously issued Community Plan Exemption certificate, is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California.

Planning Department staff prepared a Mitigation Monitoring and Reporting Program (MMRP) setting forth mitigation measures that were identified in the Transit Center District Plan EIR that are applicable to the project. These mitigation measures are set forth in their entirety in the MMRP, attached to Motion No. 18675 as Exhibit C, and were made conditions of approval of the original Project.

The Planning Commission's actions to amend the conditions of approval under Planning Code Section 309 and the recommendation concerning the development agreement do not compel any changes to the project that the Planning Commission previously approved. Rather, these actions merely authorize the Commission on Community Investment and Infrastructure, Planning Commission and Board of Supervisors to remove the on-site affordable housing requirement from the project. Thus, these actions and authorization of the acceptance of \$13.85 million for affordable housing subsidy within Zone 1 of the Transbay Redevelopment Plan do not constitute a project under the California Environmental Quality Act ("CEQA"), CEQA Guidelines (California Code of Regulations Title 14) Section 15378 (b)(4) because it merely creates a government funding mechanism that does not involve any commitment to a specific project.

The Planning Commission has reviewed and considered reports, studies, plans and other documents pertaining to the Proposed Amendment.

The Planning Commission has heard and considered the testimony presented at the public hearing and has further considered the written materials and oral testimony presented on behalf of the Project Sponsor, Department staff, and other interested parties.

On October 16, 2014, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Case No. 2014.1399WX. The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, the Planning Department staff, and other interested parties.

MOVED, that the Commission hereby approves the Proposed Amendment, as requested in Application No. 2014.1399X, subject to conditions of approval contained in Exhibit A of Motion No. 18765 and to the Mitigation, Monitoring and Reporting Program contained in Exhibit C of Motion No. 18765 (incorporated by reference as though fully set forth herein), 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. **Site Description and Present Use.** The Project Site is an irregularly shaped property formed by two parcels measuring a total of 15,313 square feet, located on the east side of Fremont Street, between Mission and Howard Streets. The Project Site is within the C-3-O (SD)

District, the 700-S-2 Height and Bulk District, the Transit Center C-3-O (SD) Commercial Special Use District, and the Transbay C-3 Special Use District. The two buildings which previously occupied the Project Site have been demolished, and foundation and site-preparation activities are underway for the construction of the Project.

3. **Surrounding Properties and Neighborhood.** The Project Site is located in an area characterized by dense urban development. There are many high-rise structures containing dwellings, offices and other commercial uses. The Project Site is surrounded by a number of high-rise buildings. The Millennium (301 Mission Street) is a residential development consisting of a 60-story residential building and an 11-story tower, located to the north. 50 Beale Street (a 23-story office building), 45 Fremont Street (a 34-story office building) and 50 Fremont Street (a 43-story office building) are situated further to the north. 199 Fremont Street (a 27-story office building) is located immediately to the east. There are numerous smaller commercial buildings in the area as well. The future Transit Center and the Transbay Tower are currently under construction immediately to the north of the Project Site. The Transit Center is planned to accommodate local and inter-city bus service, as well as Caltrain and California High Speed Rail service. The roof of the Transit Center will also feature a 5.4-acre public park called "City Park."

The Project Site is located within the "Zone 2" of the Transbay Redevelopment Plan Project Area, as well as the larger Transit Center District Plan (TCDP) area. The City adopted the TCDP and related implementing ordinances in August 2012. Initiated by a multi-year public and cooperative interagency planning process that began in 2007, the Plan is a comprehensive vision for shaping growth on the southern side of Downtown. Broadly stated, the goals of the TCDP are to focus regional growth toward downtown San Francisco in a sustainable, transit-oriented manner, sculpt the downtown skyline, invest in substantial transportation infrastructure and improvements to streets and open spaces, and expand protection of historic resources.

Adoption of the Plan included height reclassification of numerous parcels in the area to increase height limits, including the site of the Transbay Tower with a height limit of 1,000 feet, and several other nearby sites with height limits ranging from 600 to 850 feet.

4. **Project Background and Proposed Amendment.** As approved, the Project would demolish an existing three-story building and an existing two-story building, and to construct a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space. The building also includes a bridge to the future elevated City Park situated on top of the Transit Center.

The Project Sponsor proposes to amend the conditions of approval for the Downtown Project Authorization (Motion No. 18765) associated with the Project, to enable the payment of an in-lieu fee toward the development of affordable housing in the Transbay Redevelopment

Project Area. In addition, the Project Sponsor proposes to enter into a Development Agreement with the City and County of San Francisco (pursuant to Chapter 56 of the San Francisco Administrative Code) to exempt the Project from the requirements of the Transbay C-3 Special Use District ("SUD", Section 249.28) to provide affordable dwelling units on-site (collectively, "Proposed Amendment"). In addition, the Development Agreement would specify the terms for payment of the in-lieu fee.

5. **Public Comment.** To date, the Department has received no comments regarding the Proposed Amendment.
6. **Planning Code Compliance.** The Commission finds that the Proposed Amendment is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Transbay C-3 SUD (Section 249.28).** The boundaries of the Transbay C-3 SUD generally apply to the privately-owned parcels within Transbay Redevelopment Plan Project Area, corresponding to the boundaries of "Zone 2" of the Project Area. The SUD sets forth regulations regarding active ground-floor uses, streetscape improvements, and procedures for payment of fees. In addition, the SUD specifies that all residential developments must provide a minimum of 15% of all the dwelling units as affordable to, and occupied by, qualifying persons and families as defined by the Transbay Redevelopment Plan. The SUD further requires that all inclusionary units must be built on-site, and that off-site construction or in-lieu fee payment are not permitted to satisfy these requirements.

The Transbay Redevelopment Plan requires that, in accordance with State law (Public Resources Code Section 5027.1), at least 35% of all new housing within the Project Area be affordable to low- and moderate-income households. It is anticipated that this goal will be achieved through a combination of constructing stand-alone affordable housing projects, increasing affordable housing requirements for development of the publicly-owned parcels in "Zone 1", and requiring on-site affordable units for developments on privately-owned parcels containing residential uses.

The Office of Community Investment and Infrastructure (OCII), in consultation with the Mayor's Office of Housing and Community Development (MOHCD), has analyzed the implications of applying the on-site requirement of the SUD to the Project. The units within the Project are relatively large, and are situated within the uppermost floors of the tower with abundant views. Given these characteristics, the 11 affordable units within the Project would need to be steeply discounted compared with the market-rate units. In addition, it is estimated that the homeowner's association ("HOA") fees for these units will likely exceed \$2,000 per month. These HOA fees would impose a substantial financial burden on residents whose income levels would allow them to qualify for an affordable unit within the Project. Therefore, OCII and MOHCD staff have concluded that the resources necessary to create affordable units within the Project could be better leveraged to create other affordable housing opportunities elsewhere in the Redevelopment Plan Area.

The Project Sponsor proposes to enter into a Development Agreement (pursuant to Chapter 56 of the San Francisco Administrative Code) to exempt the Project from the requirements of Section 249.28 to provide affordable dwelling units on-site. If approved by the Board of Supervisors, the Project Sponsor would contribute \$13.85 million toward the development of affordable housing in the Redevelopment Plan Area. OCII staff estimates that this fee would be capable of creating approximately 69 affordable housing units, a net gain of 58 affordable units compared to the 11 affordable units that would be provided within the Project.

- B. **Inclusionary Affordable Housing Program.** Planning Code Section 415 sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. At the time of Project approval in 2012, Planning Code Section 415.3 applied these requirements to projects that consist of five or more units, where the first application (EE or BPA) was applied for on or after July 18, 2006. Within the Transbay C-3 SUD, developments containing residential uses must satisfy these requirements by provided 15% of the proposed dwelling units on-site as affordable.

The conditions of approval for the Project in 2012 reflected the regulations of Sections 249.28 and 415 by requiring that 11 of the 74 dwelling units in the project be affordable. As discussed in Item #6A above, the Project Sponsor proposes to enter into a Development Agreement to exempt the Project from the on-site requirements of Section 249.28, and to enable an in-lieu contribution of \$13.85 million toward the development of affordable housing in the Redevelopment Plan Area. For comparative purposes, if the Project Sponsor were to pay the in-lieu affordable housing fee established in the Planning Code, the fee amount would be approximately \$5.5 million. In order for this Development Agreement to proceed, the Commission must amend the conditions of approval for the Project (Motion No. 18756) to eliminate the requirement for on-site affordable dwelling units.

7. **General Plan Conformity.** The Proposed Amendment would affirmatively promote the following objectives and policies of the General Plan:

HOUSING ELEMENT:

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.

Policy 1.3:

Identify opportunities for housing and mixed-use districts near downtown and former industrial portions of the City.

Policy 1.4:

Locate in-fill housing on appropriate sites in established residential neighborhoods.

OBJECTIVE 4

FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.

Policy 4.5:

Ensure that new permanently affordable housing is located in all of the City's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

OBJECTIVE 7

SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING, INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON TRADITIONAL MECHANISMS OR CAPITAL.

Policy 7.5:

Encourage the production of affordable housing through process and zoning accommodations, and prioritize affordable housing in the review and approval processes.

OBJECTIVE 8

BUILD PUBLIC AND PRIVATE SECTOR CAPACITY TO SUPPORT, FACILITATE, PROVIDE AND MAINTAIN AFFORDABLE HOUSING.

Policy 8.1:

Support the production and management of permanently affordable housing.

The Proposed Amendment would allow the payment of an in-lieu fee which will enable the creation of a greater affordable housing opportunities in the Transbay Redevelopment Plan Project Area than would be achieved through on-site affordable units within the Project. Affordable units created within the Project would be subject to HOA fees that would likely exceed \$2,000 per month. These HOA fees would impose a substantial financial burden on residents whose income levels would allow them to qualify for an affordable unit within the Project. The funds provided by the in-lieu fee will be utilized to create affordable units on other parcels in the Project Area. OCII staff estimates that the in-lieu fee would create a net gain of 58 affordable dwelling units over the 11 affordable units that would be provided in the Project under the

existing requirements. Residents of these future affordable units would be located within close proximity of the Project Site, and would be able to enjoy the walkability, abundant transit services, and vibrant urban character of the area.

8. **Priority Policy Findings.** Section 101.1(b) establishes eight priority planning policies and requires the review of permits for consistency with said policies. The Proposed Amendment complies with these policies, on balance, as follows:

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

The Project would include retail services at the ground-floor and at the fifth floor adjacent to City Park. These uses would provide goods and services to downtown workers, residents, and visitors, while creating ownership and employment opportunities for San Francisco residents. The addition of office and residential uses would bring new employees and residents to area, strengthening the customer base of other businesses in the vicinity. The Proposed Amendment would have no effect on the retail services in the Project.

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

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

No housing has been removed for the construction of the Project, and the Project would provide 74 dwelling units. The Proposed Amendment would enable the payment of an in-lieu fee that will be utilized to create affordable housing on other parcels in the Project Area. OCII staff estimates that the in-lieu fee would create a net gain of 58 affordable dwelling units over the 11 affordable units that would be required in the Project under the existing requirements.

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

The Project Site is situated in the downtown core and is well served by public transit. The Project Site is located immediately adjacent to the future Transit Center, which will provide direct access to a significant hub of local, regional, and Statewide transportation. The Project is also located two blocks from Market Street, a major transit corridor that provides access to various Muni and BART lines. The Project implements the vision of the Transit Center District Plan to direct regional growth to a location that is served by abundant transit options, in order to facilitate travel by means other than private automobile. The Proposed Amendment would have no negative effect on transit services and circulation in the area.

- E. 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 includes retail spaces at the first and fifth floors, preserving service sector employment opportunities. The Proposed Amendment would have no effect on the retail services in the Project.

- F. 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 structural and seismic requirements under the San Francisco Building Code. The Proposed Amendment would have no effect on the physical construction of the Project.

- G. That landmarks and historic buildings be preserved.

The existing buildings that were demolished on the Project Site were not considered to be historic resources. The Proposed Amendment would not affect any landmark or historic building.

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

At the hearing for the Project on December 6, 2012, the Planning Commission adopted Motion No. 18763, finding that the shadows cast by the Project on Union Square would not be adverse to the use of the park. The Proposed Amendment would not affect the physical form of the Project, and therefore, would not change the shadow impacts to Union Square.

9. The Proposed Amendment is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
10. The Commission hereby finds that approval of the Proposed Amendment would promote the health, safety, and welfare of the City.

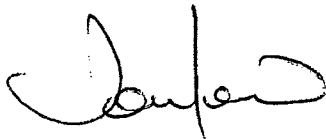
DECISION

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, in accordance with the standards specified in the Code, the Commission hereby **APPROVES Application No. 2014.1399X**, pursuant to Section 309, subject to the following conditions attached hereto as "EXHIBIT A", and subject to the conditions of approval of Planning Commission Motion No. 18765, which are amended by this approval and are incorporated herein by reference as though fully set forth, on file in Case Docket.No. 2007.0456X.

The actions contemplated in this Motion do not constitute a project under the California Environmental Quality Act ("CEQA"), CEQA Guidelines (California Code of Regulations Title 14) Sections 15378 (b)(4) and 15378(b)(5) because it merely creates a government funding mechanism that does not involve any commitment to a specific project and is an administrative activity of the government with no physical impact.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Downtown Project Authorization 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 1650 Mission Street, Room 304 or call (415) 575-6880.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting on October 16, 2014.



Jonas P. Ionin
Commission Secretary

AYES: Wu, Antonini, Fong, Hillis, Johnson, Richards,

NOES:

ABSENT: Moore

ADOPTED: October 16, 2014

EXHIBIT A

AUTHORIZATION

This authorization is modify the previous approval granted by Motion No. 18765 to eliminate the requirement of on-site affordable dwelling units and to enable the payment of an in-lieu contribution toward the development of affordable housing in the Transbay Redevelopment Plan Project Area, in association with a previously-approved project to demolish an existing three-story building and an existing two-story building, and to construct a 52-story building reaching a roof height of approximately 700 feet with a decorative screen reaching a maximum height of approximately 745 feet and a spire reaching a maximum height of approximately 800 feet, containing approximately 404,000 square feet of office uses, approximately 74 dwelling units, approximately 2,000 square feet of retail space, and approximately 68,000 square feet of subterranean area with off-street parking, loading, and mechanical space, as well as a bridge to the future elevated City Park situated on top of the Transit Center, at a Project Site located within the C-3-O(SD) (Downtown Office, Special Development) District, the 700-S-2 Height and Bulk District, the Transit Center C-3-O(SD) Commercial Special Use District, and the Transbay C-3 Special Use District, in general conformance with plans dated December 6, 2012 and stamped "EXHIBIT B" included in the docket for Case No. 2007.0456X, subject to the conditions of approval reviewed and approved by the Commission on December 6, 2012 under Motion No. 18765, as amended by the Planning Commission on October 16, 2014 under Motion No. 19262. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on December 6, 2012 under Motion No. 18765, as amended by the Planning Commission on October 16, 2014 under Motion No. 19262.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 19262 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Planning Code Section 309 Downtown Project Authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. 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 remaining clauses, sentences, or sections of these conditions. This decision conveys

no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Planning Code Section 309 Downtown Project Authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting PERFORMANCE

1. Additional Project Authorization. The Project Sponsor must obtain approval from the Board of Supervisors for a Development Agreement between the Project Sponsor and the City and County of San Francisco to exempt the Project from the requirements of Section 249.28 to provide affordable dwelling units on-site, and to enable the payment of an in-lieu fee from the Project Sponsor to OCII for the development of affordable housing in the Redevelopment Plan Area. Consequently, this approval is conditioned upon a final and effective Development Agreement under which the Project Sponsor has complied with all of its terms. Failure to satisfy this condition shall result in the Project Authorization reverting to the project authorization in Planning Commission Motion 18765 dated December 6, 2012.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

PROVISIONS

2. Affordable Units. Condition #36 within Exhibit A of Motion No. 18765, requiring that the Project provide 15% of the dwelling units as affordable to qualifying households, shall no longer apply to the Project. The Project Sponsor shall contribute an in-lieu fee to the Office of Community Investment and Infrastructure ("OCII") for the creation of affordable housing opportunities within the Transbay Redevelopment Plan Project Area, in accordance with the terms of the proposed Development Agreement between the Project Sponsor and the City and County of San Francisco.

For information about compliance, contact the Planning Department at 415-558-6378, www.sf-planning.org

**CITY AND COUNTY OF SAN FRANCISCO
COMMUNITY FACILITIES DISTRICT NO. 2014-1
(TRANSBAY TRANSIT CENTER)**

AMENDED AND RESTATED RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Taxable Parcel in the City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center) shall be levied and collected according to the tax liability determined by the Administrator through the application of the appropriate amount or rate for Square Footage within Taxable Buildings, as described below. All Taxable Parcels in the CFD shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to the CFD unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

“Act” means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the California Government Code.

“Administrative Expenses” means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City and TJPA carrying out duties with respect to CFD No. 2014-1 and the Bonds, including, but not limited to, levying and collecting the Special Tax, the fees and expenses of legal counsel, charges levied by the City Controller’s Office and/or the City Treasurer and Tax Collector’s Office, costs related to property owner inquiries regarding the Special Tax, costs associated with appeals or requests for interpretation associated with the Special Tax and this RMA, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements for the Bonds and the Special Tax, costs associated with foreclosure and collection of delinquent Special Taxes, and all other costs and expenses of the City and TJPA in any way related to the establishment or administration of the CFD.

“Administrator” means the Director of the Office of Public Finance who shall be responsible for administering the Special Tax according to this RMA.

“Affordable Housing Project” means a residential or primarily residential project, as determined by the Zoning Authority, within which all Residential Units are Below Market Rate Units. All Land Uses within an Affordable Housing Project are exempt from the Special Tax, as provided in Section G and are subject to the limitations set forth in Section D.4 below.

“Airspace Parcel” means a parcel with an assigned Assessor’s Parcel number that constitutes vertical space of an underlying land parcel.

“Apartment Building” means a residential or mixed-use Building within which none of the Residential Units have been sold to individual homebuyers.

“Assessor’s Parcel” or **“Parcel”** means a lot or parcel, including an Airspace Parcel, shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

“Assessor’s Parcel Map” means an official map of the County Assessor designating Parcels by Assessor’s Parcel number.

“Authorized Facilities” means those public facilities authorized to be funded by the CFD as set forth in the CFD formation proceedings.

“Base Special Tax” means the Special Tax per square foot that is used to calculate the Maximum Special Tax that applies to a Taxable Parcel pursuant to Sections C.1 and C.2 of this RMA. The Base Special Tax shall also be used to determine the Maximum Special Tax for any Net New Square Footage added to a Taxable Building in the CFD in future Fiscal Years.

“Below Market Rate Units” or **“BMR Units”** means all Residential Units within the CFD that have a deed restriction recorded on title of the property that (i) limits the rental price or sales price of the Residential Unit, (ii) limits the appreciation that can be realized by the owner of such unit, or (iii) in any other way restricts the current or future value of the unit.

“Board” means the Board of Supervisors of the City, acting as the legislative body of CFD No. 2014-1.

“Bonds” means bonds or other debt (as defined in the Act), whether in one or more series, issued, incurred, or assumed by the CFD related to the Authorized Facilities.

“Building” means a permanent enclosed structure that is, or is part of, a Conditioned Project.

“Building Height” means the number of Stories in a Taxable Building, which shall be determined based on the highest Story that is occupied by a Land Use. If only a portion of a Building is a Conditioned Project, the Building Height shall be determined based on the highest Story that is occupied by a Land Use regardless of where in the Building the Taxable Parcels are located. If there is any question as to the Building Height of any Taxable Building in the CFD, the Administrator shall coordinate with the Zoning Authority to make the determination.

“Certificate of Exemption” means a certificate issued to the then-current record owner of a Parcel that indicates that some or all of the Square Footage on the Parcel has prepaid the Special Tax obligation or has paid the Special Tax for thirty Fiscal Years and, therefore, such Square Footage shall, in all future Fiscal Years, be exempt from the levy of Special Taxes in the CFD. The Certificate of Exemption shall identify (i) the Assessor’s Parcel number(s) for the Parcel(s)

on which the Square Footage is located, (ii) the amount of Square Footage for which the exemption is being granted, (iii) the first and last Fiscal Year in which the Special Tax had been levied on the Square Footage, and (iv) the date of receipt of a prepayment of the Special Tax obligation, if applicable.

“Certificate of Occupancy” or **“COO”** means the first certificate, including any temporary certificate of occupancy, issued by the City to confirm that a Building or a portion of a Building has met all of the building codes and can be occupied for residential and/or non-residential use. For purposes of this RMA, “Certificate of Occupancy” shall not include any certificate of occupancy that was issued prior to January 1, 2013 for a Building within the CFD; however, any subsequent certificates of occupancy that are issued for new construction or expansion of the Building shall be deemed a Certificate of Occupancy and the associated Parcel(s) shall be categorized as Taxable Parcels if the Building is, or is part of, a Conditioned Project and a Tax Commencement Letter has been provided to the Administrator for the Building.

“CFD” or **“CFD No. 2014-1”** means the City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center).

“Child Care Square Footage” means, collectively, the Exempt Child Care Square Footage and Taxable Child Care Square Footage within a Taxable Building in the CFD.

“City” means the City and County of San Francisco.

“Conditioned Project” means a Development Project that is required to participate in funding Authorized Facilities through the CFD.

“Converted Apartment Building” means a Taxable Building that had been designated as an Apartment Building within which one or more Residential Units are subsequently sold to a buyer that is not a Landlord.

“Converted For-Sale Unit” means, in any Fiscal Year, an individual Market Rate Unit within a Converted Apartment Building for which an escrow has closed, on or prior to June 30 of the preceding Fiscal Year, in a sale to a buyer that is not a Landlord.

“County” means the City and County of San Francisco.

“CPC” means the Capital Planning Committee of the City and County of San Francisco, or if the Capital Planning Committee no longer exists, “CPC” shall mean the designated staff member(s) within the City and/or TJPA that will recommend issuance of Tax Commencement Authorizations for Conditioned Projects within the CFD.

“Development Project” means a residential, non-residential, or mixed-use development that includes one or more Buildings, or portions thereof, that are planned and entitled in a single application to the City.

“Exempt Child Care Square Footage” means Square Footage within a Taxable Building that, at the time of issuance of a COO, is determined by the Zoning Authority to be reserved for one or more licensed child care facilities. If a prepayment is made in association with any Taxable Child Care Square Footage, such Square Footage shall also be deemed Exempt Child Care Square Footage beginning in the Fiscal Year following receipt of the prepayment.

“Exempt Parking Square Footage” means the Square Footage of parking within a Taxable Building that, pursuant to Sections 151.1 and 204.5 of the Planning Code, is estimated to be needed to serve Land Uses within a building in the CFD, as determined by the Zoning Authority. If a prepayment is made in association with any Taxable Parking Square Footage, such Square Footage shall also be deemed Exempt Parking Square Footage beginning in the Fiscal Year following receipt of the prepayment.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“For-Sale Residential Square Footage” or **“For-Sale Residential Square Foot”** means Square Footage that is or is expected to be part of a For-Sale Unit. The Zoning Authority shall make the determination as to the For-Sale Residential Square Footage within a Taxable Building in the CFD. For-Sale Residential Square Foot means a single square-foot unit of For-Sale Residential Square Footage.

“For-Sale Unit” means (i) in a Taxable Building that is not a Converted Apartment Building: a Market Rate Unit that has been, or is available or expected to be, sold, and (ii) in a Converted Apartment Building, a Converted For-Sale Unit. The Administrator shall make the final determination as to whether a Market Rate Unit is a For-Sale Unit or a Rental Unit.

“Indenture” means the indenture, fiscal agent agreement, resolution, or other instrument pursuant to which CFD No. 2014-1 Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

“Initial Annual Adjustment Factor” means, as of July 1 of any Fiscal Year, the Annual Infrastructure Construction Cost Inflation Estimate published by the Office of the City Administrator’s Capital Planning Group and used to calculate the annual adjustment to the City’s development impact fees that took effect as of January 1 of the prior Fiscal Year pursuant to Section 409(b) of the Planning Code, as may be amended from time to time. If changes are made to the office responsible for calculating the annual adjustment, the name of the inflation index, or the date on which the development fee adjustment takes effect, the Administrator shall continue to rely on whatever annual adjustment factor is applied to the City’s development impact fees in order to calculate adjustments to the Base Special Taxes pursuant to Section D.1 below. Notwithstanding the foregoing, the Base Special Taxes shall, in no Fiscal Year, be increased or decreased by more than four percent (4%) of the amount in effect in the prior Fiscal Year.

“Initial Square Footage” means, for any Taxable Building in the CFD, the aggregate Square Footage of all Land Uses within the Building, as determined by the Zoning Authority upon issuance of the COO.

“IPIC” means the Interagency Plan Implementation Committee, or if the Interagency Plan Implementation Committee no longer exists, “IPIC” shall mean the designated staff member(s) within the City and/or TJPA that will recommend issuance of Tax Commencement Authorizations for Conditioned Projects within the CFD.

“Land Use” means residential, office, retail, hotel, parking, or child care use. For purposes of this RMA, the City shall have the final determination of the actual Land Use(s) on any Parcel within the CFD.

“Landlord” means an entity that owns at least twenty percent (20%) of the Rental Units within an Apartment Building or Converted Apartment Building.

“Market Rate Unit” means a Residential Unit that is not a Below Market Rate Unit.

“Maximum Special Tax” means the greatest amount of Special Tax that can be levied on a Taxable Parcel in the CFD in any Fiscal Year, as determined in accordance with Section C below.

“Net New Square Footage” means any Square Footage added to a Taxable Building after the Initial Square Footage in the Building has paid Special Taxes in one or more Fiscal Years.

“Office/Hotel Square Footage” or “Office/Hotel Square Foot” means Square Footage that is or is expected to be: (i) Square Footage of office space in which professional, banking, insurance, real estate, administrative, or in-office medical or dental activities are conducted, (ii) Square Footage that will be used by any organization, business, or institution for a Land Use that does not meet the definition of For-Sale Residential Square Footage Rental Residential Square Footage, or Retail Square Footage, including space used for cultural, educational, recreational, religious, or social service facilities, (iii) Taxable Child Care Square Footage, (iv) Square Footage in a residential care facility that is staffed by licensed medical professionals, and (v) any other Square Footage within a Taxable Building that does not fall within the definition provided for other Land Uses in this RMA. Notwithstanding the foregoing, street-level retail bank branches, real estate brokerage offices, and other such ground-level uses that are open to the public shall be categorized as Retail Square Footage pursuant to the Planning Code. Office/Hotel Square Foot means a single square-foot unit of Office/Hotel Square Footage.

For purposes of this RMA, “Office/Hotel Square Footage” shall also include Square Footage that is or is expected to be part of a non-residential structure that constitutes a place of lodging, providing temporary sleeping accommodations and related facilities. All Square Footage that shares an Assessor’s Parcel number within such a non-residential structure, including Square Footage of restaurants, meeting and convention facilities, gift shops, spas, offices, and other related uses shall be categorized as Office/Hotel Square Footage. If there are separate Assessor’s Parcel numbers for these other uses, the Administrator shall apply the Base Special Tax for Retail Square Footage to determine the Maximum Special Tax for Parcels on which a restaurant, gift shop, spa, or other retail use is located or anticipated, and the Base Special Tax for Office/Hotel Square Footage shall be used to determine the Maximum Special Tax for Parcels on

which other uses in the building are located. The Zoning Authority shall make the final determination as to the amount of Office/Hotel Square Footage within a building in the CFD.

“Planning Code” means the Planning Code of the City and County of San Francisco, as may be amended from time to time.

“Proportionately” means that the ratio of the actual Special Tax levied in any Fiscal Year to the Maximum Special Tax authorized to be levied in that Fiscal Year is equal for all Taxable Parcels.

“Rental Residential Square Footage” or **“Rental Residential Square Foot”** means Square Footage that is or is expected to be used for one or more of the following uses: (i) Rental Units, (ii) any type of group or student housing which provides lodging for a week or more and may or may not have individual cooking facilities, including but not limited to boarding houses, dormitories, housing operated by medical institutions, and single room occupancy units, or (iii) a residential care facility that is not staffed by licensed medical professionals. The Zoning Authority shall make the determination as to the amount of Rental Residential Square Footage within a Taxable Building in the CFD. Rental Residential Square Foot means a single square-foot unit of Rental Residential Square Footage.

“Rental Unit” means (i) all Market Rate Units within an Apartment Building, and (ii) all Market Rate Units within a Converted Apartment Building that have yet to be sold to an individual homeowner or investor. “Rental Unit” shall not include any Residential Unit which has been purchased by a homeowner or investor and subsequently offered for rent to the general public. The Administrator shall make the final determination as to whether a Market Rate Unit is a For-Sale Unit or a Rental Unit.

“Retail Square Footage” or **“Retail Square Foot”** means Square Footage that is or, based on the Certificate of Occupancy, will be Square Footage of a commercial establishment that sells general merchandise, hard goods, food and beverage, personal services, and other items directly to consumers, including but not limited to restaurants, bars, entertainment venues, health clubs, laundromats, dry cleaners, repair shops, storage facilities, and parcel delivery shops. In addition, all Taxable Parking Square Footage in a Building, and all street-level retail bank branches, real estate brokerages, and other such ground-level uses that are open to the public, shall be categorized as Retail Square Footage for purposes of calculating the Maximum Special Tax pursuant to Section C below. The Zoning Authority shall make the final determination as to the amount of Retail Square Footage within a Taxable Building in the CFD. Retail Square Foot means a single square-foot unit of Retail Square Footage.

“Residential Unit” means an individual townhome, condominium, live/work unit, or apartment within a Building in the CFD.

“Residential Use” means (i) any and all Residential Units within a Taxable Building in the CFD, (ii) any type of group or student housing which provides lodging for a week or more and may or may not have individual cooking facilities, including but not limited to boarding houses,

dormitories, housing operated by medical institutions, and single room occupancy units, and (iii) a residential care facility that is not staffed by licensed medical professionals.

“RMA” means this Rate and Method of Apportionment of Special Tax.

“Special Tax” means a special tax levied in any Fiscal Year to pay the Special Tax Requirement.

“Special Tax Requirement” means the amount necessary in any Fiscal Year to: (i) pay principal and interest on Bonds that are due in the calendar year that begins in such Fiscal Year; (ii) pay periodic costs on the Bonds, including but not limited to, credit enhancement, liquidity support and rebate payments on the Bonds, (iii) create and/or replenish reserve funds for the Bonds to the extent such replenishment has not been included in the computation of the Special Tax Requirement in a previous Fiscal Year; (iv) cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year; (v) pay Administrative Expenses; and (vi) pay directly for Authorized Facilities. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by: (i) interest earnings on or surplus balances in funds and accounts for the Bonds to the extent that such earnings or balances are available to apply against such costs pursuant to the Indenture; (ii) in the sole and absolute discretion of the City, proceeds received by the CFD from the collection of penalties associated with delinquent Special Taxes; and (iii) any other revenues available to pay such costs as determined by the Administrator.

“Square Footage” means, for any Taxable Building in the CFD, the net saleable or leasable square footage of each Land Use on each Taxable Parcel within the Building, as determined by the Zoning Authority. If a building permit is issued to increase the Square Footage on any Taxable Parcel, the Administrator shall, in the first Fiscal Year after the final building permit inspection has been conducted in association with such expansion, work with the Zoning Authority to recalculate (i) the Square Footage of each Land Use on each Taxable Parcel, and (ii) the Maximum Special Tax for each Taxable Parcel based on the increased Square Footage. The final determination of Square Footage for each Land Use on each Taxable Parcel shall be made by the Zoning Authority.

“Story” or **“Stories”** means a portion or portions of a Building, except a mezzanine as defined in the City Building Code, included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between the surface of the floor and the ceiling next above it.

“Taxable Building” means, in any Fiscal Year, any Building within the CFD that is, or is part of, a Conditioned Project, and for which a Certificate of Occupancy was issued and a Tax Commencement Authorization was received by the Administrator on or prior to June 30 of the preceding Fiscal Year. If only a portion of the Building is a Conditioned Project, as determined by the Zoning Authority, that portion of the Building shall be treated as a Taxable Building for purposes of this RMA.

“Tax Commencement Authorization” means a written authorization issued by the Administrator upon the recommendations of the IPIC and CPC in order to initiate the levy of the Special Tax on a Conditioned Project that has been issued a COO.

“Taxable Child Care Square Footage” means the amount of Square Footage determined by subtracting the Exempt Child Care Square Footage within a Taxable Building from the total net leasable square footage within a Building that is used for licensed child care facilities, as determined by the Zoning Authority.

“Taxable Parcel” means, within a Taxable Building, any Parcel that is not exempt from the Special Tax pursuant to law or Section G below. If, in any Fiscal Year, a Special Tax is levied on only Net New Square Footage in a Taxable Building, only the Parcel(s) on which the Net New Square Footage is located shall be Taxable Parcel(s) for purposes of calculating and levying the Special Tax pursuant to this RMA.

“Taxable Parking Square Footage” means Square Footage of parking in a Taxable Building that is determined by the Zoning Authority not to be Exempt Parking Square Footage.

“TJPA” means the Transbay Joint Powers Authority.

“Zoning Authority” means either the City Zoning Administrator, the Executive Director of the San Francisco Office of Community Investment and Infrastructure, or an alternate designee from the agency or department responsible for the approvals and entitlements of a project in the CFD. If there is any doubt as to the responsible party, the Administrator shall coordinate with the City Zoning Administrator to determine the appropriate party to serve as the Zoning Authority for purposes of this RMA.

B. DATA FOR CFD ADMINISTRATION

On or after July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Taxable Parcels in the CFD. In order to identify Taxable Parcels, the Administrator shall confirm which Buildings in the CFD have been issued both a Tax Commencement Authorization and a COO.

The Administrator shall also work with the Zoning Authority to confirm: (i) the Building Height for each Taxable Building, (ii) the For-Sale Residential Square Footage, Rental Residential Square Footage, Office/Hotel Square Footage, and Retail Square Footage on each Taxable Parcel, (iii) if applicable, the number of BMR Units and aggregate Square Footage of BMR Units within the Building, (iv) whether any of the Square Footage on a Parcel is subject to a Certificate of Exemption, and (v) the Special Tax Requirement for the Fiscal Year. In each Fiscal Year, the Administrator shall also keep track of how many Fiscal Years the Special Tax has been levied on each Parcel within the CFD. If there is Initial Square Footage and Net New Square Footage on a Parcel, the Administrator shall separately track the duration of the Special Tax levy in order to ensure compliance with Section F below.

In any Fiscal Year, if it is determined by the Administrator that (i) a parcel map or condominium plan for a portion of property in the CFD was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created parcels into the then current tax roll), and (ii) the Assessor does not yet recognize the newly-created parcels, the Administrator shall calculate the Special Tax that applies separately to each newly-created parcel, then applying the sum of the individual Special Taxes to the Assessor's Parcel that was subdivided by recordation of the parcel map or condominium plan.

C. DETERMINATION OF THE MAXIMUM SPECIAL TAX

1. Base Special Tax

Once the Building Height of, and Land Use(s) within, a Taxable Building have been identified, the Base Special Tax to be used for calculation of the Maximum Special Tax for each Taxable Parcel within the Building shall be determined based on reference to the applicable table(s) below:

FOR-SALE RESIDENTIAL SQUARE FOOTAGE

<i>Building Height</i>	<i>Base Special Tax Fiscal Year 2013-14*</i>
1 – 5 Stories	\$4.71 per For-Sale Residential Square Foot
6 – 10 Stories	\$5.02 per For-Sale Residential Square Foot
11 – 15 Stories	\$6.13 per For-Sale Residential Square Foot
16 – 20 Stories	\$6.40 per For-Sale Residential Square Foot
21 – 25 Stories	\$6.61 per For-Sale Residential Square Foot
26 – 30 Stories	\$6.76 per For-Sale Residential Square Foot
31 – 35 Stories	\$6.88 per For-Sale Residential Square Foot
36 – 40 Stories	\$7.00 per For-Sale Residential Square Foot
41 – 45 Stories	\$7.11 per For Sale Residential Square Foot
46 – 50 Stories	\$7.25 per For-Sale Residential Square Foot
More than 50 Stories	\$7.36 per For-Sale Residential Square Foot

RENTAL RESIDENTIAL SQUARE FOOTAGE

<i>Building Height</i>	<i>Base Special Tax Fiscal Year 2013-14*</i>
1 – 5 Stories	\$4.43 per Rental Residential Square Foot
6 – 10 Stories	\$4.60 per Rental Residential Square Foot
11 – 15 Stories	\$4.65 per Rental Residential Square Foot
16 – 20 Stories	\$4.68 per Rental Residential Square Foot
21 – 25 Stories	\$4.73 per Rental Residential Square Foot
26 – 30 Stories	\$4.78 per Rental Residential Square Foot
31 – 35 Stories	\$4.83 per Rental Residential Square Foot
36 – 40 Stories	\$4.87 per Rental Residential Square Foot
41 – 45 Stories	\$4.92 per Rental Residential Square Foot
46 – 50 Stories	\$4.98 per Rental Residential Square Foot
More than 50 Stories	\$5.03 per Rental Residential Square Foot

OFFICE/HOTEL SQUARE FOOTAGE

<i>Building Height</i>	<i>Base Special Tax Fiscal Year 2013-14*</i>
1 – 5 Stories	\$3.45 per Office/Hotel Square Foot
6 – 10 Stories	\$3.56 per Office/Hotel Square Foot
11 – 15 Stories	\$4.03 per Office/Hotel Square Foot
16 – 20 Stories	\$4.14 per Office/Hotel Square Foot
21 – 25 Stories	\$4.25 per Office/Hotel Square Foot
26 – 30 Stories	\$4.36 per Office/Hotel Square Foot
31 – 35 Stories	\$4.47 per Office/Hotel Square Foot
36 – 40 Stories	\$4.58 per Office/Hotel Square Foot
41 – 45 Stories	\$4.69 per Office/Hotel Square Foot
46 – 50 Stories	\$4.80 per Office/Hotel Square Foot
More than 50 Stories	\$4.91 per Office/Hotel Square Foot

RETAIL SQUARE FOOTAGE

<i>Building Height</i>	<i>Base Special Tax Fiscal Year 2013-14*</i>
N/A	\$3.18 per Retail Square Foot

* The Base Special Tax rates shown above for each Land Use shall escalate as set forth in Section D.1 below.

2. Determining the Maximum Special Tax for Taxable Parcels

Upon issuance of a Tax Commencement Authorization and the first Certificate of Occupancy for a Taxable Building within a Conditioned Project that is not an Affordable Housing Project, the

Administrator shall coordinate with the Zoning Authority to determine the Square Footage of each Land Use on each Taxable Parcel. The Administrator shall then apply the following steps to determine the Maximum Special Tax for the next succeeding Fiscal Year for each Taxable Parcel in the Taxable Building:

- Step 1.* Determine the Building Height for the Taxable Building for which a Certificate of Occupancy was issued.
- Step 2.* Determine the For-Sale Residential Square Footage and/or Rental Residential Square Footage for all Residential Units on each Taxable Parcel, as well as the Office/Hotel Square Footage and Retail Square Footage on each Taxable Parcel.
- Step 3.* ***For each Taxable Parcel that includes only For-Sale Units***, multiply the For-Sale Residential Square Footage by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 4.* ***For each Taxable Parcel that includes only Rental Units***, multiply the Rental Residential Square Footage by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 5.* ***For each Taxable Parcel that includes only Residential Uses other than Market Rate Units***, net out the Square Footage associated with any BMR Units and multiply the remaining Rental Residential Square Footage (if any) by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 6.* ***For each Taxable Parcel that includes only Office/Hotel Square Footage***, multiply the Office/Hotel Square Footage on the Parcel by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 7.* ***For each Taxable Parcel that includes only Retail Square Footage***, multiply the Retail Square Footage on the Parcel by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 8.* ***For Taxable Parcels that include multiple Land Uses***, separately determine the For-Sale Residential Square Footage, Rental Residential Square Footage, Office/Hotel Square Footage, and/or Retail Square Footage. Multiply the Square Footage of each Land Use by the applicable Base Special Tax from Section C.1, and sum the individual amounts to determine the aggregate Maximum Special Tax for the Taxable Parcel for the first succeeding Fiscal Year.

D. CHANGES TO THE MAXIMUM SPECIAL TAX

1. *Annual Escalation of Base Special Tax*

The Base Special Tax rates identified in Section C.1 are applicable for fiscal year 2013-14. Beginning July 1, 2014 and each July 1 thereafter, the Base Special Taxes shall be adjusted by the Initial Annual Adjustment Factor. The Base Special Tax rates shall be used to calculate the Maximum Special Tax for each Taxable Parcel in a Taxable Building for the first Fiscal Year in which the Building is a Taxable Building, as set forth in Section C.2 and subject to the limitations set forth in Section D.3.

2. *Adjustment of the Maximum Special Tax*

After a Maximum Special Tax has been assigned to a Parcel for its first Fiscal Year as a Taxable Parcel pursuant to Section C.2 and Section D.1, the Maximum Special Tax shall escalate for subsequent Fiscal Years beginning July 1 of the Fiscal Year after the first Fiscal Year in which the Parcel was a Taxable Parcel, and each July 1 thereafter, by two percent (2%) of the amount in effect in the prior Fiscal Year. In addition to the foregoing, the Maximum Special Tax assigned to a Taxable Parcel shall be increased in any Fiscal Year in which the Administrator determines that Net New Square Footage was added to the Parcel in the prior Fiscal Year.

3. *Converted Apartment Buildings*

If an Apartment Building in the CFD becomes a Converted Apartment Building, the Administrator shall rely on information from the County Assessor, site visits to the sales office, data provided by the entity that is selling Residential Units within the Building, and any other available source of information to track sales of Residential Units. In the first Fiscal Year in which there is a Converted For-Sale Unit within the Building, the Administrator shall determine the applicable Base Maximum Special Tax for For-Sale Residential Units for that Fiscal Year. Such Base Maximum Special Tax shall be used to calculate the Maximum Special Tax for all Converted For-Sale Units in the Building in that Fiscal Year. In addition, this Base Maximum Special Tax, escalated each Fiscal Year by two percent (2%) of the amount in effect in the prior Fiscal Year, shall be used to calculate the Maximum Special Tax for all future Converted For-Sale Units within the Building. Solely for purposes of calculating Maximum Special Taxes for Converted For-Sale Units within the Converted Apartment Building, the adjustment of Base Maximum Special Taxes set forth in Section D.1 shall not apply. All Rental Residential Square Footage within the Converted Apartment Building shall continue to be subject to the Maximum Special Tax for Rental Residential Square Footage until such time as the units become Converted For-Sale Units. The Maximum Special Tax for all Taxable Parcels within the Building shall escalate each Fiscal Year by two percent (2%) of the amount in effect in the prior Fiscal Year.

4. *BMR Unit/Market Rate Unit Transfers*

If, in any Fiscal Year, the Administrator determines that a Residential Unit that had previously been designated as a BMR Unit no longer qualifies as such, the Maximum Special Tax on the

new Market Rate Unit shall be established pursuant to Section C.2 and adjusted, as applicable, by Sections D.1 and D.2. If a Market Rate Unit becomes a BMR Unit after it has been taxed in prior Fiscal Years as a Market Rate Unit, the Maximum Special Tax on such Residential Unit shall not be decreased unless: (i) a BMR Unit is simultaneously redesignated as a Market Rate Unit, and (ii) such redesignation results in a Maximum Special Tax on the new Market Rate Unit that is greater than or equal to the Maximum Special Tax that was levied on the Market Rate Unit prior to the swap of units. If, based on the Building Height or Square Footage, there would be a reduction in the Maximum Special Tax due to the swap, the Maximum Special Tax that applied to the former Market Rate Unit will be transferred to the new Market Rate Unit regardless of the Building Height and Square Footage associated with the new Market Rate Unit.

5. *Changes in Land Use on a Taxable Parcel*

If any Square Footage that had been taxed as For-Sale Residential Square Footage, Rental Residential Square Footage, Office/Hotel Square Footage, or Retail Square Footage in a prior Fiscal Year is rezoned or otherwise changes Land Use, the Administrator shall apply the applicable subsection in Section C.2 to calculate what the Maximum Special Tax would be for the Parcel based on the new Land Use(s). If the amount determined is greater than the Maximum Special Tax that applied to the Parcel prior to the Land Use change, the Administrator shall increase the Maximum Special Tax to the amount calculated for the new Land Uses. If the amount determined is less than the Maximum Special Tax that applied prior to the Land Use change, there will be no change to the Maximum Special Tax for the Parcel. Under no circumstances shall the Maximum Special Tax on any Taxable Parcel be reduced, regardless of changes in Land Use or Square Footage on the Parcel, including reductions in Square Footage that may occur due to demolition, fire, water damage, or acts of God. In addition, if a Taxable Building within the CFD that had been subject to the levy of Special Taxes in any prior Fiscal Year becomes all or part of an Affordable Housing Project, the Parcel(s) shall continue to be subject to the Maximum Special Tax that had applied to the Parcel(s) before they became part of the Affordable Housing Project. All Maximum Special Taxes determined pursuant to Section C.2 shall be adjusted, as applicable, by Sections D.1 and D.2.

6. *Prepayments*

If a Parcel makes a prepayment pursuant to Section H below, the Administrator shall issue the owner of the Parcel a Certificate of Exemption for the Square Footage that was used to determine the prepayment amount, and no Special Tax shall be levied on the Parcel in future Fiscal Years unless there is Net New Square Footage added to a Building on the Parcel. Thereafter, a Special Tax calculated based solely on the Net New Square Footage on the Parcel shall be levied for up to thirty Fiscal Years, subject to the limitations set forth in Section F below. Notwithstanding the foregoing, any Special Tax that had been levied against, but not yet collected from, the Parcel is still due and payable, and no Certificate of Exemption shall be issued until such amounts are fully paid. If a prepayment is made in order to exempt Taxable Child Care Square Footage on a Parcel on which there are multiple Land Uses, the Maximum Special Tax for the Parcel shall be recalculated based on the exemption of this Child Care Square Footage which shall, after such prepayment, be designated as Exempt Child Care Square Footage and remain exempt in all Fiscal Years after the prepayment has been received.

E. METHOD OF LEVY OF THE SPECIAL TAX

Each Fiscal Year, the Special Tax shall be levied Proportionately on each Taxable Parcel up to 100% of the Maximum Special Tax for each Parcel for such Fiscal Year until the amount levied on Taxable Parcels is equal to the Special Tax Requirement.

F. COLLECTION OF SPECIAL TAX

The Special Taxes for CFD No. 2014-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that prepayments are permitted as set forth in Section H below and provided further that the City may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods.

The Special Tax shall be levied and collected from the first Fiscal Year in which a Parcel is designated as a Taxable Parcel until the principal and interest on all Bonds have been paid, the City's costs of constructing or acquiring Authorized Facilities from Special Tax proceeds have been paid, and all Administrative Expenses have been paid or reimbursed. Notwithstanding the foregoing, the Special Tax shall not be levied on any Square Footage in the CFD for more than thirty Fiscal Years, except that a Special Tax that was lawfully levied in or before the final Fiscal Year and that remains delinquent may be collected in subsequent Fiscal Years. After a Building or a particular block of Square Footage within a Building (i.e., Initial Square Footage vs. Net New Square Footage) has paid the Special Tax for thirty Fiscal Years, the then-current record owner of the Parcel(s) on which that Square Footage is located shall be issued a Certificate of Exemption for such Square Footage. Notwithstanding the foregoing, the Special Tax shall cease to be levied, and a Release of Special Tax Lien shall be recorded against all Parcels in the CFD that are still subject to the Special Tax, after the Special Tax has been levied in the CFD for seventy-five Fiscal Years.

Pursuant to Section 53321 (d) of the Act, the Special Tax levied against Residential Uses shall under no circumstances increase more than ten percent (10%) as a consequence of delinquency or default by the owner of any other Parcel or Parcels and shall, in no event, exceed the Maximum Special Tax in effect for the Fiscal Year in which the Special Tax is being levied.

G. EXEMPTIONS

Notwithstanding any other provision of this RMA, no Special Tax shall be levied on: (i) Square Footage for which a prepayment has been received and a Certificate of Exemption issued, (ii) Below Market Rate Units except as otherwise provided in Sections D.3 and D.4, (iii) Affordable Housing Projects, including all Residential Units, Retail Square Footage, and Office Square Footage within buildings that are part of an Affordable Housing Project, except as otherwise provided in Section D.4, and (iv) Exempt Child Care Square Footage.

H. PREPAYMENT OF SPECIAL TAX

The Special Tax obligation applicable to Square Footage in a building may be fully prepaid as described herein, provided that a prepayment may be made only if (i) the Parcel is a Taxable Parcel, and (ii) there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment. Any prepayment made by a Parcel owner must satisfy the Special Tax obligation associated with all Square Footage on the Parcel that is subject to the Special Tax at the time the prepayment is calculated. An owner of an Assessor's Parcel intending to prepay the Special Tax obligation shall provide the City with written notice of intent to prepay. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for the Square Footage on such Assessor's Parcel. Prepayment must be made not less than 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Special Taxes. The Prepayment Amount for a Taxable Parcel shall be calculated as follows:

- Step 1:* Determine the Square Footage of each Land Use on the Parcel.
- Step 2:* Determine how many Fiscal Years the Square Footage on the Parcel has paid the Special Tax, which may be a separate total for Initial Square Footage and Net New Square Footage on the Parcel. If a Special Tax has been levied, but not yet paid, in the Fiscal Year in which the prepayment is being calculated, such Fiscal Year will be counted as a year in which the Special Tax was paid, but a Certificate of Exemption shall not be issued until such Special Taxes are received by the City's Office of the Treasurer and Tax Collector.
- Step 3:* Subtract the number of Fiscal Years for which the Special Tax has been paid (as determined in Step 2) from 30 to determine the remaining number of Fiscal Years for which Special Taxes are due from the Square Footage for which the prepayment is being made. This calculation would result in a different remainder for Initial Square Footage and Net New Square Footage within a building.
- Step 4:* Separately for Initial Square Footage and Net New Square Footage, and separately for each Land Use on the Parcel, multiply the amount of Square Footage by the applicable Maximum Special Tax that would apply to such Square Footage in each of the remaining Fiscal Years, taking into account the 2% escalator set forth in Section D.2, to determine the annual stream of Maximum Special Taxes that could be collected in future Fiscal Years.
- Step 5:* For each Parcel for which a prepayment is being made, sum the annual amounts calculated for each Land Use in Step 4 to determine the annual Maximum Special Tax that could have been levied on the Parcel in each of the remaining Fiscal Years.

- Step 6.* Calculate the net present value of the future annual Maximum Special Taxes that were determined in Step 5 using, as the discount rate for the net present value calculation, the true interest cost (TIC) on the Bonds as identified by the Office of Public Finance. If there is more than one series of Bonds outstanding at the time of the prepayment calculation, the Administrator shall determine the weighted average TIC based on the Bonds from each series that remain outstanding. The amount determined pursuant to this Step 6 is the required prepayment for each Parcel. Notwithstanding the foregoing, if at any point in time the Administrator determines that the Maximum Special Tax revenue that could be collected from Square Footage that remains subject to the Special Tax after the proposed prepayment is less than 110% of debt service on Bonds that will remain outstanding after defeasance or redemption of Bonds from proceeds of the estimated prepayment, the amount of the prepayment shall be increased until the amount of Bonds defeased or redeemed is sufficient to reduce remaining annual debt service to a point at which 110% debt service coverage is realized.

Once a prepayment has been received by the City, a Certificate of Exemption shall be issued to the owner of the Parcel indicating that all Square Footage that was the subject of such prepayment shall be exempt from Special Taxes.

I. INTERPRETATION OF SPECIAL TAX FORMULA

The City may interpret, clarify, and revise this RMA to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, as long as such interpretation, clarification, or revision does not materially affect the levy and collection of the Special Taxes and any security for any Bonds.

J. SPECIAL TAX APPEALS

Any taxpayer who wishes to challenge the accuracy of computation of the Special Tax in any Fiscal Year may file an application with the Administrator. The Administrator, in consultation with the City Attorney, shall promptly review the taxpayer's application. If the Administrator concludes that the computation of the Special Tax was not correct, the Administrator shall correct the Special Tax levy and, if applicable in any case, a refund shall be granted. If the Administrator concludes that the computation of the Special Tax was correct, then such determination shall be final and conclusive, and the taxpayer shall have no appeal to the Board from the decision of the Administrator.

The filing of an application or an appeal shall not relieve the taxpayer of the obligation to pay the Special Tax when due.

Nothing in this Section J shall be interpreted to allow a taxpayer to bring a claim that would otherwise be barred by applicable statutes of limitation set forth in the Act or elsewhere in applicable law.