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November 5, 2018

Hon. Malia Cohen, President
San Francisco Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: 450 O'Farrell Street EIR and Conditional Use Appeal
Board File Nos. 180993 and 180997

Dear President Cohen and Supervisors:

We have been retained by Fifth Church of Christ, Scientist (the "Church") in connection with the EIR and Conditional Use appeals pending before the San Francisco Board of Supervisors ("Board"). We are writing to inform you that if the Board grants these appeals and imposes the mitigation measures proposed by San Francisco Heritage ("Heritage"), the Board and the City and County of San Francisco ("City") would violate the Church's civil rights as protected by the federal Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C §§ 2000cc, *et seq.*, and the Free Exercise Clause of the United States Constitution. As discussed in further detail below, we urge the Board to reject the appeals and uphold the Planning Commission's conditional use approval without the imposition of additional mitigation measures. Failure to do so would potentially expose the City to years of litigation, substantial damages and attorney's fees, together with a likelihood of eventually granting conditional use approval without the proposed mitigation measures.

This Firm is highly experienced in religious liberty litigation in general, and specifically in bringing cases under RLUIPA's land use provisions with respect to zoning and historic preservation issues. We have represented Buddhist, Hindu, Jewish, Muslim, Native American, Sikh, and Christian clients, among others. Storzer & Associates has successfully represented Third Church Christ, Scientist in its litigation with the District of Columbia Historic Preservation Review Board and the St. John's United Church of Christ against the City of Indianapolis over similar historic preservation issues.

The actions of the Board are subject to the requirements of RLUIPA. RLUIPA mandates that “[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution-- (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc(a). The statute includes any governmental “branch, department, agency, instrumentality or official” in its definition of those subject to its terms. *Id.* § 2000cc-5(4).¹ Furthermore, RLUIPA “shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.” *Id.* § 2000cc-3(g). RLUIPA also prevents governments from discriminating between religious denominations, favoring nonreligious assemblies and institutions over religious assemblies and institutions, and unreasonably limiting religious assemblies, institutions or structures. *Id.* § 2000cc(b). Thus, to the extent that any Board action would impose a substantial burden on the religious exercise of the Church without being the least restrictive means of achieving a compelling government interest, or would treat the Church differently and worse than any other religious or nonreligious entity, it would violate RLUIPA.

RLUIPA applies to the application of historic preservation laws. The text of RLUIPA explicitly states that the application of historic preservation laws to church properties is subject to RLUIPA: “The term ‘land use regulation’ means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant’s use or development of land (including a structure affixed to land).” 42 U.S.C. § 2000cc-5(5) (emphasis added).

Imposing the mitigation measures proposed by Heritage would violate RLUIPA and the Free Exercise Clause of the United States Constitution. Requiring the Church to pay \$1.5 million as a condition of approval would present a classic case of a substantial burden on a church’s religious exercise. In the Ninth Circuit, a government burdens religious exercise when it “imposes a significantly great restriction or onus upon such exercise.” *Int’l Church of Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059, 1067 (9th Cir. 2011) (internal citations and quotations omitted) (finding that the district court erred in finding no substantial burden under RLUIPA when the City blocked the church from building a house of worship that would meet its religious needs). *See also Guru Nanak Sikh Soc. of Yuba City v. Cty. of Sutter*, 456 F.3d 978, 992 (9th Cir. 2006) (holding that the denial of a conditional use permit to build a house of worship substantially burdened organization’s religious exercise because the County’s actions “have to a significantly great extent lessened the prospect of Guru Nanak being able to construct a temple in the future”); *Harbor Missionary Church Corp. v. City of San Buenaventura*, 642 F. App’x 726, 729 (9th Cir. 2016) (“The City’s denial of the conditional use permit prevents the Church from conducting its homeless ministry, an integral part of its religion, without suffering substantial delay, uncertainty, and expense. Therefore, the district court erred in determining that the Church’s religious exercise was not substantially burdened by denial of a conditional use permit.”); *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1227 (C.D. Cal. 2002) (finding that plaintiff established a substantial burden under the Free Exercise where the City was prevented from building a church that would meet its religious needs).

¹ The Board is subject to the terms of RLUIPA as it is a branch, department, agency or instrumentality of the City. Its members are also subject to RLUIPA as governmental “official[s].” *Id.* § 2000cc-5(4)(A)(ii).

Placing conditions on approval may also substantially burden a church's religious exercise. *See, e.g., First Lutheran Church v. City of St. Paul*, 326 F. Supp. 3d 745, 760-62 (D. Minn. 2018) ("Thus, the question becomes whether any of Resolution 18-145's conditions impose a substantial burden on First Lutheran's partnership with Listening House."); *Chabad Lubavitch of Litchfield Cty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 195 (2d Cir. 2014) ("[O]ur multifaceted analysis considered whether the denial was conditional; if so, whether the condition was itself a substantial burden . . .").

Further, courts have found that municipalities can substantially burden religious exercise by acting in a manner that creates significant "delay, uncertainty, and expense" for a church. *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005); *see also Grace Church of N. Cty. v. City of San Diego*, 555 F. Supp. 2d 1126, 1137-39 (S.D. Cal. 2008) (finding plaintiff had established substantial burden from uncertainty and expense resulting from municipality's zoning regulations and from municipal officials' consistent hostility toward plaintiff in their review of plaintiff's land use applications); *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007) (noting that a complete denial of a religious institution's zoning application which results in substantial "delay, uncertainty, and expense" can be a substantial burden).

Requiring the Church to pay \$1.5 million as a "mitigation" measure would greatly jeopardize the Church's ability to rebuild in accordance with its religious needs. According to the Development Feasibility Review conducted on the proposed development, the expected returns on the development investment range between 2.9 and 4.5 percent, falling below the typical return threshold. Although the Developer expressed willingness to proceed under these conditions, an unprecedented \$1.5 million in mitigation measures endangers the financial feasibility of the entire project. *See* 450 O'Farrell Street Development Feasibility Review and Evaluation; EPS #161164 (Exhibit A). Building a new place of worship on the Church's property is essential for the Church to fulfill its religious mission, as explained below. If the City were to impose the proposed mitigation measures, it would frustrate the Church's ability to do so.

In a strikingly similar case involving the proposed demolition of a landmarked church, a federal court made clear that such burdens implicate RLUIPA:

The [Historic Preservation Review Board's] motion asserts, among other things, that historic preservation designation alone imposes no burden, it's only a process. That argument frankly blinks reality. It is very clear that a burden is imposed by historic designation; it's a financial burden, it's a burden on the alienability of land, on what you can do with land.

Third Church of Christ, Scientist v. District of Columbia Historic Preservation Review Board, Civil Action No. 08-1371, Transcript of Hearing at 49-50 (Apr. 7, 2009). Several other courts have held that historic preservation regulation that impacts churches substantially burdens religious exercise. *See, e.g., First Covenant Church v. City of Seattle*, 120 Wash. 2d 203, 219 (1992) (holding that designation substantially burdens religious exercise both administratively and financially); *Society of Jesus of New England v. Boston Landmarks Comm'n*, 409 Mass. 38, 41-43 (1990) (holding that historic landmark designation of a church unconstitutionally restrained religious worship. "In short, under our hierarchy of constitutional values we must accept the possible loss of historically significant elements of the interior of this church as the price of

safeguarding the right of religious freedom.”); *Mount St. Scholastica, Inc. v. City of Atchison, Kansas*, 482 F. Supp. 2d 1281, 1295 (D. Kan. 2007) (plaintiffs’ Free Exercise rights violated by historic landmark regulation of property); *Keeler v. Mayor of Cumberland*, 940 F. Supp. 879, 885 (D. Md. 1996) (inability to demolish building that was a financial drain on the church substantially burdened its religious exercise).

In the latter case, *Keeler*, a church sought to demolish a monastery that had previously been landmarked and, consequently, a demolition permit was denied. *Id.* at 880. In ruling for the church, the court held that the failure to issue the permit impermissibly violated the Church’s constitutional rights. *Id.* at 886-887. Although a municipality may have a legitimate interest in recognizing or maintaining the aesthetic values created by historic structures, “[n]o court has found historic preservation to be a compelling government interest.” *Mount St. Scholastica, Inc. v. City of Atchison, Kan.*, 482 F. Supp. 2d 1281, 1295 (D. Kan. 2007) (citing *Keeler*, 940 F. Supp. at 886). In order to rise to the level of a compelling government interest, an interest must be “of the highest order.” *Int’l Church of Foursquare Gospel*, 673 F.3d at 1071 (internal citations and quotations omitted). Preserving the aesthetic qualities of a historic district fails to meet that high standard.

A church’s physical facilities are an integral component of its religious exercise. *See* 42 U.S.C. § 2000cc-5(7)(B) (“The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.”).

Houses of worship. . . . express, among other things, the religious community’s purpose, theology, identity, hope, unity and reverence for the divine and its identification with or separation from certain aspects of the culture. They constitute “an image of an entire religious program, a world view.”

Carmella, *Houses of Worship and Religious Liberty: Constitutional Limits to Landmark Preservation and Architectural Review*, 36 VILL. L. REV. 401, 450 (1991) (footnotes omitted). “In governing the appearance of the worship structure, the state sits as arbiter between the religious community and the individual worshipper. . . . The state consequently becomes involved in the process of defining beliefs for the adherents.” *Id.* at 498 (footnote omitted).

Religious architecture, through its shapes, symbols, decorations, ornamentations, and monumentality, represents a strong intention to communicate a particularized message about a group’s religious beliefs. “The history of church building demonstrates that the urge to express faith through architecture is basic.”

Thomas Pak, *Free Exercise, Free Expression, and Landmarks Preservation*, 91 COLUM. L. REV. 1813, 1840-41 (1991) (footnotes omitted). Additionally, “[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants’ interpretations of those creeds.” *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1227 (C.D. Cal. 2002) (quoting *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989)).

Here, the Church is unable to fulfill its religious mission in its current building, which is oversized, dark, and invites illegal behavior. Walls of concrete block and large stucco columns create dark corners that foster unsafe conditions. The front entrance of the building is inactive except when there are church services or meetings. There is frequent urination on and around the church, and people often have to step over feces to enter the building. The Church property is also a site for illegal drug activity and violence. Such conditions are not conducive to welcoming individuals seeking comfort and healing into the Church, which is a crucial component of the Church's religious mission.

Further, the monumental scale and solid concrete block exterior walls of the current building give an impression of coldness and exclusion, which is the antitheses of the Church's religious need to welcome those who seek peace and comfort. The current structure also includes barriers to mobility and access. The steps up to sanctuary are difficult for the elderly and individuals with disabilities, and there is no handicapped access for Sunday school students or teachers. These conditions, along with the need to install a chain link fence in front of the Church's portico, gravely impede the Church's mission of providing a welcoming and healing refuge. The current building cannot be improved to meet the Church's needs, and a new building is required for the Church to carry out its religious mission.

Of great religious significance to the Church, the current structure cannot accommodate a Christian Science Reading Room. A Reading Room is an integral part of this denomination and mandated by the Church's bylaws that state that "[e]ach church of the Christian Science denomination shall have a Reading Room." A Reading Room, which is open to the public daily throughout the week, is a neighborhood sanctuary providing spiritual support and a safe haven where any individual can find hope, comfort, and healing. As Scripture says: "Human beings cannot live on bread alone, but need every word that God speaks." Matthew 4:4. For a Christian Science church, a Reading Room provides spiritual food to the community and offers healing and restoration. The Church cannot fulfill its religious mission without a Reading Room.

The Church seeks to rebuild its house of worship in a way that will enable it to fulfill its religious mission.² The proposed church will have a Christian Science Reading Room which will serve as a daily active presence in the neighborhood. The design will be welcoming, inviting, light-filled and human-scaled to reflect the Church's spiritual mission of creating an atmosphere of light and love while restoring safety and dignity to the neighborhood. The 176 new housing units included in the proposed development will provide much needed animation and a constant flow of people to the area which will end the use of the property for urination, defecation, drug use and violence.

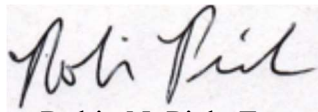
² The instant appeal is thus distinguishable from the situation presented in *California-Nevada Annual Conference of the Methodist Church v. City & Cty. of San Francisco*, 74 F. Supp. 3d 1144, 1156 (N.D. Cal. 2014), where the court found no substantial burden where a religious organization sought to sell its property to a developer for the construction of condominiums, finding such conduct to be commercial, rather than religious. Unlike the instant case, the organization in *California-Nevada Annual Conference* did not allege that it was seeking to build a house of worship necessary for its religious exercise.

If the Board grants Heritage's appeal and requires the Church to pay \$1.5 million, such action by the Board would impose a substantial burden on the Church's religious exercise. Such an excessive and unwarranted demand is not justified by any compelling government interest. 42 U.S.C. § 2000cc(a). Certainly, it is not the "least restrictive means" of achieving any governmental interest. *See id.*; *Cottonwood Christian Ctr.*, 218 F. Supp. 2d at 1229 ("Even if Defendants had compelling reasons to burden Cottonwood's religious exercise, they must do so in the least restrictive means. Far from doing that, the City has done the equivalent of using a sledgehammer to kill an ant.").

Additionally, we are unaware of the City imposing similar conditions on any non-religious institutional or assembly uses. To the extent that the Board imposes such conditions on the Church, such differential treatment vis-a-vis other religious or nonreligious entities would also give rise to claims under Sections 2000cc(b)(1) and 2000cc(b)(2) of RLUIPA.

If the City and Board were not previously aware of these legal requirements, it is now placed on notice that its actions are subject to them. As the court in *Third Church of Christ, Scientist*, noted: "I am troubled to hear that the D.C. government declines even to entertain the religious freedom claims of the plaintiffs here, but the invitation to take that to a court of their choice probably will serve just as well." Transcript, *supra*, at 50-51. We are hopeful that such action will not be necessary here. However, if such condition is imposed, it is this Firm's opinion that it is unlikely that the Board would prevail in defending such action.

Yours truly,

A handwritten signature in black ink, appearing to read "Robin N. Pick". The signature is written in a cursive, flowing style.

Robin N. Pick, Esq.

cc: Mike Buhler, San Francisco Heritage
Fifth Church of Christ, Scientist

DRAFT MEMORANDUM

To: Tyler Evje, Thompson | Dorfman Partners, LLC
From: James Musbach, Ashleigh Kanat, and Michael Nimon
Subject: 450 O'Farrell Street Development Feasibility Review and Evaluation; EPS #161164
Date: November 13, 2017

The Economics of Land Use



At the request of 450 O'Farrell Partners, LLC, the Project Sponsor of 450 O'Farrell Street in San Francisco (the Project), EPS prepared development pro formas for the proposed project and two alternatives considered in the planning documents as part of the application process. This analysis uses static pro forma financial models reflective of vertical development costs and revenue estimates specific to each of the alternatives allowing a comparison of developer returns. The development programs considered in this analysis are described below and are summarized in **Table 1** with design schemes included in the **Appendix**.

- A "Full Preservation" alternative resulting in 151,200 square feet of gross building area, including 97 residential rental units, 800 square feet of restaurant/retail space, and 10,666 square feet of new church space.
- A "Partial Preservation" alternative resulting in 201,200 square feet of gross building area, including 162 residential rental units, 4,600 square feet of restaurant/retail space, and 10,207 square feet of new church space.
- The "Proposed Project" consists of 237,810 square feet of gross building area and includes 176 rental residential units and 6,200 square feet of restaurant/retail. This alternative includes 13,595 square feet of new church space.

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EPS prepared a development pro forma model for the Proposed Project. The Project Sponsor provided EPS with baseline data, such as rents, construction costs, and operating cost assumptions, which EPS reviewed and revised as appropriate. The financial analysis provides an independent assessment of the financial returns for each of the alternatives. The review relies upon industry standards, EPS's experience with similar projects, and market conditions and trends in San Francisco and the Bay Area.

EPS has reviewed the key market assumptions for reasonableness, but has not conducted a detailed market analysis. Actual financial outcomes may differ from the pro forma and EPS findings to the extent that future economic cycles, market, and development trends differ from current conditions. The analysis is in 2017 dollars.

Summary of Findings

Financial results are shown in **Table 2** with the findings described below. Detailed pro formas for each alternative are shown in **Tables 3** through **5**.

- 1. The Full Preservation and Partial Preservation Project alternatives generate insufficient returns to the Developer.** These alternatives generate a yield of 2.9 percent and 3.9 percent, respectively. These returns are below the feasibility threshold range of 5.5 percent to 6.5 percent for projects of comparable development risk and complexity. This return range is based on capitalization rate data adjusted for development risk and location as well as EPS experience with comparable projects.¹
- 2. The additional of square footage reflected in the Proposed Project alternative improves development feasibility.** The resulting yield of 4.5 percent still falls slightly below the typical feasibility range. While the additional space increases total building development costs, the associated revenues offset the cost increase and improve the relative performance of the Proposed Project. The Developer has indicated willingness to accept a 4.5 percent return.

Project Description

The Project is bounded by O'Farrell Street, Geary Boulevard, Taylor Street, and Jones Street in San Francisco's Downtown/Civic Center neighborhood. The site currently houses a three-story 26,904-square foot church, the Fifth Church of Christ Scientist. Other uses include a 4,415-square foot retail space, a 1,012-square foot restaurant, and a residential building at 532 Jones Street. The buildings comprising the Project are designated as contributing resources to the Uptown Tenderloin Historic District, which is listed on the National Register of Historic Places (NRHP).

The proposed Project envisions partial demolition of the existing Fifth Church of Christ Scientist building, and the full demolition of the vacant retail building along O'Farrell Street and the restaurant building along Jones Street. The Project provides a total of 237,810 gross square feet including 187,640 square feet of residential uses, 6,200 square feet of restaurant/retail space, 13,595 square feet for the church, and 8,398 square feet of open space. The new building would be 13-stories (130 feet) with 176 dwelling units, restaurant/retail space, and a replacement church incorporated into the ground level. Twenty-eight units would be Below Market Rate (BMR) with five of these replacing rent controlled units.² The parking garage will provide 41 below grade spaces with additional bicycle parking.

¹ *IRR Monitor Viewpoint mid-2017* data for the San Francisco market.

² All alternatives assume 5 replacement units and 13.5 percent BMR units provided onsite, which is the Project's current affordability requirement reflective of the recent changes to San Francisco's inclusionary housing program.

Review of Key Assumptions and Methodology

Revenues

This analysis assumes average market rate rents of about \$4,400 per unit per month across each of the alternatives. This estimate is based on a market report prepared for the proposed Project by the Concord Group in November 2016. Overall, the market-rate rents fall within a comparable rent range relative to other rental projects in San Francisco based on a review of recent rents reported by Trulia.com. This analysis does not vary the market rate rent assumptions by alternative; however, alternatives with lower density will likely achieve lower rents due to the lack of view premiums, which would further compress yields in these alternatives. Average per-unit monthly rents for affordable units are estimated to range from \$660 to \$1,478 per unit across the alternatives, depending on each alternative's unit size distribution. The BMR units are targeted to be affordable to households earning up to 55 percent of the area median income (AMI). Residential revenue also assumes 7 percent of rental income in other revenue consisting of storage fees, RUBs income, and other revenue.

For the commercial space, this analysis assumes rents of \$60 per square foot per year for retail on a triple-net basis (NNN). These rents are within the range of comparable retail projects in the market area. This analysis also assumes parking revenue of \$325 per space per month. Lastly, this analysis assumes reuse of the existing church space, identified as 'assembly' land use in the Environmental Impact Report for the Project. Based on review of similar facility sales in San Francisco, this analysis assumes a value of about \$240 per square foot across all scenarios.³

Vacancy and Operating Expenses

For the residential component, this analysis reflects a vacancy (or other loss) rate of 5.0 percent. This is a typical level of stabilized vacancy in strong residential markets, such as San Francisco. For the commercial components, a 5.0 percent vacancy/loss factor is applied to the retail space.

The analysis assumes that annual operating expenses will be \$5,000 per unit. These expenses reflect a blend of market rate and affordable units and typically include property management, administration, maintenance, utilities, insurance, and taxes. For affordable units, management and administration expenses also include services required for monitoring, compliance and other costs associated with fulfilling the affordability requirements. EPS assumes additional property tax expenses based on the development value of the Project net of the share attributable to the church assuming a property tax rate of 1.23 percent. A residential capital reserve of 2.0 percent of gross revenue is also assumed.

For the retail components, operating expenses are assumed to be approximately \$18 per square foot and 90 percent of these expenses are assumed to be recoverable from the tenant, consistent with a triple-net lease structure.

³ Based on sales comparables reported by Costar for properties with lodging/meeting halls or religious facility uses sold between 2014 and 2017. The resulting 12 transactions have sale prices ranging from \$83 to \$419 per square foot. This value equates to the net rental rate of \$14.40 per square foot assuming a capitalization rate of 6%.

Development Costs

The cost for new construction generally has been increasing over the past several years due to improvements in the economy, resurgence of new development activity, and the associated growth in demand for construction services and materials. The analysis assumes direct construction cost ranges between approximately \$400 and \$500 per square foot, depending on the alternative and reflective of the economies of scale associated with the larger building. The estimates are based on the February 2017 bid provided by the Project Sponsor, as shown in **Table 7**.

Development costs also include site acquisition, indirect costs, project contingency, and financing. These costs do not vary significantly between the alternatives evaluated in this analysis. Site acquisition is assumed at \$8.7 million for all alternatives. Indirect costs include architecture and engineering, legal and other professional services, development impact fees, other permits and fees, marketing, leasing, and retail leasing commissions, general and administrative, developer fees, and taxes during development.

Development impact fees are estimated for each alternative based on the City's 2017 fee schedule, as shown in **Table 8**. They consist of the transit sustainability, bike parking in lieu, school impact, child care, utilities connection, and street trees in lieu fees. A soft cost contingency of 5.0 percent of other indirect costs is also assumed. Lastly, this analysis estimates a financing cost based on a 65 percent loan to cost ratio with a 5 percent annual interest rate, 60 percent average outstanding balance, and a 2-year construction duration. Total indirect costs comprise approximately 27 to 28 percent of the direct costs across all alternatives and fall within a typical range.

Financial Returns

Expected returns on development investment vary based on a range of factors such as risk, capital and real estate market conditions, building uses, and other trends. All evaluated alternatives generate yields ranging between 2.9 and 4.5 percent. These yields are based on annual net operating income as a share of total cost. The Proposed Project generates the highest return whereas the Full Preservation alternative generates the lowest return.

Projects of comparable development risk and complexity typically require a return threshold ranging between 5.5 percent and 6.5 percent depending on location, complexity, construction type, and other risk factors. This range is based on the capitalization rate data reported for a blend of urban multifamily and commercial uses in San Francisco as well as EPS's experience with comparable projects.

Despite the yield for the proposed project falling below the typical return threshold, the Developer expressed willingness to proceed with the Project. This financial risk and reduced return may be taken for a number of reasons including strong market fundamentals and tenant prospects, anticipation of future improvements in market conditions, expected rates of return lower than assumed in this analysis, access to low-cost funding, or long-term investment strategy, among others.

Table 1
Summary of Development Alternatives
450 O'Farrell Street Feasibility; EPS #161164

DRAFT

Item	Full Preservation Alternative	Partial Preservation Alternative	Proposed Project
Gross Building Square Feet (1)	151,200	201,200	237,810
Residential			
Net Square Feet	87,595	127,110	143,380
Units	97	162	176
Market Rate	80	136	148
BMR (2)	17	26	28
Residential Unit Count			
Studio	14	21	22
1 BR	51	87	95
2 BR	30	50	55
3 BR	2	4	4
Restaurant/Retail			
Gross Square Feet	800	4,638	6,200
Net Square Feet 90%	720	4,174	5,580
Church/Assembly Space			
Gross Square Feet (preserved)	17,800	12,960	0
Gross Square Feet (new)	10,666	10,207	13,595
Below-Grade Parking Spaces	28	39	41
Courtyard Open Space	2,674	2,950	8,110

(1) Includes residential lobby and leasing office.

(2) Each alternative preserves 5 "restricted" studio units with the remainder based on a 13.5% BMR ratio requirement. [BMRs = (total units - 5) * 13.5% + 5 (restricted BMRs)]

Table 2
Summary of Feasibility Results
450 O'Farrell Street Feasibility; EPS #161164

DRAFT

Item	Full Preservation Alternative	Partial Preservation Alternative	Proposed Project
Net Operating Income (NOI)	\$3,108,000	\$5,608,000	\$6,228,000
Total Development Cost	\$108,157,000	\$143,210,000	\$137,463,000
Yield (1)	2.9%	3.9%	4.5%
Funding Gap (2)	(\$51,648,000)	(\$41,246,000)	(\$24,227,000)

(1) A measure of return defined as NOI divided by total development cost.

(2) A subsidy needed to bridge the Project's cost and the resulting finished value.

Table 3
Full Preservation Pro Forma
450 O'Farrell Street Feasibility; EPS #161164

DRAFT

Item	Assumption	Total (Rounded)
DEVELOPMENT PROGRAM		
Gross Building Square Feet		151,200
Residential		
Gross Square Feet		87,595
Units		97
Market Rate		80
BMR		17
Retail/Restaurant		
Gross Square Feet		800
Net Square Feet (1)		720
Church Square Feet		10,666
Parking Spaces		28
OPERATING REVENUE		
Market Rate Residential Lease Revenue (2)	\$4,400 per month	\$4,224,000
Below Market Rate Residential Lease Revenue (3)	\$1,080 per month	\$220,000
Other Income (4)	7.0%	\$311,000
(less) Operating Expenses (5)	\$5,000 per unit/year	(\$485,000)
(less) Capital Reserve	2.0%	(\$89,000)
(less) Vacancy/Credit Loss	5.0%	(\$222,000)
Residential NOI		\$3,959,000
Residential Parking Revenue (6)	\$325 per space/month	\$109,000
(less) Operating Expenses	20%	(\$22,000)
Parking NOI		\$87,000
Subtotal, Residential and Parking NOI (before property taxes)		\$4,046,000
Subtotal, Residential and Parking NOI (after property taxes) (7)		\$2,817,000
Retail Lease Revenue (NNN) (8)	\$60.00 /sq. ft./year	\$43,000
(less) Vacancy/Credit Loss	5.0%	(\$2,000)
(plus) Recovered Expenses (9)	\$16.20 /sq. ft./year	\$12,000
(less) Operating Expenses (10)	\$8.00 /sq. ft./year	(\$6,000)
(less) Property Taxes (10)	\$10.00 /sq. ft./year	(\$7,000)
Subtotal, Retail NOI (after property taxes)		\$40,000
Assembly Space NOI (11)		\$251,000
Total NOI (after property taxes)		\$3,108,000
REVERSION VALUE (12)		
Residential and Parking	4.0% cap rate	\$69,026,000
Retail	6.0% cap rate	\$649,000
Assembly Space (11)	6.0% cap rate	\$4,187,000
Total Revenues		\$73,862,000
DEVELOPMENT COSTS		
Site Acquisition (13)		\$8,670,000
Direct Construction Costs		
Building Construction Cost (13)	\$492 per gross sq.ft.	\$74,338,000
Tenant Improvements (Retail)	\$75 per net retail sq.ft.	\$54,000
Hard Cost Contingency	5.0% of building and TI cost	\$3,720,000
Subtotal, Direct Construction Costs		\$78,112,000
Indirect Costs		
Architectural & Engineering	4.0% of direct construction cost	\$3,124,000
Legal and Other Professional Services	3.0% of direct construction cost	\$2,343,000
Development Impact Fees	see Table 8	\$1,180,000
Other Permits and Fees	3.0% of direct construction cost	\$2,343,000
Marketing, Leasing, and Retail Commissions	1.0% of direct construction cost	\$781,000
G&A	2.0% of direct construction cost	\$1,562,000
Developer Fees	6.0% of direct construction cost	\$4,687,000
Taxes During Development	1.0% of direct construction cost	\$781,000
Soft Cost Contingency	5.0% of other soft cost	\$840,000
Financing (14)		\$3,734,000
Subtotal, Indirect Costs		\$21,375,000
Indirect Costs as % of Direct Costs		27%
Total Development Costs		\$108,157,000
Yield (15)		2.9%

- (1) A 90% efficiency factor is applied to the gross square footage.
- (2) Applies to net square footage; based on recommendations prepared by The Concord Group and Trulia, as of November 2016.
- (3) Applies to net square footage; based on data posted by the San Francisco Mayor's Office of Housing and Community Development for 55% of AMI.
- (4) Includes storage fees, RUBs income, and other revenue.
- (5) Reflects typical apartment operating expenses in the Bay Area net of property taxes, based on EPS's experience with similar projects.
- (6) Monthly revenue per space provided by Project Sponsor. Assumes 100% occupancy.
- (7) As a tax-exempt institution, the church will not pay property taxes. The property tax calculation discounts the taxable basis accordingly.
- (8) Retail NNN lease assumption based on CoStar data.
- (9) Assumes retail tenants reimburse approximately 90% of Operating Expenses and Property Taxes.
- (10) Operating Expenses and Property Taxes combined represent 30% of revenues.
- (11) Applies to the existing church space and assumes a net rent of \$14.40 per square foot or a value of \$240 per square foot based on comparable sales in San Francisco.
- (12) Assumes a 2% cost of sale.
- (13) Provided by the Project Sponsor.
- (14) Assumes 65% LTC ratio with a 5% annual interest rate, 60% average balance outstanding and 2 year construction period.
- (15) A measure of unleveraged return calculated as total NOI divided by total development costs.

Table 4
Partial Preservation Pro Forma
450 O'Farrell Street Feasibility; EPS #161164

DRAFT

Item	Assumption	Total (Rounded)
DEVELOPMENT PROGRAM		
Gross Building Square Feet		201,200
Residential		
Gross Square Feet		127,110
Units		162
Market Rate		136
BMR		26
Retail/Restaurant		
Gross Square Feet		4,638
Net Square Feet (1)		4,174
Church Square Feet		10,207
Parking Spaces		39
OPERATING REVENUE		
Market Rate Residential Lease Revenue (2)	\$4,410 per month	\$7,197,000
Below Market Rate Residential Lease Revenue (3)	\$1,140 per month	\$356,000
Other Income (4)	7.0%	\$529,000
(less) Operating Expenses (5)	\$5,000 per unit/year	(\$810,000)
(less) Capital Reserve	2.0%	(\$151,000)
(less) Vacancy/Credit Loss	5.0%	<u>(\$378,000)</u>
Residential NOI		\$6,743,000
Residential Parking Revenue (6)	\$325 per space/month	\$152,000
(less) Operating Expenses	20%	<u>(\$30,000)</u>
Parking NOI		\$122,000
Subtotal, Residential and Parking NOI (before property taxes)		\$6,865,000
Subtotal, Residential and Parking NOI (after property taxes) (7)		\$5,234,000
Retail Lease Revenue (NNN) (8)	\$60.00 /sq. ft./year	\$250,000
(less) Vacancy/Credit Loss	5.0%	(\$13,000)
(plus) Recovered Expenses (9)	\$16.20 /sq. ft./year	\$68,000
(less) Operating Expenses (10)	\$8.00 /sq. ft./year	(\$33,000)
(less) Property Taxes (10)	\$10.00 /sq. ft./year	<u>(\$42,000)</u>
Subtotal, Retail NOI (after property taxes)		\$230,000
Assembly Space NOI (11)		\$144,000
Total NOI (after property taxes)		\$5,608,000
REVERSION VALUE (12)		
Residential and Parking	4.0% cap rate	\$128,235,000
Retail	6.0% cap rate	\$3,763,000
Assembly Space (11)	6.0% cap rate	<u>\$2,401,000</u>
Total Revenues		\$134,399,000
DEVELOPMENT COSTS		
Site Acquisition (13)		\$8,670,000
Direct Construction Costs		
Building Construction Cost (13)	\$498 per gross sq.ft.	\$100,176,000
Tenant Improvements (Retail)	\$75 per net retail sq.ft.	\$313,000
Hard Cost Contingency	5.0% of building and TI cost	<u>\$5,024,000</u>
Subtotal, Direct Construction Costs		\$105,513,000
Indirect Costs		
Architectural & Engineering	4.0% of direct construction cost	\$4,221,000
Legal and Other Professional Services	3.0% of direct construction cost	\$3,165,000
Development Impact Fees	see Table 8	\$1,733,000
Other Permits and Fees	3.0% of direct construction cost	\$3,165,000
Marketing, Leasing, and Retail Commissions	1.0% of direct construction cost	\$1,055,000
G&A	2.0% of direct construction cost	\$2,110,000
Developer Fees	6.0% of direct construction cost	\$6,331,000
Taxes During Development	1.0% of direct construction cost	\$1,055,000
Soft Cost Contingency	5.0% of other soft cost	\$1,142,000
Financing (14)		<u>\$5,050,000</u>
Subtotal, Indirect Costs		\$29,027,000
Indirect Costs as % of Direct Costs		28%
Total Development Costs		\$143,210,000
Yield (15)		3.9%

- (1) A 90% efficiency factor is applied to the gross square footage.
- (2) Applies to net square footage; based on recommendations prepared by The Concord Group and Trulia, as of November 2016.
- (3) Applies to net square footage; based on data posted by the San Francisco Mayor's Office of Housing and Community Development for 55% of AMI.
- (4) Includes storage fees, RUBs income, and other revenue.
- (5) Reflects typical apartment operating expenses in the Bay Area net of property taxes, based on EPS's experience with similar projects.
- (6) Monthly revenue per space provided by Project Sponsor. Assumes 100% occupancy.
- (7) As a tax-exempt institution, the church will not pay property taxes. The property tax calculation discounts the taxable basis accordingly.
- (8) Retail NNN lease assumption based on CoStar data.
- (9) Assumes retail tenants reimburse approximately 90% of Operating Expenses and Property Taxes.
- (10) Operating Expenses and Property Taxes combined represent 30% of revenues.
- (11) Applies to the existing church space and assumes a net rent of \$14.40 per square foot or a value of \$240 per square foot based on comparable sales in San Francisco.
- (12) Assumes a 2% cost of sale.
- (13) Provided by the Project Sponsor.
- (14) Assumes 65% LTC ratio with a 5% annual interest rate, 60% average balance outstanding and 2 year construction period.
- (15) A measure of unleveraged return calculated as total NOI divided by total development costs.

Table 5
Proposed Project Pro Forma
450 O'Farrell Street Feasibility; EPS #161164

DRAFT

Item	Assumption	Total (Rounded)
DEVELOPMENT PROGRAM		
Gross Building Square Feet		237,810
Residential		
Gross Square Feet		143,380
Units		176
Market Rate		148
BMR		28
Retail/Restaurant		
Gross Square Feet		6,200
Net Square Feet (1)		5,580
Church Square Feet		13,595
Parking Spaces		41
OPERATING REVENUE		
Market Rate Residential Lease Revenue (2)	\$4,410 per month	\$7,828,000
Below Market Rate Residential Lease Revenue (3)	\$1,150 per month	\$384,000
Other Income (4)	7.0%	\$575,000
(less) Operating Expenses (5)	\$5,000 per unit/year	(\$880,000)
(less) Capital Reserve	2.0%	(\$164,000)
(less) Vacancy/Credit Loss	5.0%	(\$411,000)
Residential NOI		\$7,332,000
Residential Parking Revenue (6)	\$325 per space/month	\$160,000
(less) Operating Expenses	20%	(\$32,000)
Parking NOI		\$128,000
Subtotal, Residential and Parking NOI (before property taxes)		\$7,460,000
Subtotal, Residential and Parking NOI (after property taxes) (7)		\$5,921,000
Retail Lease Revenue (NNN) (8)	\$60.00 /sq. ft./year	\$335,000
(less) Vacancy/Credit Loss	5.0%	(\$17,000)
(less) Operating Expenses (9)	\$8.00 /sq. ft./year	(\$45,000)
(less) Property Taxes (9)	\$10.00 /sq. ft./year	(\$56,000)
(plus) Recovered Expenses (10)	\$16.20 /sq. ft./year	\$90,000
Subtotal, Retail NOI (after property taxes)		\$307,000
Total NOI (after property taxes)		\$6,228,000
REVERSION VALUE (11)		
Residential and Parking	4.0% cap rate	\$145,058,000
Retail	6.0% cap rate	\$3,554,000
Total Revenues		\$148,612,000
DEVELOPMENT COSTS		
Site Acquisition (12)		\$8,670,000
Direct Construction Costs		
Building Construction Cost (12)	\$402 per gross sq.ft.	\$95,504,000
Tenant Improvements (Retail)	\$75 per net retail sq.ft.	\$419,000
Hard Cost Contingency	5.0% of building and TI cost	\$4,796,000
Subtotal, Direct Construction Costs		\$100,719,000
Indirect Costs		
Architectural & Engineering	4.0% of direct construction cost	\$4,029,000
Legal and Other Professional Services	3.0% of direct construction cost	\$3,022,000
Development Impact Fees	see Table 8	\$1,989,000
Other Permits and Fees	3.0% of direct construction cost	\$3,022,000
Marketing, Leasing, and Retail Commissions	1.0% of direct construction cost	\$1,007,000
G&A	2.0% of direct construction cost	\$2,014,000
Developer Fees	6.0% of direct construction cost	\$6,043,000
Taxes During Development	1.0% of direct construction cost	\$1,007,000
Soft Cost Contingency	5.0% of other soft cost	\$1,107,000
Financing (13)		\$4,834,000
Subtotal, Indirect Costs		\$28,074,000
Indirect Costs as % of Direct Costs		28%
Total Development Costs		\$137,463,000
Yield (14)		4.5%

- (1) A 90% efficiency factor is applied to the gross square footage.
- (2) Applies to net square footage; based on recommendations prepared by The Concord Group and Trulia, as of November 2016.
- (3) Applies to net square footage; based on data posted by the San Francisco Mayor's Office of Housing and Community Development for 55% of AMI.
- (4) Includes storage fees, RUBs income, and other revenue.
- (5) Reflects typical apartment operating expenses in the Bay Area net of property taxes, based on EPS's experience with similar projects.
- (6) Monthly revenue per space provided by Project Sponsor. Assumes 100% occupancy.
- (7) As a tax-exempt institution, the church will not pay property taxes. The property tax calculation discounts the taxable basis accordingly.
- (8) Retail NNN lease assumption based on CoStar data.
- (9) Operating Expenses and Property Taxes combined represent 30% of revenues.
- (10) Assumes retail tenants reimburse approximately 90% of Operating Expenses and Property Taxes.
- (11) Assumes a 2% cost of sale.
- (12) Provided by the Project Sponsor.
- (13) Assumes 65% LTC ratio with a 5% annual interest rate, 60% average balance outstanding and 2 year construction period.
- (14) A measure of unleveraged return calculated as total NOI divided by total development costs.

Table 6
Summary of Unit Distribution and Rents by Alternative
450 O'Farrell Street Feasibility; EPS #161164

DRAFT

Type of Unit	Monthly Rent (1)	Full Preservation Alternative		Partial Preservation Alternative		Proposed Project	
		Units	Share of Total	Units	Share of Total	Units	Share of Total
Market Rate							
Studio	\$2,808	8	8.2%	14	8.6%	15	8.4%
1 BR	\$3,888	44	45.4%	75	46.3%	82	46.7%
2 BR	\$5,616	27	27.8%	44	27.2%	48	27.0%
3 BR	\$7,128	<u>1</u>	<u>1.0%</u>	<u>3</u>	<u>1.9%</u>	<u>3</u>	<u>2.0%</u>
Subtotal, Market Rate		80	82.5%	136	84.0%	148	84.0%
Below Market Rate							
Studio	\$1,063	1	1.0%	2	1.2%	2	1.1%
Studio (Restricted)	\$660	5	5.2%	5	3.1%	5	2.8%
1 BR	\$1,214	7	7.2%	12	7.4%	13	7.3%
2 BR	\$1,353	3	3.1%	6	3.7%	7	4.2%
3 BR	\$1,478	<u>1</u>	<u>1.0%</u>	<u>1</u>	<u>0.6%</u>	<u>1</u>	<u>0.3%</u>
Subtotal, Below Market Rate		17	17.5%	26	16.0%	28	15.8%
Total Residential Units							
Studio		9	9.3%	16	9.9%	17	9.7%
Studio (Restricted)		5	5.2%	5	3.1%	5	2.8%
1 BR		51	52.6%	87	53.7%	95	54.0%
2 BR		30	30.9%	50	30.9%	55	31.3%
3 BR		<u>2</u>	<u>2.1%</u>	<u>4</u>	<u>2.5%</u>	<u>4</u>	<u>2.3%</u>
Total		97	100.0%	162	100.0%	176	100.0%

(1) Market rate rents are based on median rent data for San Francisco as aggregated and reported by the Concord Group and Trulia.com, as of November 2016. Below market rate rents are based on data posted by the San Francisco Mayor's Office of Housing and Community Development,

Sources: Thompson | Dorfman; Trulia.com; San Francisco Mayor's Office of Housing and Community Development, 2016 Maximum Monthly Rent by Unit Type; and Economic & Planning Systems, Inc.

Table 7
Summary of Construction Costs by Alternative
450 O'Farrell Street Feasibility; EPS #161164

DRAFT

Item		Full Preservation Alternative		Partial Preservation Alternative		Proposed Project (1)
Direct Costs						
Restoration and Renovation		\$6,548,842		\$4,497,149		\$1,967,530
Residential		\$43,494,226		\$63,156,114		\$67,276,094
Other Uses (2)		\$6,829,529		\$11,153,537		\$7,348,559
Site Work		<u>\$3,186,426</u>		<u>\$3,248,526</u>		<u>\$2,720,076</u>
Subtotal		\$60,059,023		\$82,055,326		\$79,312,259
Contractor Contingency	4.5%	\$2,693,047	3.9%	\$3,190,721	3.3%	\$2,619,684
Construction Management Fee	4.8%	\$2,859,154	4.7%	\$3,852,922	4.6%	\$3,673,228
Other (3)	14.5%	<u>\$8,726,791</u>	13.5%	<u>\$11,077,014</u>	12.5%	<u>\$9,898,766</u>
Subtotal		\$14,278,992		\$18,120,657		\$16,191,678
Total Construction Cost		\$74,338,015		\$100,175,983		\$95,503,937
Construction Cost per Unit		\$766,371		\$618,370		\$542,636
Construction Cost per Sq.Ft.		\$492		\$498		\$402

(1) Construction cost estimates provided by the Project applicant based on a construction bid dated 02.14.17.

(2) Includes church, retail, and garage uses.

(3) Includes general requirements, general conditions, job equipment, GRT, insurance, and subguard.

Table 8
Development Impact Fees by Alternative*
450 O'Farrell Street Feasibility; EPS #161164

DRAFT




Item	Full Preservation Alternative	Partial Preservation Alternative	Proposed Project
Transportation Sustainability Fee (Resi)	\$461,663	\$705,450	\$808,647
Transportation Sustainability Fee (Retail)	\$15,152	\$87,844	\$116,576
Bike Parking In-lieu Fee	\$2,246	\$3,750	\$4,074
School Impact Fee (Retail)	\$310	\$1,800	\$2,388
Childcare Impact Fee - Resi	\$211,617	\$307,607	\$373,605
Childcare Impact Fee - Retail	\$11,075	\$11,075	\$11,075
Water Capacity Charge	\$35,213	\$35,213	\$35,213
Wastewater Capacity Charge	\$119,811	\$119,811	\$119,811
Contractor Connection Fee	\$120	\$120	\$120
Meter Rental Deposit	\$8,580	\$8,580	\$8,580
Street Trees In-Lieu Fee	<u>\$9,530</u>	<u>\$9,530</u>	<u>\$9,530</u>
Total Fees	\$1,180,147	\$1,733,122	\$1,989,451

*Note: fee estimates are based on the 2017 San Francisco Citywide Development Impact Fee Register published by the San Francisco Planning Department.

APPENDIX A



Table S.3: Comparison of Significant Impacts of the Proposed Project to Impacts of the Alternatives – for DEIR

	Proposed Project	No Project Alternative	Full Preservation Alternative	Partial Preservation Alternative
		[assumes no change to the site]		

Legend: NI = No Impact; LS = Less than Significant; S = Significant; SU = Significant and unavoidable; SUM = Significant and unavoidable impact with mitigation; NA = Not Applicable

Description	The 450 O'Farrell Street church building would be retained as a public space, with a play area, café, and other community uses.	No changes would be made to the existing structures at 450–474 O'Farrell Street and 532 Jones Street.	This alternative would include the rehabilitation of the church and the development of 97 residential units.	This alternative would retain and rehabilitate the front of the existing buildings located at 474 and 450 O' Farrell Street.
Height ^a	A single 13-story (130 foot tall, with an additional 20 feet for the elevator penthouse).	Three existing buildings with heights of 50, 30 and 30 feet.	Height of new construction at the streetwall property line 130 feet high.	Height of new construction setback (15', 20', 35') from streetwall property 130 feet high.
Number of Stories	13	3/1/1	13	13
Number of Residential Units	176	5	97	162

GSF by Use				
Residential	143,380 nsf		87,595 nsf	127,110 nsf
Retail/Restaurant	6,155 gsf	5,427 gsf	800 gsf	4,638 gsf
Leasing Office/Lobby/Amenity	2,490 gsf		4,600 gsf	4,618 gsf
Church (new)	10,570 gsf	N/A	10,666 gsf	1,726 gsf (existing) ^d 8,481 gsf (new)
Existing church		25,800 gsf	21,800 gsf (assembly/event)	12,960 gsf (assembly/event)
Below Grade Parking, Building Storage, Bicycle Storage, Mechanical, and Circulation Space	21,520 gsf	None	28 parking spaces in belowground parking ^e	39 parking spaces in belowground parking ^e
Total GSF	235,605 gsf	31,227 gsf	151,236 gsf	201,231 gsf
Common Open Space	8,110 gsf		2,674 gsf	2,950 gsf
Parking and Loading		4		
Residential Spaces ^b	40(2)	N/A	28(1)	39(1)
Car-share Spaces ^c	1	N/A	0	0
Service Vehicle Loading Spaces	0	N/A	0	0
Total Parking and Loading	41	4	28	39
	Yes	None	Some	Some

Summary
Table S.3 (continued)

	Proposed Project	No Project Alternative [assumes no change to the site]	Full Preservation Alternative	Partial Preservation Alternative
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Legend: NI = No Impact; LS = Less than Significant; S = Significant; SU = Significant and unavoidable; SUM = Significant and unavoidable impact with mitigation; NA = Not Applicable

Historic Architectural Resources				
Impact CR-1: The proposed demolition of the existing Fifth Church of Christ, Scientist building at 450 O'Farrell Street would have a substantial adverse effect on an individual historic architectural resource.	S	NA	NA	S
Impact CR-2: The proposed demolition of the existing buildings on the project site and the new construction, as included under the proposed project, would not have a substantial adverse effect on a historic district.	LS	NA	LS	LS
Impact CR-3: Construction activities for the proposed project could result in physical damage to adjacent historic resources.	LS	NI	LS	LS
<p><i>Notes:</i></p> <ul style="list-style-type: none"> a The height of the proposed project is 130 feet as measured from 450 O'Farrell Street per Planning Code Sections 260(a)(1)(B) and 260(a)(1)(D). b For each 25 off-street parking spaces provided, one space must be designed and designated for persons with disabilities per San Francisco Planning Code Section 155(i). The number of ADA-accessible spaces is shown in parentheses. c One space is required per San Francisco Planning Code Section 166. d Rehabilitated portion of existing building at 474-480 O'Farrell. e Does not include gross square footage of underground parking. 				

Source: Johanna Street Architect and Kwan Henmi Architects, 2017.