



# SAN FRANCISCO PLANNING DEPARTMENT

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## Board of Appeals Brief

*Date:* March 30, 2017  
*Hearing Date:* April 5, 2017  
*Appeal Nos.:* 16-111, 16-112 and 16-113  
*Project Address:* 1049 Market Street  
*Block/Lot:* 3703/067  
*Zoning:* C-3-G (Downtown – General)/90-X Height and Bulk District  
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### INTRODUCTION

On June 8, 2016, 1049 Market Street, LLC (“Appellant”) filed Appeal Nos. 16-111, 16-112 and 16-113 challenging three actions taken by the City related to the property at 1049 Market Street (“Property”). The three actions are as follows: 1) the Zoning Administrator’s issuance of a Revocation Request for Building Permit Application No. 201307262890 (16-111); 2) the Department of Building Inspection’s (“DBI”) Revocation of Permit for Building Permit Application No. 201307262890 (16-112); and, 3) the Zoning Administrator’s issuance of a Notice of Violation and Penalty Decision (16-113). The Appellant argues that the City erred or abused its discretion in taking these actions. The Planning Department (“Department”) provides the following responses to Appellant’s brief.

### PROPERTY INFORMATION

The Property is located within the C-3-G (Downtown – General) Zoning District, which allows a variety of residential and commercial uses. The Property is approximately 8,250 square feet in area and contains a seven-story 56,800 square foot building that was constructed in 1907 as a furniture store. The building is a known historic resource (known as the “Sterling Building”) that is located within the Market Street Theatre and Loft Historic District. The Appellant purchased the property in 2012. Prior to that time, the property was owned by affiliates or associates of the Appellant since 1994.

## **BACKGROUND**

Research of Planning Department records indicates the Property received a permit in 1991 (Building Permit Application No. 9104752) for the “conversion of approximately 5,844 square feet of unfinished space for six Artist/Live-Work units” on the 6th floor. A Notice of Special Restrictions (NSR) for this permit was also filed on the deed of the property (NSR No. E906779 - attached). Further evidence demonstrates that previous owners of the subject property converted floors one through five to residential uses at least 10 years ago. In 2007, DBI issued a Notice of Violation (NOV No. 200711850) against the property requiring the property owner to obtain permits legalizing the residential use of these units (Appellant’s Brief Gall Declaration Exhibit A). In 2013, DBI issued a second NOV for failure to comply with the 2007 NOV.

Beginning in 2013, the Department began to receive anonymous complaints against the Property regarding the unpermitted conversion of dwelling units to commercial use. As of that time, the owner had failed to legalize the residential use of the premises as required by the 2007 and 2013 NOVs. Instead, the owner applied for and obtained Building Permit Application No. 201307262890 (“Permit” - Appellant’s Brief Gall Declaration Exhibit C) with the following scope of work: “To comply with Notice of Violation 200711850. Demo of office walls on the 1st through 5th floor. SFAB-017.” The Permit was issued over-the-counter, without Planning Department review.

On October 28, 2013, the Department submitted a Request for Suspension (Appellant’s Brief Gall Declaration Exhibit G) for the Permit because it was not reviewed by the Planning Department, and there was a question as to whether the work proposed in the Permit triggered additional requirements and/or procedures under the Planning Code.

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On November 13, 2013, the Suspension Request was appealed (Appeal No. 13-144) by the Appellant to the Board of Appeals; however, this appeal was subsequently withdrawn on February 19, 2014. The Permit thus remained suspended.

On December 10, 2013, the Board of Supervisors adopted interim controls (Resolution No. 428-13 – “2013 Controls” – Appellant’s Brief Patterson Declaration Exhibit B) for a 12-month period requiring, among other things, that “certain building permits for any building with some commercial use shall require the posting of a notice and a 15-day delay in starting the work, and the re-establishment of a commercial use that has been converted to residential use shall require Planning Commission approval through either an authorization under Planning Code, Section 320 et seq., or a conditional use authorization.” This control applies to the area bounded by Market Street from Van Ness Street east to 5th Street on the north side and east to 2nd Street on the south side, 2nd Street south to Brannan Street, Brannan Street west to Division Street, and South Van Ness Street north to Market Street (which includes the Property).

On February 2, 2015, the Department issued a Release of Suspension Request (Appellant’s Brief Gall Declaration Exhibit I) for the Permit. The Release of Suspension found, based on the law in effect at that time, that the pre-existing office space had not been abandoned by the conversion of the building to residential use, and further stated that any residential units could be maintained and improved in a manner consistent with Planning and Building Codes.

On February 3, 2015, the Release of Suspension Request was appealed by 17 residents of the Property to the Board of Appeals (Appeal No. 15-022).

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On March 5, 2015, the Board of Supervisors adopted interim controls (Resolution No. 61-15 – “2015 Controls” – Appellant’s Brief Patterson Declaration Exhibit D) for a 12-month period requiring, among other things, the following:

*That during the pendency of these interim controls in the geographic area covered by these controls, any commercial use that has been converted in whole or in part to residential use without benefit of permit shall be deemed abandoned. Any permit, subject to the posted notice and 15-day hold requirements above, to re-establish any commercial use shall not be issued or reinstated, or, if already issued, shall not remain effective, unless the project sponsor obtains a Conditional Use authorization under Planning Code Section 303, in addition to all requirements of the Planning Code applicable to the establishment of any such use.*

The 2015 Controls applied to the area bounded by Market Street from Van Ness Street east to 5th Street on the north side and east to 2nd Street on the south side, 2nd Street south to Brannan Street, Brannan Street west to Division Street, and South Van Ness Street north to Market Street (which includes the Property).

On April 8, 2015, the Board of Appeals heard Appeal No. 15-022. At this hearing, the Department stated that the 2015 Controls applied to the Permit, and requested that the Board of Appeals uphold the appeal so that the Permit remained suspended until DBI could institute revocation proceedings consistent with the interim controls. The Board of Appeals did not determine the applicability of the 2015 Controls, but instead upheld the appeal on the basis that the Zoning Administrator erred in failing to recognize that the subject permit is defective (Appellant’s Brief Gall Declaration Exhibit K).

On September 9, 2015, the Department received an anonymous complaint (Complaint No. 2015-012037ENF) with photographs (attached) alleging that units located on the first through the sixth floors located in 1049 Market Street were in the process, or had already been, converted to office use.

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In response to this complaint, the Department obtained a list of residential eviction records from the San Francisco Rent Board (attached). These records demonstrate the existence of approximately 66 units, located on floors one through six, which received eviction notices between October 7, 2013 and March 30, 2015. This evidence is supplemented by a commercial lease advertisement (attached) for at least eight units located on the 4th floor and at least one unit located on the 6th floor.

On September 22, 2015, the Department issued a Notice of Enforcement (Appellant's Brief Gall Declaration Exhibit L) detailing the complaint and the request for an interior inspection of the Property. Although the Department received a response dated October 7, 2015 from the Appellant's representative (Ryan J. Patterson), the response failed to provide any evidence demonstrating that units had not been converted to office use.

On December 1, 2015, the Board of Supervisors adopted Building and Planning Code amendments (Ordinance No. 208-15) to require written and posted notice to all tenants of a building in which demolition or merger of an authorized or unauthorized Residential Unit is proposed. Any work undertaken at the Property to eliminate an authorized or unauthorized Residential Unit after the effective date of this ordinance must comply with the terms of Ordinance No. 208-15. Further, Building Code Section 106A.4.6 requires revocation of any permit where the applicant has not substantially complied with the noticing provisions.

On January 13, 2016, a Notice of Violation and Penalty (NOVP - Appellant's Brief Gall Declaration Exhibit L) was issued detailing violation under the 2015 Controls that were in effect at that time per Planning Code Section 306.7. In addition, the Appellant was provided with notice of the pending adoption of Board File No. 150494 (Planning Department Case No. 2015-006712PCA – amendment to Planning Code Section 317) and that the subject property would be in violation of Section 317 for the removal of authorized and unauthorized dwelling units if

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the proposed amendments to Section 317 became effective. The Appellant subsequently requested a Zoning Administrator Hearing on the NOV. P.

On February 26, 2016, the Zoning Administrator held a public hearing regarding the NOV. P. and provided the Appellant with additional time to respond to the complaint.

On March 4, 2016 and March 11, 2016, the Board of Supervisors adopted Planning Code amendments (Ordinance Nos. 23-16 and 33-16 - Appellant's Brief Patterson Declaration Exhibits M and O) to amend Planning Code Section 317 to make permanent elements of the 2013 and 2015 Controls ("Permanent Controls"). Planning Code Section 317(c)(2) requires Conditional Use ("CU") authorization for "any permit issued for Removal of an Unauthorized Unit prior to March 1, 2016 that has been suspended by the City or in which the applicant's rights have not vested." The Permanent Controls do not contain the provision of the 2015 Controls, challenged in Appeal No. 15-22 (Release of Suspension) that "any commercial use that has been converted in whole or in part to residential use without benefit of permit shall be deemed abandoned." Under the terms of the Permanent Controls, the Permit requires a CU under the Planning Code.

On May 26, 2016, the Zoning Administrator, upon reviewing all available information related to the enforcement case, found the property to be in violation of the Planning Code and issued a Notice of Violation and Penalty Decision (NOVPD - attached). On the same day, the Zoning Administrator also issued a Revocation Request for the Permit finding that it violates the Planning Code (Appellant's Brief Gall Declaration Exhibit O).

On May 27, 2016, DBI issued a Revocation of Permit for the Permit (Appellant's Brief Gall Declaration Exhibit O).

On June 8, 2016, the Appellant filed Appeal Nos. 16-111, 16-112 and 16-113.

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On June 29, 2016, the Appellant filed the required CU application (Case No. 2016-008515CUA); however, they have not diligently pursued the application, nor submitted the required environmental evaluation application.

**ISSUES ON APPEAL**

On November 17, 2017, the Appellant submitted a brief for Appeal Nos. 16-111, 16-112 and 16-113; however, the Appellant failed to demonstrate that the City erred or abused its discretion in revoking Building Permit Application No. 201307262890 or issuing the Notice of Violation and Penalty Decision. As a result, the Board should uphold each of the challenged determinations.

**PREVIOUS LITIGATION**

Appellant has challenged the 2015 Controls in three separate actions against the City: first seeking damages and other relief for alleged violation of its constitutional rights and purported state writ theories in federal court on May 8, 2015 (“Federal Complaint”); then the first of its state court cases, alleging the same conduct by the City and seeking functionally identical relief from the City (“First State Case”). Both complaints challenged San Francisco’s adoption of the 2015 Controls and sought damages based on this Board’s decision in Appeal No. 15-22 (Suspension Release). On September 28, 2015, the federal court granted, in part, the City’s motion to dismiss the Federal Complaint, and stayed the federal claims, citing *Railroad Commission of Tex. v. Pullman Co.* (1941) 312 U.S. 496 (“*Pullman*”).

Following trial of the First State Case, the Superior Court did not reinstate the Permit, as Appellant had requested; instead, it remanded the Permit to the Board of Appeals for further action on the narrow question of whether, any commercial use at the property should be deemed abandoned pursuant to the 2015 Controls, and specifically noted that the Board would be called upon to determine what law applied to its determination. (See Appellant’s Brief

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Patterson Declaration Exhibit A p. 7.) The Superior Court further held that Appellant has no vested right in the Permit (*id.* at pp. 7-10), and that Appellant had failed to establish the City had taken its property without compensation under any of the tests for an unconstitutional taking. (*Id.* at pp. 10-13.) Instead, the Court specifically found that the Appellant continues to generate income from the live-work units on the sixth floor and the street level commercial units, that that the City had placed no limits on the rents that Appellant could charge for those units. (*Id.* at pp. 10-11.) In addition, Appellant had admitted that it continued to rent vacant units on floors 1 through 5 to tech businesses despite the suspension of the Permit (*id.* at p. 11), and that Appellant had chosen not to accept rent from its residential tenants as a result of its litigation strategy in its eviction lawsuits, not as a result of any City conduct. (*Ibid.*), The Court also held that the 2015 Controls were not a “project” for CEQA purposes because they do not authorize or permit any specific construction, and do not compel property owners to illegally convert office units to residential rental use. (*Id.* at pp. 12-17.) Nor, after such illegal conversion did the 2015 Controls forbid property owners from converting such units back to their legally permitted use as offices. Appellant has appealed that order.

On February 24, 2017, the Superior Court heard argument in Appellant’s lawsuit challenging the validity of the Permanent Controls. Appellant has challenged the Permanent Controls under CEQA, vested rights and takings theories. The parties are awaiting the Court’s decision in that case.

**A. THE NOVP DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.**

The NOVP Decision correctly finds that the Appellant is in violation of Planning Code Section 317 for unauthorized efforts to convert Residential Units<sup>1</sup> and Unauthorized Units<sup>2</sup> to

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<sup>1</sup> Per Planning Code Section 317(b)(12): “Residential Unit” shall mean a legal conforming or legal nonconforming Dwelling Unit, a legal nonconforming Live/Work Unit or Group Housing.

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Office Use. Evidence supporting the conversion includes commercial lease advertisements for at least eight units on the fourth floor which were previously Unauthorized Units and at least one unit on the sixth floor which was previously a Residential Unit (attached). Additionally, the Zoning Administrator held a public hearing on the complaint which was attended by the Appellant who was represented by their attorneys (Andrew Zacks and Ryan Patterson). The hearing was also attended by Matt McFarland (representing residents of the Property), Tommy Avicolti Mecca (Housing Rights Committee) and individual residents of the building. At this hearing, the Zoning Administrator received testimony from the residents and their representatives confirming conversion of Unauthorized and Residential Units on the property. This evidence is supplemented by Rent Board records which demonstrate the existence of approximately 66 units located on floors one through six, which received eviction notices between October 7, 2013 and March 30, 2015 (attached). The Appellant, which was provided with additional time to review the materials submitted at the hearing and provide a response, failed to provide any testimony or evidence to demonstrate that the Property was in compliance with the Planning Code.

**B. APPLICABILITY OF THE 2015 AND PERMANENT CONTROLS**

Appellant argues that neither the 2015 nor the Permanent Controls apply to the Permit; however, they fail to substantiate these claims.

The 2015 Controls provide:

That during the pendency of these interim controls in the geographic area covered by these controls, any commercial use that has been converted in whole or in part to residential use without benefit of a permit shall be deemed abandoned. Any permit, subject to the posted notice and 15-day hold requirements above, to re-establish any commercial use shall not be issued or

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<sup>2</sup> Per Planning Code Section 317(b)(13): "Unauthorized Unit" shall mean one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from Residential Units on the same property. "Independent" shall mean that (i) the space has independent access that does not require entering a Residential Unit on the property and (ii) there is no open, visual connection to a Residential Unit on the property.

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reinstated, or, if already issued, shall not remain effective, unless the project sponsor obtains a Conditional Use authorization under Planning Code Section 303, in addition to all requirements of the Planning Code applicable to the establishment of any such use...

(Resolution No. 61-15, at p. 4 [emphasis added].)

The 2015 Controls specifically state that they apply to permits that have already issued and that, if issued, the permit shall not remain effective. Here, the Permit has been suspended since October 28, 2013. Even if the Permit had not been revoked, the 2015 Controls provide that any reinstatement of the Permit would require a CU. This is because the Permit is within the category subject to the posted notice and 15-day hold requirements. Those permits include: “Structural or architectural work above the ground floor in the interior of any building with some commercial use that obtained its first certificate of occupancy prior to 1979, is valued at \$15,000 or more, and requires the submittal of floor plans...” (*Id.* at p. 4.). While the Controls do exempt a limited category of permits – including “permits to address a life/safety issues, and permits for weather protection, accessibility upgrades, and dry rot repair” – the Permit does not fall within those categories. Appellant’s argument to the contrary offers no evidence from the administrative record to support it. In fact, as the Superior Court found in the First State Case, Appellant “has admitted for many years that there are no safety concerns at the building....” (Patterson Dec. at Ex. A, p. 12.) Nor is there any evidence in the permit application itself indicating that the Permit was sought for the purpose of addressing life/safety issues. Rather, it was only after Appellant determined that it preferred to evict its tenants and convert the building to commercial use that it began asserting unfounded safety concerns. The trial court rejected these belated and unsubstantiated claims, and this Board should reject them as well.

Likewise, the applicability of the Permanent Controls is clear: it applies to “any permit issued for Removal of an Unauthorized Unit prior to March 1, 2016 that has been suspended by

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the City or in which the applicant's rights have not vested" (Section 317(c)(2)). As noted below, the Permit has remained suspended since October 28, 2013 and the Appellant does not have a vested right to the Permit. As such, the Permanent Controls apply to the Permit.

Appellant incorrectly suggests that the 2015 Controls do not apply to the Property because Appellant did not seek to remove residential units "without benefit of a permit" since Appellant had already obtained the Permit at issue here. (See App. Brief at p. 11.) The reference to "without benefit of a permit" refers to conversion *from* commercial use *to* residential use (as was the case with the Property); it does not refer to whether a property has obtained a permit to convert to commercial uses. Further, Appellant's Permit remained suspended continuously from October 28, 2013 through the present as a result of 1) the original Suspension Request, 2) Appellant's withdrawal of its appeal of the Suspension Request, 3) the pendency of the original state litigation and 4) the Revocation Request. The Superior Court never reinstated the Permit, but rather remanded the matter to the Board of Appeals for the narrow question of whether, any commercial use at the property should be deemed abandoned pursuant to the 2015 Controls. (See Patterson Dec., Ex. A at p. 7..) However, because the 2015 Controls and Permanent Controls rendered the Permit void (S.F. Planning Code §176(a); S.F. Building Code § 106A.4.3; *see, also, Land Waste Management v. Contra Costa County Bd. of Supervisors* (1990) 222 Cal.App.3d 950, 957–958 ["[i]ssuance of a permit inconsistent with zoning ordinances or the general plan may be set aside and invalidated as ultra vires."]), the Department and DBI properly revoked the Permit before any further proceedings were conducted before this Board. As a result, the property was never legally restored to commercial use, and any conversion of the residential units in the property to commercial use after October 28, 2013 without a CU violated the Interim (2013 and 2015) and Permanent Controls.

**C. THE 2015 CONTROLS AND THE PERMANENT CONTROLS ARE CONSISTENT WITH THE ELLIS ACT.**

Appellant incorrectly argues, as it has in the Superior Court, that the 2015 Controls and the Permanent Controls are preempted by the Ellis Act. But this issue has already been addressed by the First District Court of Appeal in a case considering a related provision of Planning Code section 317. In that case, the Court of Appeal rejected the restriction in Section 317 providing that the Planning Commission shall not approve an application for Residential Merger if any tenant has been evicted from one of the units to be merged pursuant to the Ellis Act within 10 years prior to filing the application for merger. (See *San Francisco Apartment Association v. City and County of San Francisco* (2016) 3 Cal.App.5<sup>th</sup> 463.) However, the court specifically found that the Ellis Act reserves to local governments, like the City, the authority to conduct discretionary review prior to issuing permits involving residential units. Specifically, the court stated:

... the San Francisco Planning Code provides for a review process whenever a landowner applies for a permit to demolish, merge or convert a residential unit, which, among other things, requires the planning commission to consider the effect of the proposed demolition, merger or conversion on the number of affordable rental units in the surrounding area. There is no challenge under the Ellis Act to this discretionary process. In any event, it appears consistent with the inherent police power of local governments to regulate land use, a power expressly recognized by the Act, in that planning commission review of permit applications does not, in and of itself, extract a penalty from landlords seeking to exit the residential rental market. However, for the reasons stated above, the Ordinance at issue goes far beyond mandating a discretionary review.

(*Id.* at p. 486 fn. 10.)

In this case, the 2015 and Permanent Controls simply impose a review process on owners before they may remove existing residential units from the market. As a matter of law, the Ellis Act does not preempt this requirement. (See, e.g., S.F. Plan. Code §317(a) [under the amended provisions “a public hearing will be held prior to approval of any permit that would remove existing housing, with certain exceptions, as described below.”].) The Controls do not

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prevent a property owner from converting withdrawn units to other uses, or exact a “ransom” (or any fee at all) as a prerequisite to such conversion. Thus, unlike the Hotel Conversion Ordinance considered in the *Reidy* case, cited by Appellant, the Controls cannot be said to punish property owners for withdrawing their units in violation of the Ellis Act (See *Reidy v. City and County of San Francisco* (2004) 123 Cal.App.4th 580.)

The Controls do not prohibit or create a precondition to a property owner’s right to go out of the residential rental business, create a defense to an unlawful detainer action not recognized in the Act, or place too high a price on a property owner’s right to elect to withdraw units from the rental market. As a result, the Controls do not interfere with a landlord’s “unfettered right” to go out of the rental business. (See *City of Santa Monica v. Yarmark* (1988) 203 Cal.App.3d 153.) Rather, the right to and procedure for withdrawing from the rental market is exactly the same today as it was before the City adopted its Ordinance. After an owner exercises its right to withdraw, the Permanent Controls now provide that all properties are subject to the same review “to regulate the particulars of the demolition and the redevelopment of the property after it is withdrawn from the rental market.” (*Reidy, supra*, 123 Cal.App.4th at p. 588 [emphasis added].)

The Controls do not contradict the Ellis Act, because they do not “mandate what state law expressly forbids, or forbid what state law expressly mandates.” (*Big Creek Lumber Co. v. Cty. of Santa Cruz*, 38 Cal. 4<sup>th</sup> 1139, 1161, 136 P.3d 821, 835 (2006), as modified (August 30, 2006)) As a result, Appellant’s preemption claim fails.

**D. APPELLANT DOES NOT HAVE A VESTED RIGHT TO THE PERMIT.**

Appellant argues here, as it did in the First State Case before Judge Jackson, that it has a vested right to the Permit. Judge Jackson rejected that argument, and although that decision is on appeal, the Board should reject it as well. As a matter of law, even if Appellant could

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establish that it had incurred the expenses it alleges in its opening brief, those expenditures do not support a finding of vested rights in its permit.

To establish vested rights in a permit, a plaintiff must prove it has performed substantial work and incurred substantial liabilities in good faith reliance upon a validly issued governmental permit. (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791.) For the same reasons cited by Judge Jackson in the trial court, Appellant has again failed to establish its vested rights claim under this standard.

First, Appellant offered no evidence that it performed any work in good faith reliance on a valid permit. The basis for the original Suspension Request was a question regarding the validity of the Permit. Appellant cannot rely in good faith on a permit that was issued on the basis of a misleading permit application. (*Stokes v. Board of Permit Appeals* (1997) 52 Cal.App.4th 1348, 1353; *Autopsy/Post Services, Inc. v. City of Los Angeles* (2005) 129 Cal.App.4th 521, 523 [no vested right to use building for performing autopsies where permit applications never revealed that proposed use].) Here, the permit application provided no indication that the work proposed would eliminate dozens of units of housing. Rather, the application affirmatively represented that the work would not result in a change in use in the building, that the work consisted of removing “office walls,” and that its purpose was to bring the building into compliance with the 2007 NOV (which required legalization of the units).

Second, Appellant has presented no evidence that it incurred any of the kinds of costs that qualify to support a vested rights claim. The only costs allegedly incurred by Appellant under the Permit are costs for attorneys, consultants and “relocation expenses.” (App. Brief at p. 17.) The law is very clear that these costs do not satisfy the test for a vested right to proceed under a permit. No right to develop can vest until all final discretionary permits have been authorized and significant “hard costs” have been expended in reliance on those permits—that

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is, until substantial construction has occurred in reliance on a building permit. (*Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 552.) Costs incurred for the services of engineers, consultants and legal advisors in connection with obtaining permits, and other work that is preparatory to construction under a permit, are not the “hard costs” that establish a vested right. (*Id.* at p. 553.) Similarly, relocation costs and other costs incurred to facilitate Appellant’s eviction litigation, are not the kind of “hard costs” that support a vested rights claim. Moreover, residential relocation expenses are not contemplated by the Permit, which was issued for removal of “office walls”. In fact, the construction cost reflected on the Permit is only \$20,000 (increased from the Appellant’s original estimate of \$10,000)—far less than the \$352,000 that Appellant now claims to have spent in reliance on the Permit. (See Gall Dec., Ex. C.) As a result, Appellant has provided no evidence of qualifying costs to support its vested rights claim, and the claim should be rejected.

**E. APPLICATION OF THE CONTROLS DOES NOT TAKE APPELLANT’S PROPERTY WITHOUT JUST COMPENSATION.**

Appellant’s takings claim misrepresents the effects of the 2015 and Permanent Controls on its property. But an examination of the Controls, and the Administrative Record before this Board, do not support this taking claim for several reasons. In order to state its takings claim, Appellant engages in pure speculation, assuming that the Planning Commission will (1) deny Petitioner a CU to convert its building’s residential units to commercial/office use (despite the fact that Petitioner has issued notices to its tenants under the Ellis Act); and then (2) require Appellant to submit an application for a permit to legalize the units on floors two through five. Appellant refers to this speculation as a “virtual certainty” based on the stated goals of the Controls. But such unsupported speculation regarding the potential impacts of legislation on a property owner is insufficient to support a takings claim. Instead, the courts recognize two categories of regulatory action that will generally be deemed per se compensable takings: First,

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where government requires an owner to suffer a “permanent physical invasion” of his property for such things as cable lines, it must provide just compensation. (*Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419, 432.) Second, courts find a taking where government regulation deprives the owner of “all economically beneficial or productive use of [the] land.” (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1015.) Appellant cannot meet either of these tests.

The Controls do not compel a particular use of property, or require owners to retain particular tenants. Nor do the 2015 and Permanent Controls deprive owners of all economically viable use of their property, as they neither prohibit changes of use from residential in every case, nor prevent owners from continuing to use their property for residential purposes in those cases where the Commission denies a CU. Rather, the Controls standardize the process for property owners to follow when they seek to change the use of their property from residential to another use. (See Plan. Code § 317(a), (c)(1).) Instead of applying different levels of review to such applications depending on the unit count or zoning district, or on the legal status of the units, the Permanent Controls now require all such applications be submitted for public review under the CU process. (*Ibid.*) Under prior law, owners who received NOV’s for illegal residential units could abate the violations by either applying for permits to voluntarily legalize the units, or demolishing them. Under the Permanent Controls, those same property owners must abate the NOV by either applying to the Commission for and obtaining permission to remove the units through a CU, or applying for a permit to legalize the units. (S.F. Planning Code §§ 317(c)(1), 317(g)(7).)

Appellant also cannot meet the “essentially ad hoc” takings standard set forth in *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 124.) This is because the administrative record contains no facts establishing any economic harm to Appellant resulting

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from the City's adoption or application of the Controls. Appellant purchased the building nearly two decades after floors two through five had been illegally converted to residential use, and the sixth floor was legally converted to residential live/work space. Thus, Appellant had no investment-backed expectation that the building was a commercial office building at the time of its purchase. The City had already issued the first of two NOV's concerning the illegal units in 2007 when Appellant purchased the building. As a result, nothing about the Controls alters any reasonable expectation that Appellant may have had concerning the City's position concerning legal uses of the property.

Whether or not the Planning Commission ultimately grants the CU, Appellant cannot establish that the City's application of the Controls to its property meets any legal test for an unconstitutional taking.

**F. THE CONTROLS DO NOT VIOLATE APPELLANT'S RIGHT TO EQUAL PROTECTION.**

Appellant asserts that both the application of the Controls and revocation of its Permit violated its Equal Protection rights because it has allegedly been singled out for unfair treatment. In effect, Appellant argues that it has been treated as a "class of one." "[A] plaintiff who does not belong to any 'suspect' (that is, favored) class--by definition, the situation of a class-of-one plaintiff--must, to prevail, 'negative any reasonably conceivable state of facts that could provide a rational basis for the classification.'" (*Lauth v. McCollum* (7TH Cir. 2005) 424 F.3d 631, 634.) Here, Appellant alleges no facts to overcome the City's rational basis for adopting the Controls or applying those controls to Appellant's property. Instead, both the 2015 Controls and the Permanent Controls evidence the Board of Supervisor's rational concerns with the loss of both legal and illegal residential units in the City.

In the 2015 Controls, the Board found that unpermitted residential use in the control area had become "an important source of housing for residents of the City" and concluded that

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preservation of relatively affordable housing stock in the current climate of “scarce housing resources and relative lack of affordability, is of paramount concern.” The Board concluded that the 2015 Controls would afford the public and decision makers the same level of notice and opportunity to consider the impacts of a change of use of these unpermitted residences as would be available had the owners obtained the required permits for the uses. Based on these and other considerations, and in the best interest of the public, the Board adopted the controls.

The Permeant Controls similarly found “San Francisco faces a continuing shortage of affordable housing. There is a high ratio of rental to ownership tenure among the City’s residents. The General Plan recognizes that existing housing is the greatest stock of rental and financially accessible residential units, and is a resource in need of protection. Therefore, a public hearing will be held prior to approval of any permit that would remove existing housing, with certain exceptions, as described below.” (S.F. Plan. Code §317(a).)

While Appellant may disagree that the Controls are a “perfect fit” for the issues they address, “rational-basis review in equal protection analysis ‘is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.’” (*Aleman v. Glickman* (9th Cir. 2000) 217 F.3d 1191, 1200-01 [Citations omitted].) Rather, “courts are compelled under rational-basis review to accept a legislature’s generalizations even when there is an imperfect fit between means and ends. A classification does not fail rational-basis review because it ‘is not made with mathematical nicety or because in practice it results in some inequality.’” (*Ibid.*)

Appellant has not met its burden of establishing that the City violated its Equal Protection rights when it adopted the Controls or, pursuant to those Controls, revoked the Permit.

**G. THE CONTROLS DO NOT VIOLATE APPELLANT’S RIGHT TO DUE PROCESS.**

Local land use decisions rejecting development projects and refusals to issue building permits do not ordinarily implicate substantive due process. Even where state officials have violated state law or administrative procedures, such violations do not ordinarily rise to the level of a constitutional deprivation. Substantive due process “does not protect individuals from all [governmental] actions that infringe liberty or injure property in violation of some law. Rather, substantive due process prevents ‘governmental power from being used for purposes of oppression,’ or ‘abuse of government power that shocks the conscience,’ or ‘action that is legally irrational in that it is not sufficiently keyed to any legitimate state interests.’” (*Committee of U.S. Citizens Living in Nicaragua v. Reagan* (D.C.Cir.1988) 859 F.2d 929, 943.)

The “irreducible minimum of a substantive due process claim challenging land use action is failure to advance any legitimate governmental purpose.” (*Shanks v. Dressel* (9th Cir. 2008) 540 F.3d 1082, 1088.) For the reasons stated above, however, both adoption of the Controls and the City’s exercise of discretion to revoke Appellant’s Permit in order to review the status of the un-permitted residential uses pursuant to a CU, served the legitimate governmental purposes of: (1) preserving scarce affordable housing, and (2) providing the City with an opportunity to investigate the status of the several buildings in the Interim Control Area that have been converted from office to residential use without permits, thereby becoming important housing resources in the area. As a result, Appellant has failed to establish the irreducible minimum of a substantive due process claim in this case.

**H. THE BOARD DID NOT DECIDE THE CITY AND TENANT’S “ABANDONMENT” ARGUMENT AND APPLICATION OF THE 2015 CONTROLS TO THE PERMIT AT THE PRIOR APPEAL.**

Appellant argues that the Board rejected the City’s argument that the 2015 Controls applied to the Permit in Appeal No. 15-022; however, the evidence in the record does not

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support this claim. In Appeal No. 15-22, the Board granted the tenant's appeal and overturned the Request for Release of Suspension of the Permit on the basis that the "Zoning Administrator ERRED in failing to recognize that the subject permit is defective." The Board's decision is silent on the applicability of the 2015 Controls. The Appellant subsequently filed their Federal Case and First State Case in response to the Board's decision. In its decision of the First State Case, the Superior Court remanded the Permit to the Board of Appeals for further action on the narrow question of the applicability of the provision in the 2015 Controls stating that "any commercial use that has been converted in whole or in part to residential use without benefit of permit shall be deemed abandoned" (see Patterson Dec., Ex. A at p. 7), and specifically noted that the Board would be called upon to determine what law applied to its determination. As such, the Board has not made a determination regarding the applicability of the 2015 Controls. Instead, before the Superior Court had issued its order, the 2015 Controls were superseded by the Permanent Controls, and the Permit was revoked. For the reasons set forth below, these facts rendered further proceedings by the Board moot.

**I. THE ZONING ADMINISTRATOR ACTED WITHIN HIS DISCRETION IN ISSUING THE REVOCATION REQUEST, AND DBI PROPERLY REVOKED THE PERMIT.**

The Appellant argues that the Zoning Administrator's Revocation Request is invalid and that the facts do not justify revocation of the Permit; however, they fail to substantiate these claims. As demonstrated above, the 2015 and Permanent Controls apply to the Permit and the Revocation Request was properly issued. While the Appellant has filed the required CU to legalize the conversion, they have not diligently pursued this application. This failure to comply with the requirements of Section 317 further justifies revocation of the Permit.

Planning Code Section 176 provides that any permit issued that violates the provisions of the Planning Code is null and void. (S.F. Plan. Code §176(a); see, also, *Land Waste*

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*Management v. Contra Costa County Bd. of Supervisors* (1990) 222 Cal.App.3d 950, 957–958 [“[i]ssuance of a permit inconsistent with zoning ordinances or the general plan may be set aside and invalidated as ultra vires”].) The San Francisco Building Code likewise provides that any permit issued in violation of any City ordinance is invalid. (S.F. Building Code § 106A.4.3.) Thus, a permit may be revoked by an administrative body after issuance on the basis of a subsequent change in the zoning laws unless the permittee has made substantial improvements in good faith reliance on the permit. (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 125; *Collier v. City and County of San Francisco* (2007) 151 Cal.App.4th 1326, 1333.)

In this case, the Zoning Administrator and DBI acted properly when revoking the Permit. Moreover, the Board should find that the Permit is subject to the Permanent Controls, and must therefore be revoked on the grounds that Appellant has failed to obtain the required CU. As a result, the Board should also find that, based on the City’s adoption of the Permanent Controls and the revocation of the Permit, Appeal No. 15-22 (Suspension Request) has been rendered moot.

**J. REVOCATION OF A PERMIT DOES NOT CONSTITUTE A PROHIBITED *EX POST FACTO* ACTION.**

Appellant raised, and then dropped, its *ex post facto* challenge to the 2015 Controls in its First State Case. As it was in that case, the claim is inapplicable here. Moreover, since the filing of the First State Case, the Zoning Administrator is informed that Appellant has withdrawn the eviction notices that form the basis of this claim. As a result, the claim is now moot.

Even if Appellant had not withdrawn the eviction notices that are the subject of its hypothetical criminal liability, the claim fails as a matter of law. The *ex post facto* clause bars the government from passing *laws* that impose a new punishment or increase punishment for a crime committed before passage of the law. (See *Weaver v. Graham* (1981) 450 U.S. 24, 28;

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*Collins v. Youngblood* (1990) 497 U.S. 37, 43.) The *ex post facto* clause applies only to the passage of laws with criminal implications, and not to actions on local land use permits like the one at issue here. (Cf *Santa Barbara Patients' Collective Health Co-op. v. City of Santa Barbara* (C.D. Cal. 2012) 911 F.Supp.2d 884, 897 [dismissing marijuana dispensary's challenge to zoning change]; *Valley Wood Preserving, Inc. v. Paul* (9th Cir. 1986) 785 F.2d 751, 754 [revocation of conditional use permit because the plaintiff had failed to comply with a subsequently imposed requirement to clean up a chemical spill not subject to *ex post facto* challenge].) The Controls do not create criminal penalties for any conduct, and certainly do not contemplate criminal penalties for the otherwise lawful exercise of a landlord's right to evict tenants. Similarly, revocation of the Permit did not compel Appellant to issue the eviction notices nor, as it was revealed in the course of the landlord-tenant lawsuits, did it force Appellants to withdraw the defective notices it had issued through no fault of the City.

**K. THE CITY'S ADOPTION OF LAWS OF GENERAL APPLICABILITY AND ENFORCEMENT OF THOSE LAWS AGAINST A PARTICULAR PROPERTY OWNER DO NOT CONSTITUTE UNLAWFUL RETALIATION.**

The Permanent Controls require all property owners to submit to "a public hearing ...prior to approval of any permit that would remove existing housing, with certain exceptions, as described below." (S.F. Plan. Code §317(a).) The Controls do not "spot zone" Appellant's property, or target Appellant for special treatment of any kind. Quite the contrary: *all* property owners, anywhere in the City, who intend to remove existing housing units—whether legal or illegal—must obtain a CU permitting the removal.

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## **CONCLUSION**

In light of the foregoing, the Department respectfully requests that the Board of Appeals deny the appeals and uphold the City's actions to revoke Building Permit Application No. 201307262890 and issue the Notice of Violation and Penalty Decision.

### **Cc:**

Ryan Patterson – Agent for Appellant

### **Attachments:**

Notice of Violation and Penalty Decision with Attachments (NOVPD - May 26, 2016)<sup>3</sup>  
Notice of Special Restrictions (NSR) No. E906779 (Attachment to NOVPD)  
Complaint No. 2015-012037ENF with Photographs (Attachment to NOVPD)  
San Francisco Rent Board Eviction Records (Attachment to NOVPD)  
Commercial Lease Advertisement (Attachment to NOVPD)

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<sup>3</sup> Note: Notice of Violation and Penalty Decision (5/26/16) also includes copies of the following attachments which can also be found in the Appellant's Brief: Notice of Violation and Penalty (January 13, 2016); Board of Supervisor's Ordinance No. 61-15 (Board File No. 150087); Notice of Enforcement (September 22, 2015); Suspension Request (October 28, 2013); and, Release of Suspension Request (February 2, 2015)



# SAN FRANCISCO PLANNING DEPARTMENT

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## Notice of Violation and Penalty Decision

May 26, 2016

**Property Owner**

1049 Market Street LLC  
16351 Skyline Boulevard  
Woodside, CA 94062

1049 Market Street LLC  
1005 Market Street #310  
San Francisco CA, 94103

**Site Address:** 1049-1051 Market Street  
**Assessor's Block/ Lot:** 3703/ 067  
**Complaint Number:** 2015-012037ENF  
**Zoning District:** C-3-G (Downtown-General)  
**Code Violations:** 317 (Loss of Residential and Unauthorized Units)  
**Administrative Penalty:** \$250 Each Day of Violation  
**Response Due:** Within 15 days from the date of this Notice  
**Staff Contact:** Dario Jones, (415) 558-6477 or [Dario.Jones@sfgov.org](mailto:Dario.Jones@sfgov.org)  
**DECISION:** NOTICE OF VIOLATION AND PENALTY UPHELD

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

The Planning Department has determined that the subject property at 1049-1051 Market Street (Property) is in violation of the Planning Code. As the Property Owner, you are the "responsible" party to bring the above property into compliance with the Planning Code. Details of the violation are discussed below:

### DESCRIPTION OF VIOLATION

**Violation of Planning Code Section 317:** The Property is in violation for unauthorized efforts to convert Residential Units<sup>1</sup> and Unauthorized Units<sup>2</sup> to Office Use (see attached). Per Planning Code Section 317, Conditional Use (CU) Authorization is required for the conversion of one or more Residential or Unauthorized Units. To date, no such CU Authorization has been submitted or approved for the Property.

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<sup>1</sup> Per Planning Code Section 317(b)(12): "Residential Unit" shall mean a legal conforming or legal nonconforming Dwelling Unit, a legal nonconforming Live/Work Unit or Group Housing.

<sup>2</sup> Per Planning Code Section 317(b)(13): "Unauthorized Unit" shall mean one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from Residential Units on the same property. "Independent" shall mean that (i) the space has independent access that does not require entering a Residential Unit on the property and (ii) there is no open, visual connection to a Residential Unit on the property.

## BACKGROUND

Beginning in 2013, the Planning Department (Department) began to receive anonymous complaints against the Property regarding the unpermitted conversion of dwelling units to commercial use. The Property, a seven-story 56,800 square foot building, was constructed in 1907 as a furniture store. Research of Planning Department records indicate the Property received a permit in 1991 (Building Permit Application No. 09104752) for the "conversion of approximately 5,844 square feet of unfinished space for six Artist/Live-Work<sup>3</sup> units" on the 6<sup>th</sup> floor. A Notice of Special Restrictions (NSR) for this permit was also filed on the deed of the property (NSR No. E906779 - see attached).

Further evidence<sup>4</sup> demonstrates that previous owners of the subject property converted floors one through five to residential uses at least 10 years ago. In 2007, the Department of Building Inspection (DBI) issued a Notice of Violation (NOV No. 200711850) against the property requiring the property owner to obtain permits legalizing the residential use of these units. In 2011, DBI issued a second NOV for failure to comply with the 2007 NOV. As of 2013, the owner had failed to legalize the residential use of the premises. Instead, the owner applied for and obtained Building Permit Application No. 201307262890 (Permit) with the following scope of work: "To comply with Notice of Violation 200711850. Demo of office walls on the 1st through 5th floor. SFAB-017." The Permit was issued over-the-counter, without Planning Department review.

On October 28, 2013, the Planning Department submitted a Request for Suspension for the Permit because it was not reviewed by the Planning Department, and there was a question as to whether the work proposed in the Permit triggered additional requirements and/or procedures under the Planning Code.

On November 13, 2013, the Suspension Request was appealed (Appeal No. 13-144) by the Property Owner to the Board of Appeals; however, this appeal was subsequently withdrawn on February 19, 2014.

On December 10, 2013, the Board of Supervisors adopted interim controls (Resolution No. 428-13) for a 12-month period requiring, among other things, that "certain building permits for any building with

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<sup>3</sup> Planning Code Section 102 defines Live Work as follows: "A hybrid Residential and PDR Use that is defined as a structure or portion of a structure combining a residential living space for a group of persons including not more than four adults in the same unit with an integrated work space principally used by one or more of the residents of that unit; provided, however, that no otherwise qualifying portion of a structure that contains a Group A occupancy under the Building Code shall be considered a Live/Work Unit. No City official, department, board, or commission shall issue or approve a building permit or other land use entitlement authorizing a new live/work unit as defined here, except as authorized as an accessory use under Section 204.4. Lawfully approved live/work units are subject to the provisions of Sections 181 and 317 of this Code."

<sup>4</sup> As noted in the Planning Department's Suspension Request (October 28, 2013), this evidence includes: (1) materials associated with DBI Complaint Number 200711850, which substantiated allegations of conversion to some type of residential occupancy, (2) testimony received at the Building Inspection Commission hearing on October 16, 2013 by individuals who represented themselves as current or previous residential tenants of the Building, (3) articles in the San Francisco Chronicle and San Francisco Examiner during the week of October 8, 2013, (4) verbal reports by the property owners themselves during a meeting with DBI and Planning Department Staff on October 13, 2013, and (5) admissions made by the current owner(s) in various litigation, including the lawsuit entitled *1049 Market LLC v. Aaron Miller, et al.*, San Francisco Superior Court Case No. CGC-15-545950

some commercial use shall require the posting of a notice and a 15-day delay in starting the work, and the re-establishment of a commercial use that has been converted to residential use shall require Planning Commission approval through either an authorization under Planning Code, Section 320 et seq., or a conditional use authorization." This control applies to the area bounded by Market Street from Van Ness Street east to 5th Street on the north side and east to 2nd Street on the south side, 2nd Street south to Brannan Street, Brannan Street west to Division Street, and South Van Ness Street north to Market Street (which includes the Property).

On February 2, 2015, the Planning Department issued a Release of Suspension Request (attached) for the Permit. The Release of Suspension found, at that time, that the pre-existing office space had not been abandoned by the conversion of the building to residential use and stated that any residential units may be maintained and improved in a manner consistent with Planning and Building Codes.

On February 3, 2015, the Release of Suspension Request was appealed by 17 residents of the Property to the Board of Appeals (Appeal No. 15-022).

On March 5, 2015, the Board of Supervisors adopted interim controls (Resolution No. 61-15) for a 12-month period requiring, among other things, the following:

*That during the pendency of these interim controls in the geographic area covered by these controls, any commercial use that has been converted in whole or in part to residential use without benefit of permit shall be deemed abandoned. Any permit, subject to the posted notice and 15-day hold requirements above, to re-establish any commercial use shall not be issued or reinstated, or, if already issued, shall not remain effective, unless the project sponsor obtains a Conditional Use authorization under Planning Code Section 303, in addition to all requirements of the Planning Code applicable to the establishment of any such use.*

This control applies to the area bounded by Market Street from Van Ness Street east to 5th Street on the north side and east to 2nd Street on the south side, 2nd Street south to Brannan Street, Brannan Street west to Division Street, and South Van Ness Street north to Market Street (which includes the Property).

On April 8, 2015, the Board of Appeals heard Appeal No. 15-022. At this hearing, the Planning Department stated that the March 2015 Interim Controls applied to the Permit, and requested that the Board of Appeals uphold the appeal so that the Permit remained suspended until DBI could institute revocation proceedings consistent with the interim controls. The Board of Appeals upheld the appeal on the basis that the Zoning Administrator erred in failing to recognize that the subject permit is defective. As such, the Permit remains suspended.

On September 9, 2015, the Department received an anonymous complaint (Complaint No. 2015-012037ENF) with photographs (attached) alleging that units located on the first through the sixth floors located in 1049 Market Street were in the process, or had already been, converted to office use.

In response to this complaint, the Department obtained a list of residential eviction records from the San Francisco Rent Board (attached). These records demonstrate the existence of approximately 66 units, located on floors one through six, which received eviction notices between October 7, 2013 and March 30,

2015. This evidence is supplemented by a commercial lease advertisement (attached) for eight units located on the 4<sup>th</sup> floor and one unit located on the 6<sup>th</sup> floor.

On September 22, 2015, the Department issued a Notice of Enforcement (attached) to you detailing the complaint and the request for an interior inspection of the Property. Although the Planning Department received a response dated October 7, 2015 (attached) from your representative (Ryan J. Patterson), the response declined to provide any evidence demonstrating that units had not been converted to office use. Additionally, the Department's request for an inspection was not granted within the 15-day timeframe outlined in the Notice of Enforcement.

On December 1, 2015, the Board of Supervisors adopted Building and Planning Code amendments (Ordinance No. 208-15) to require written and posted notice to all tenants of a building in which demolition or merger of an authorized or unauthorized Residential Unit is proposed. Any work undertaken at the Property to eliminate an authorized or unauthorized Residential Unit after the effective date of this ordinance must comply with the terms of Ordinance No. 208-15. Further, Building Code Section 106A.4.6 requires revocation of any permit where the applicant has not substantially complied with the noticing provisions.

On January 13, 2016, a Notice of Violation and Penalty (NOVP - attached) was issued to you detailing violation under the March 2015 Interim Controls that were in effect at that time per Planning Code Section 306.7. In addition, you were provided with notice of the pending adoption of Board File No. 150494 (Planning Department Case No. 2015-006712PCA – amendment to Planning Code Section 317) and that the subject property would be in violation of Section 317 for the removal of authorized and unauthorized dwelling units if the proposed amendments to Section 317 became effective. You subsequently requested a Zoning Administrator Hearing on the NOVP.

On February 26, 2016, the Zoning Administrator held a public hearing regarding the NOVP (see details below).

On March 4, 2016 and March 11, 2016, the Board of Supervisors adopted Planning Code amendments (Ordinance Nos. 23-16 and 33-16) to amend Planning Code Section 317 to make permanent elements of the December 2013 and March 2015 Interim Controls. Planning Code Section 317(c)(2) requires Conditional Use authorization for "any permit issued for Removal of an Unauthorized Unit prior to March 1, 2016 that has been suspended by the City or in which the applicant's rights have not vested." As such, the Permit requires Conditional Use authorization under the Planning Code. The Property Owner is aware of the requirement and has not sought, nor indicated that they intend to seek, the required approvals.

## **EVIDENCE PRESENTED AT THE ZONING ADMINISTRATOR'S HEARING**

The Zoning Administrator Hearing was attended by the property owners (1049 Market Street LLC) who were represented by their attorneys (Andrew Zacks and Ryan Patterson). The hearing was also attended by Matt McFarland (representing residents of the Property), Tommi Avicolli Mecca (Housing Rights Committee) and individual residents of the Property.

Mr. Zacks and Mr. Patterson submitted documentation including two copies of objections to the interim and pending permanent controls that were previously submitted to the Department. Although Mr. Zacks and Mr. Peterson submitted no evidence demonstrating compliance with the interim controls in place at the time, they made additional arguments. These arguments are included with the Department's responses in the "Findings" section below.

Mr. McFarland stated the following:

1. The property owner had the opportunity to respond to the Department's request to inspect the interior of the subject property.
2. The property owner has not removed dwelling units from the rental market and therefore any Ellis Act evictions do not apply; and, the subject property must comply with the Department's interim and permanent controls.
3. Mr. McFarland also stated that units 106, 107, 108, 602, and 603 had been illegally converted from residential units to commercial uses during the effective date of the interim controls.

Mr. Avicolli Mecca stated the following:

1. He became involved in 2013 to assist the tenants in their efforts to avoid being evicted from the subject property.
2. The units in the subject property were occupied as residential uses and the subject property contains approximately 84 dwelling units.
3. Most of tenants were artists who were paying affordable rents
4. The dwelling units on the 4th floor are being advertised for commercial uses.
5. The dwelling units are currently under rent control.

The following individuals, representing themselves as residents of the Property, stated the following:

1. Carina C. Zona stated that she has lived at the subject property since 2011 in unit 316, and submitted demonstrative evidence including advertisements for commercial use for unit 607.
2. Anthony Breax stated he lives on the 6th floor since 2004 and at one time every unit on the 6th floor was a residence and he personally knew the previous residential tenants.
3. Chandra L Redack stated she has been a resident of subject property since 2004 and her unit was advertised as a residential unit. She stated that none of the tenants were notified of the demolition of the residential units and that their units are under rent control.
4. Chris Baker, stated he has been a resident of subject property since 2002; and, he stated the units were always represented by the property manager as residential uses.
5. Anne Cooper stated she has been a resident since 1998 on the 2nd floor.
6. Ronnie Johnson stated she has been a resident in unit 606 and has seen only residents on the 6th floor until recently when a commercial tenant (lighting company) moved in to two units with one unit being used as an office/conference room.
7. Darren Brown stated that he is a resident of unit 408 and has seen demolition occurring next door in unit 407.

## DECISION

**NOTICE OF VIOLATION AND PENALTY UPHELD.** Pursuant to Planning Code Section 317, the Zoning Administrator upholds the Notice of Violation and Penalty issued on January 13, 2016 for the following reasons:

## FINDINGS

Despite the opportunity for the property owner to demonstrate compliance, the property owner has refused the Planning Department's request for an interior inspection and has provided no evidence of compliance to date. Additionally, during the hearing, counsel for the property owners made the following arguments against the issuance of the NOVP. As part of the findings of this decision, a response to each argument is provided:

1. Counsel argued the NOVP was issued in error and the Planning Department's enforcement process should be rejected as the property owner is burdened with proving compliance before the allegation of removing dwelling units is confirmed.

The Department responds that the Property Owner was provided substantial due process and that all provisions of Planning Code Section 176 have been followed. Additionally, the Property Owner has rejected the Department's requests for an interior inspection of the Property. Through the enforcement process, the Department has amassed substantial evidence sufficient to demonstrate that the Property is in violation of the Planning Code as noted above.

2. Mr. Zacks argued that the procedure (Zoning Administrator Hearing) is inappropriate as there is a pending writ proceeding before the Superior Court that will affect the outcome of the hearing.

The Department responds that the pending Superior Court action does not prevent or suspend this enforcement process. The NOV at issue addresses conduct that has occurred since the filing of the writ lawsuit, and is unaffected by the claims asserted by the property owner in that writ action.

3. Mr. Patterson argued that the NOVP is unclear regarding what the alleged violation is and when it occurred. Further, it was argued the interim controls only apply to specific building permits and the NOVP does not implicate a building permit or permits; and, without a specific building permit identified in violation, there can be no violation.

The Department responds that the NOVP is clear regarding the nature and details of the violation. Further, the interim controls (and now permanent controls) do not require a specific building permit to be identified prior to the issuance of the NOVP. The interim and permanent controls clearly define the applicability and requirements for these controls. The Property Owner must obtain a CU Authorization in order to remove, convert or demolish Residential Units or Unauthorized Units. This property owner has failed to do so.

4. Mr. Patterson argued that the NOVP does not indicate if the subject property will be in violation of the permanent controls once they are adopted and objected to the lack of notice of the pending permanent controls.

The Department responds that this issue was clearly addressed in the NOVP and at the Zoning Administrator Hearing. The Property was in violation of the March 2015 Interim Controls and is

May 26, 2016

now in violation of the permanent controls (Ordinance Nos. 23-16 and 33-16), which superseded the interim controls.

5. Mr. Patterson objected to the rescheduling of the hearing as it is presumed that the hearing was delayed to accommodate the adoption of the permanent controls so those controls may be included into the enforcement process for the Property.

The Department notes that the Zoning Administrator clarified the reason for the rescheduling at the hearing (a child care issue); and, further, that the permanent controls had not become effective at the time of the hearing on February 26, 2016 (the permanent controls first became effective on April 3, 2016 through Ordinance No. 23-16). Additionally, during the hearing it was noted that the March 2015 Interim Controls were adopted to provide time for the development of permanent controls. As contained in the findings of Resolution No. 61-15: "the Board of Supervisors wants to control the removal of any existing residential uses in commercial spaces and review the status of the original legal uses until such time as the Planning Department can propose permanent legislation" and "the Board has determined that the public interest will best be served by imposition of these interim controls at this time in order to ensure that the legislative scheme which may ultimately be adopted is not undermined during the planning and legislative process for permanent controls."

As noted in the NOVP, the Department has compiled substantial evidence demonstrating that the Property is in violation for unauthorized efforts to convert Residential Units and Unauthorized Units to Office Use. This evidence is supported by the statements received from members of the public documenting conversions at the Property. While counsel for the Property Owner rejects the issuance of the NOVP, they have failed to provide evidence or reasonable arguments to refute the Department's evidence, or to allow the Department the ability to inspect the Property.

Based upon the above findings (including statements received from members of the public) it is my determination that the subject property is in violation of Planning Code Section 317 for the conversion of Residential Units and Unauthorized Units to Office Uses.

## **PENALTIES**

Pursuant to Planning Code Section 176, the administrative penalties of **\$250 per day** have been assessed to the responsible party for each day the violation continues unabated, excluding the period of time the Notice of Violation and Penalty has been pending before the Zoning Administrator. The Notice of Violation and Penalty was issued on April 2, 2015 and the Zoning Administrator Hearing was held on May 19, 2015. No penalties are due at this time, however, failure to take the compliance actions as noted above or appeal to the Board of Appeals **within fifteen (15) days** will result in accrual of penalties thereafter.

## **ENFORCEMENT TIME AND MATERIALS FEE**

Pursuant to Planning Code Section 350(c)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations. Additional fees will continue to accrue until the violation is abated. This fee is separate from the administrative penalties as noted above and is not appealable.

## APPEALS

This decision letter and any assessed penalties may be appealed to the Board of Appeals **within the 15-day time limit** from the date of this decision. Again, the time and materials fees are not appealable. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day that the violation exists, excluding the period of time that the matter has been pending either before the Zoning Administrator or before 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.**

Sincerely,



Scott F. Sanchez  
Zoning Administrator

- Enc: Notice of Violation and Penalty, dated January 13, 2016  
Planning Department Complaint No. 2015-012037ENF  
Board File No. 150087  
Building Permit Application No. 09104752  
Notice of Special Restrictions No E906779  
Notice of Enforcement, dated September 22, 2015  
Suspension Request dated October 28, 2013  
Release of Suspension Request dated February 2, 2015  
San Francisco Rent Board Record of Eviction Notices for 1049 Market Street  
Commercial Lease Advertisement for Units 401, 403, 404, 405, 406, 412, 415, 416, 602  
Response from Mr. Ryan J. Patterson, Attorney for Property Owner, dated October 7, 2015  
Photos, submitted anonymously of dwelling units (306, 301, 315, 401, and 412) located in 1049 Market Street
- Cc: Jennifer Rakowski, Rent Board Supervisor, Rent Board, San Francisco  
Dario Jones, Enforcement Planner, San Francisco Planning Department  
Christine Haw, Code Enforcement Supervisor, San Francisco Planning Department  
Mr. John Gall - 1005 Market St #310, San Francisco CA 94103 (property owner)  
Mr. Terry Bogart - 16351 Skyline Blvd, Woodside CA 94062 (property owner)  
Evan Housel, Kidder Mathews, Commercial Real Estate Firm, 101 Mission St #2100, San Francisco, CA 94105  
Mario Previtali, Kidder Mathews, Commercial Real Estate Firm, 101 Mission St #2100, San Francisco, CA 94105  
Ryan P. Patterson, Attorney for Property Owner, Zacks and Freedman, 235 Montgomery Street, Suite 400, San Francisco, California 94104



# SAN FRANCISCO PLANNING DEPARTMENT

## NOTICE OF VIOLATION

January 13, 2016

**Property Owner**

1049 Market Street LLC  
16351 Skyline Boulevard  
Woodside, CA 94062

1049 Market Street LLC  
1005 Market Street #310  
San Francisco CA, 94103

**Site Address:** 1049-1051 Market Street  
**Assessor's Block/ Lot:** 3703/ 067  
**Complaint Number:** 2015-012037ENF  
**Zoning District:** C-3-G, Downtown- General; Interim Zoning Control (Board File No. 150087)  
**Code Violations:** Section 306.7 (Interim Zoning Controls)  
**Administrative Penalty:** Up to \$250 Each Day of Violation  
**Response Due:** Within 15 days from the date of this Notice  
**Staff Contact:** Dario Jones, (415) 558-6477; or, [Dario.Jones@sfgov.org](mailto:Dario.Jones@sfgov.org)

The Planning Department has determined that the subject property at 1049-1051 Market Street is in violation of the Planning Code. As the owner of the subject property, you are the "responsible" party to bring the above property into compliance with the Planning Code. Details of the violation are discussed below:

### DESCRIPTION OF VIOLATION

**Violation of Planning Code Section 306.7:** The subject property is in violation of Interim Zoning Controls imposed by the Board of Supervisors (Resolution No. 61-15: Interim Zoning Controls – Building Permits for Commercial Uses in an Area Bounded by Market, 2<sup>nd</sup>, Brannan, and Division Streets, And South Van Ness Avenue - Board File No. 150087) for the unauthorized efforts to convert approximately 70 dwelling units to Office Use<sup>1</sup>. Per Resolution No. 61-15, "if a residential use has been established, the re-establishment of a commercial use that has been converted to residential use shall require Planning Commission approval through a conditional use authorization application." To date, no Conditional Use Authorization has been submitted or approved for the subject property.

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<sup>1</sup> Planning Code Section 102 defines Office Use as "A grouping of uses that includes General Office, Retail Professional Services, and Non-Retail Professional Services. This use shall exclude: retail uses other than Retail Professional Services; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; and design showrooms or any other space intended and primarily suitable for display of goods."

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

Please note that pending legislation (Board File No. 150494 – Planning Department Case No. 2015-006712PCA – amendment to Planning Code Section 317) would also require Conditional Use Authorization for the subject conversion of residential uses. On December 10, 2015, this legislation was reviewed by the Planning Commission, which recommended adoption of the legislation with minor modifications (Motion No. 19532). If this legislation becomes effective prior to the resolution of this enforcement matter, this property would also be in violation of the new provisions of Planning Code Section 317.

## BACKGROUND

Beginning in 2013, the Planning Department began to receive anonymous complaints against the subject property regarding the unpermitted conversion of dwelling units to commercial use. Research of Planning Department records indicate the subject property, a seven story, 56,800 square feet commercial building, was authorized by the Planning Department, for the “conversion of approximately 5,844 square feet of unfinished space for six Artist/Live-Work<sup>2</sup> units” located on the 6<sup>th</sup> floor per Building Permit Application (“Permit”; No. 09104752) and Notice of Special Restrictions (No. E906779 attached) in 1991.

However, further evidence<sup>3</sup> demonstrates that previous owners of the subject property had converted all remaining units in the premises to residential uses more than five years ago. In 2007, the Planning Department issued a notice of violation against the property requiring the property owner to obtain permits legalizing the residential use of these units. In 2011, the Planning Department issued a second notice of violation for failure to comply with the 2007 notice of violation. As of 2013, the owner had failed to legalize the residential use of the premises. Instead, the owner applied for and obtained Building Permit Application (No. 201307262890) (the “Permit”) for the stated purpose to “demolish office walls on the fifth through first floors” of the subject property. This Permit was issued “over the counter,” without Planning Department review. On October 28, 2013, the Planning Department issued a Suspension Request (attached) to the Department of Building Inspection, seeking suspension of the Permit.

On November 13, 2013, the Suspension Request was appealed (Appeal No. 13-144) by the property owner(s) to the Board of Appeals. This appeal was subsequently withdrawn on February 19, 2014.

On December 10, 2013, the Board of Supervisors adopted interim zoning controls (Board File No. 131068; Resolution No. 428-13) for a 12-month period stating “certain building permits for any building with some commercial use shall require the posting of a notice and a 15-day delay in starting the work, and the

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<sup>2</sup> Planning Code Section 102 defines Live Work as “A hybrid Residential and PDR Use that is defined as a structure or portion of a structure combining a residential living space for a group of persons including not more than four adults in the same unit with an integrated work space principally used by one or more of the residents of that unit; provided, however, that no otherwise qualifying portion of a structure that contains a Group A occupancy under the Building Code shall be considered a Live/Work Unit. No City official, department, board, or commission shall issue or approve a building permit or other land use entitlement authorizing a new live/work unit as defined here, except as authorized as an accessory use under Section 204.4. Lawfully approved live/work units are subject to the provisions of Sections 181 and 317 of this Code.”

<sup>3</sup> As noted in the Planning Department’s Suspension Request (October 28, 2013), this evidence includes: (1) materials associated with DBI Complaint Number 200711850, which substantiated allegations of conversion to some type of residential occupancy, (2) testimony received at the Building Inspection Commission hearing on October 16, 2013 by individuals who represented themselves as current or previous residential tenants of the Building, (3) articles in the San Francisco Chronicle and San Francisco Examiner during the week of October 8, 2013, (4) verbal reports by the property owners themselves during a meeting with DBI and Planning Department Staff on October 13, 2013, and (5) admissions made by the current owner(s) in various litigation, including the lawsuit entitled 1049 Market LLC v. Aaron Miller, et al., San Francisco Superior Court Case No. CGC-15-545950

re-establishment of a commercial use that has been converted to residential use shall require Planning Commission approval through either an authorization under Planning Code, Section 320 et seq., or a conditional use authorization." This control applies to the area bounded by Market Street from Van Ness Street east to 5th Street on the north side and east to 2nd Street on the south side, 2nd Street south to Brannan Street, Brannan Street west to Division Street, and South Van Ness Street north to Market Street (which includes the subject property).

On February 2, 2015, the Zoning Administrator issued a Release of Suspension Request (attached) for Building Permit Application No. 201307262890. The Release of Suspension included a determination that the pre-existing office space had not been abandoned and stated that any residential units may be maintained and improved in a manner consistent with Planning and Building Codes. On February 3, 2015, the residential tenants in 1049 Market Street filed an appeal (Appeal No. 15-022) to the Board of Appeals against the Release of Suspension.

On March 3, 2015, the Board of Supervisors adopted interim zoning controls (Board File No. 150087; Resolution No. 61-15) for a 12-month period. These controls state that "any commercial use that has been converted in whole or in part to residential use without benefit of a permit shall be deemed abandoned. Any permit, subject to the posted notice and 15-day hold requirements above, to re-establish any commercial use shall not be issued or reinstated, or if already issued, shall not remain effective, unless the project sponsor obtains a Conditional Use authorization." This control applies to the area bounded by Market Street from Van Ness Street east to 5th Street on the north side and east to 2nd Street on the south side, 2nd Street south to Brannan Street, Brannan Street west to Division Street, and South Van Ness Street north to Market Street (which includes the subject property).

On May 8, 2015, the Board of Appeals held a duly-noticed public hearing on Appeal No. 15-022. At this hearing, the Board of Appeals found that the Zoning Administrator erred in failing to recognize that the subject permit is defective and overruled the issuance of the Release of Suspension Request. As such, the subject Permit remains suspended.

On September 9, 2015, the Planning Department received numerous anonymous complaints (Complaint No. 2015-012037ENF, attached) with photographs (attached) alleging that dwelling units located on the first through the sixth floors located in 1049 Market Street are in the process or have already been converted to office use.

In response to this complaint, the Planning Department obtained a list of residential eviction records from the San Francisco Rent Board (attached). These records demonstrate the existence of approximately 66 dwelling units, located on floors one through six, which have received eviction notices beginning on October, 7, 2013, through March 30, 2015. This evidence is supplemented by a commercial lease advertisement (attached) for eight units located on the 4<sup>th</sup> floor and one unit located on the 6<sup>th</sup> floor.

On September 22, 2015, the Planning Department issued a Notice of Enforcement (attached) to you detailing the complaint and the request for an interior inspection of the subject property. Although the Planning Department received a response, dated October 7, 2015, (attached), from Mr. Ryan J. Patterson, attorney for the property owner, the response did not provide any evidence demonstrating the residential units had not been converted to an office use; and, the Department's request for an inspection was not granted within the 15 day time-frame as outlined in the Notice of Enforcement.

On December 9, 2015, the Mayor signed into law Ordinance No. 208-15, requiring notice to tenants of dwelling unit mergers or demolition, and requiring an affidavit and notice if kitchens, stoves or bathrooms would be removed, regardless of whether the residential unit is legal or illegal. Any work undertaken at the subject property to eliminate residential uses after the effective date of this ordinance must comply with the terms of Ordinance No. 208-15.

On December 10, 2015, the Planning Commission recommended adoption of pending legislation (Board File No. 150949 – Planning Department Case No. 2015-006712PCA – Motion No. 19532) to amend Planning Code Section 317. This amendment would require Conditional Use Authorization for the removal of all residential units, whether legal or illegal. If this legislation becomes effective prior to the resolution of this enforcement matter, this property would also be in violation of the provisions of Planning Code Section 317.

**To date, the property owner has refused to provide any evidence to demonstrate the subject property is in compliance with the Planning Code.** The Department, on the other hand, has obtained significant evidence establishing noncompliance. Therefore, the property has been deemed to be in violation of Planning Code Section 306.7 for the unauthorized conversion of residential units to office uses in violation of interim zoning controls imposed by the Board of Supervisors (Board File No. 150087; Resolution No. 61-15).

## **TIMELINE OF INVESTIGATION**

On September 22, 2015, an Enforcement Notification was issued to you, informing you that you had fifteen (15) days to contact the Planning Department to arrange for a site inspection, or to provide evidence that no violation existed on the property.

On October 7, 2015, the Planning Department received a response (attached), from Mr. Ryan J. Patterson, attorney for the property owner. However, the response refused to provide evidence that the six live-work units had not been converted to another use; and, the Planning Department's request for an inspection was not granted within the 15 day time-frame as outlined in the Notice of Enforcement.

## **HOW TO CORRECT THE VIOLATION**

The Planning Department requires that you immediately proceed to abate the violation as follows:

- Provide evidence that the alleged violation has not occurred on the property. If such violation has occurred, you must cease the conversion of all residential units for another use until a Conditional Use authorization has been granted per Planning Code Section 306.7, and restore any illegally converted units to residential use or obtain permits legalizing the conversion of such units in compliance with the Interim Controls and applicable law.

## **TIMELINE TO RESPOND**

The responsible party has **fifteen (15) days from the date of this notice** to either;

- 1) Correct the violation as noted above; or,
- 2) Appeal this Notice of Violation as noted below.

The corrective actions shall be taken as early as possible. Please contact the enforcement staff as noted above to submit evidence of correction. Any unreasonable delays in abatement of the violation will result in further enforcement action by the Planning Department.

## APPEAL PROCESSES

If the responsible party believes that this order to remove violation of the Planning Code is an abuse of discretion by the Zoning Administrator, the following appeal processes are available **within fifteen (15) days from the date of this notice:**

- 1) The responsible party may request a Zoning Administrator Hearing under Planning Code Section 176 to show cause why this Notice of Violation is issued in error and should be rescinded by submitting the Request for Zoning Administrator Hearing Form and supporting evidence to the Planning Department. The Zoning Administrator shall render a decision on the Notice of Violation within 30 days of such hearing. The responsible party may appeal the Zoning Administrator's decision to the Board of Appeals within 15 days from the date of the decision.
- 2) The responsible or any interested party may waive the right to a Zoning Administrator Hearing and proceed directly to appeal the Notice of Violation to the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, CA 94103, telephone: (415) 575-6880, website: [www.sfgov.org/bdappeal](http://www.sfgov.org/bdappeal). The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation continues unabated, excluding the period of time the matter has been pending either before the Zoning Administrator or before the Board of Appeals.
- 3) The responsible party may file a written request to the Zoning Administrator to terminate abatement proceedings under Planning Code Section 176 and refer the matter to the Planning Director for enforcement action under the process set forth in Code Section 176.1. If the Zoning Administrator determines that the enforcement case will continue under Code Section 176, this determination shall be made part of the final written decision and is not appealable separately from the decision on the merits of the case. The responsible party may appeal the Zoning Administrator's decision on the Notice of Violation and Penalty to the Board of Appeals within 15 days of such decision.

## ADMINISTRATIVE PENALTIES

If any responsible party does not request any appeal process and does not take corrective action to abate the violation **within the 15-day time limit** as noted above, this Notice of Violation will become final. Beginning on the following day, administrative penalties of up to **\$250 per day** to the responsible party will start to accrue for each day the violation continues unabated. The penalty amount shall be paid **within 30 days** from the final date of the Notice of Violation. After 30 days, the Planning Department may forward the matter to the Bureau of Delinquent Revenue for collection as authorized by Article V, Section 10.39 of the San Francisco Administrative Code. Please be advised that payment of penalty does not excuse failure to correct the violation or bar further enforcement action. Additional penalties will continue to accrue until a corrective action is taken to abate the violation.

## ENFORCEMENT TIME AND MATERIALS FEE

Pursuant to Planning Code Section 350(c)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting the Planning Code violations. Accordingly, the responsible party is currently subject to a fee of **\$1271.00** for 'Time and Materials' cost associated with the Code Enforcement investigation. **Please submit a check to the Planning Department payable to 'San Francisco Planning Department' for Code Enforcement within 15 days from the date of this notice.** Additional fees will continue to accrue until the violation is abated. This fee is separate from the administrative penalties as noted above and is not appealable.

## OTHER APPLICATIONS UNDER PLANNING DEPARTMENT CONSIDERATION

The Planning Department requires that pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. Therefore, any applications not related to abatement of the violation will be placed on hold until a corrective action is taken to abate the violation. We want to assist you in ensuring that the subject property is in full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

Sincerely,



Scott F. Sanchez  
Zoning Administrator

Enc.: Planning Department Complaint No. 2015-012037ENF  
Board File No. 150087  
Building Permit Application No. 09104752  
Notice of Special Restrictions No E906779  
Notice of Enforcement, dated September 22, 2015  
Suspension Request dated October 28, 2013  
Release of Suspension Request dated February 2, 2015  
San Francisco Rent Board Record of Eviction Notices for 1049 Market Street  
Commercial Lease Advertisement for Units 401, 403,404,405,406,412,415,416,602  
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Ryan P. Patterson, Attorney for Property Owner, Zacks and Freedman, 235 Montgomery Street, Suite 400, San Francisco, California 94104

中文詢問請電 : 558.6378  
Para información en Español llamar al: 558.6378

San Francisco Property Information Map - Internal Version  
Public Access to Useful Property Information & Resources at the Click of a Mouse

Step 1: Search or Click on the Map  
Search Examples: 490 Van Ness Ave 0767001  
Mission and Van Ness 2015-005040PRJ  
Ferry Building

1049 market

Step 2: Review Property Information  
Click tabs below to view property or parcel information

Property Zoning Preservation Planning Apps Building Permits Other Permits **Complaints** Appeals BBNs

Complaints - Planning Dept  
Complaints - Dept of Building Inspections

COMPLAINTS - PLANNING DEPT: **MAP**

2015-012037ENF Dario Jones Tel: 415-558-6477

**Enforcement (ENF)** 1049 Market Street - Unit 403

(Unit 403) Property Owner is showing other residential units to commercial tenants - Demolition and construction activity in the building including #401 & 403, possibly more units affected. (Unit 401) property owner is showing other residential units to commercial tenants - demolition and construction activity in the building including Unit 401 and 403. Unit 401 may have rented commercially. (Unit 103) rented out #103 as an office even though the unit is residential. 10/8/2015 - new complaint received stated ....in Jan. 2015, landlord rented several residential units on the first floor commercially even though units are residential, property owner recently rented unit 601 as an office even though it is residential. Demoliton and construction activity in the building including units 102, 103, 105, 106, 107, 108, 201, 203, 216, 304,305,306,307,308,309,312,314,401,505 and possibly dozens more units affected.

OPENED	STATUS	ADDRESS	FURTHER INFO
9/9/2015	Under Review 9/18/2015	1049 MARKET ST 94103	<a href="#">View in ACA</a> <a href="#">View in AA*</a>

RELATED RECORDS: None

1 [Interim Zoning Controls - Building Permits for Commercial Uses in an Area Bounded by  
2 Market, 2nd, Brannan, and Division Streets, and South Van Ness Avenue]

3 **Resolution imposing interim zoning controls to require that for a 12-month period in**  
4 **the area bounded by Market Street from Van Ness Avenue east to 5th Street on the**  
5 **north side and east to 2nd Street on the south side, 2nd Street south to Brannan Street,**  
6 **Brannan Street west to Division Street, and South Van Ness Avenue north to Market**  
7 **Street certain building permits for any building with some commercial use shall require**  
8 **the posting of a notice and a 15-day delay in starting the work and the re-establishment**  
9 **of a commercial use that has been converted to residential use shall require Planning**  
10 **Commission approval through either an authorization under Planning Code, Section**  
11 **320, et seq., or a conditional use authorization; and making environmental findings and**  
12 **a determination of consistency with the eight priority policies of Planning Code,**  
13 **Section 101.1.**

14  
15 WHEREAS, Planning Code, Section 306.7 provides for the imposition of interim zoning  
16 controls to accomplish several objectives, including preservation of areas of mixed residential  
17 and commercial uses and preservation of the City's rental housing stock; and

18 WHEREAS, Planning Code, Section 320 provides that the creation of 25,000 square  
19 feet or more of additional office space shall be subject to the office cap and other  
20 requirements of Section 320, et seq. ("Proposition M"); and

21 WHEREAS, for the purpose of office development authorizations "preexisting office  
22 space" is defined as "office space used primarily and continuously for office use and not  
23 accessory to any use other than office use for five years prior to Planning Commission  
24  
25

1 approval of an office development project which office use was fully legal under the terms of  
2 San Francisco law"; and

3 WHEREAS, There is evidence that preexisting office space has been converted  
4 without benefit of a permit to residential use in multiple buildings in the area of San Francisco  
5 bounded by Market Street from Van Ness Avenue east to 5th Street on the north side and to  
6 2nd Street on the south side, 2nd Street south to Brannan Street, Brannan Street west to  
7 Division Street, and South Van Ness north to Market; and

8 WHEREAS, The Board of Supervisors wants to control the removal of any existing  
9 residential uses in commercial spaces and review the status of the original legal uses until  
10 such time as the Planning Department can propose permanent legislation; and

11 WHEREAS, The Board is aware that during the economic downturn, renting  
12 commercial space for unpermitted residential use was an attractive economic option for many  
13 property owners, but the economic situation has changed rapidly and office use in the Area is  
14 in demand; and

15 WHEREAS, The unpermitted residential spaces have become an important source of  
16 housing for residents of the City, and preserving the City's housing stock, particularly its  
17 relatively affordable housing stock in a climate of scarce housing resources and relative lack  
18 of affordability, is of paramount concern; and

19 WHEREAS, On December 18, 2013, in Executive Directive 13-01, Mayor Ed Lee  
20 requested City Departments to make recommendations to, among other things, preserve and  
21 promote rental housing and to hold public hearings when a loss of housing is proposed; and

22 WHEREAS, The City strictly controls the change of legal uses through the Planning  
23 and Building Codes, but a change of use in a building that contains unpermitted uses does not  
24 afford the public and decision makers the same level of notice and opportunity to consider the  
25

1 impact of such a change in use when surrounding circumstances may have substantially  
2 changed; and

3 WHEREAS, This Resolution imposes a new 12-month period for these amended  
4 interim controls, which were enacted by Resolution No. 428-13 and expired on December 13,  
5 2014; and

6 WHEREAS, This Board has considered the impact on the public health, safety, peace,  
7 and general welfare if the proposed interim controls are not imposed; and

8 WHEREAS, This Board has determined that the public interest will best be served by  
9 imposition of these interim controls at this time in order to ensure that the legislative scheme  
10 which may ultimately be adopted is not undermined during the planning and legislative  
11 process for permanent controls; and

12 WHEREAS, The Planning Department has determined that the actions contemplated in  
13 this Resolution are in compliance with the California Environmental Quality Act (California  
14 Public Resources Code, Sections 21000, et seq.); said determination is on file with the Clerk  
15 of the Board of Supervisors in File No. 150087 and is incorporated herein by reference; now,  
16 therefore, be it

17 RESOLVED, That pursuant to Planning Code, Section 306.7, the Board of Supervisors  
18 by this Resolution hereby requires that during the pendency of these interim controls certain  
19 building permits for any buildings with some commercial use in the area of San Francisco  
20 bounded by Market Street from Van Ness Avenue east to 5th Street on the north side and to  
21 2nd Street on the south side, 2nd Street south to Brannan Street, Brannan Street west to  
22 Division Street, and South Van Ness Avenue north to Market Street shall require a notice to  
23 be posted the day of permit issuance in a conspicuous location on the ground floor of the  
24 building for the work specified below; and, be it

1 FURTHER RESOLVED, That if a posted notice is required it shall meet the  
2 requirements of the Planning and Building Departments and at a minimum shall state in plain  
3 language and in multiple languages the following information: "The building permit described  
4 below has been issued by the City and County of San Francisco. If you or someone you know  
5 lives in this building and may be displaced by this work, please call the following number prior  
6 to the expected construction start date on \_\_\_\_\_;" and, be it

7 FURTHER RESOLVED, That if a posted notice is required, work under the issued  
8 permit may not start until the expiration of 15 days from permit issuance and posting of the  
9 notice; and, be it

10 FURTHER RESOLVED, That the building permits that are subject to the posted notice  
11 and 15-day hold requirements are for: Structural or architectural work above the ground floor  
12 in the interior of any building with some commercial use that obtained its first certificate of  
13 occupancy prior to 1979, is valued at \$15,000 or more, and requires the submittal of floor  
14 plans; and, be it

15 FURTHER RESOLVED, That the following building permits are exempt from the  
16 posted notice and 15-day hold requirements: Permits to address a life/safety issue, and  
17 permits for weather protection, accessibility upgrades, and dry rot repair; and, be it

18 FURTHER RESOLVED, That during the pendency of these interim controls in the  
19 geographic area covered by these controls, any commercial use that has been converted in  
20 whole or in part to residential use without benefit of a permit shall be deemed abandoned. Any  
21 permit, subject to the posted notice and 15-day hold requirements above, to re-establish any  
22 commercial use shall not be issued or reinstated, or, if already issued, shall not remain  
23 effective, unless the project sponsor obtains a Conditional Use authorization under Planning  
24 Code Section 303, in addition to all requirements of the Planning Code applicable to the  
25 establishment of any such use; and, be it

1 FURTHER RESOLVED, That these interim controls shall remain in effect for twelve  
2 (12) months unless further extended or until the adoption of permanent legislation, whichever  
3 shall first occur; and, be it

4 FURTHER RESOLVED, That these interim controls are not in conflict with and hence  
5 are consistent with the eight priority policies of Planning Code, Section 101.1.  
6

7 APPROVED AS TO FORM:  
8 DENNIS J. HERRERA, City Attorney

9 By:

  
10 SUSAN CLEVELAND-KNOWLES  
11 Deputy City Attorney

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## City and County of San Francisco

### Tails

### Resolution

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 150087

**Date Passed:** March 03, 2015

Resolution imposing interim zoning controls to require that for a 12-month period, in the area bounded by Market Street from Van Ness Avenue east to 5th Street on the north side, and east to 2nd Street on the south side, 2nd Street south to Brannan Street, Brannan Street west to Division Street, and South Van Ness Avenue north to Market Street, certain building permits for any building with some commercial use shall require the posting of a notice and a 15-day delay in starting the work, and the re-establishment of a commercial use that has been converted to residential use shall require Planning Commission approval through either an authorization under Planning Code, Section 320, et seq., or a conditional use authorization; and making environmental findings and a determination of consistency with the eight priority policies of Planning Code, Section 101.1.

February 23, 2015 Land Use and Economic Development Committee - AMENDED

February 23, 2015 Land Use and Economic Development Committee - CONTINUED AS AMENDED

March 02, 2015 Land Use and Transportation Committee - AMENDED

March 02, 2015 Land Use and Transportation Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

March 03, 2015 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 150087

I hereby certify that the foregoing  
Resolution was ADOPTED on 3/3/2015 by  
the Board of Supervisors of the City and  
County of San Francisco.

*Peggy Nevin*  
for Angela Calvillo  
Clerk of the Board

*Edwin Lee*  
Mayor

3/12/15  
Date Approved



**CONDITIONS AND STIPULATIONS**

<p>APPROVED: <i>[Signature]</i></p> <p><b>FIRE</b></p> <p>INSPECTOR, BUREAU OF BLDG. INSP.</p> <p>DEPARTMENT OF CITY PLANNING</p>	<p>DATE: _____</p> <p>REASON: _____</p> <p>NOTIFIED MR. _____</p>
<p>APPROVED: _____</p> <p><b>CATEGORICALLY EXEMPT FROM ENVIRONMENTAL REVIEW</b></p> <p>NSR LIST 1006 7/19</p> <p>DEPARTMENT OF CITY PLANNING</p>	<p>DATE: _____</p> <p>REASON: _____</p> <p>NOTIFIED MR. _____</p>
<p>APPROVED: _____</p> <p>PLEASE NOTIFY SFPD AT START OF WORK CONTACT FIRE INSPECTOR (415) 861-8000 EXT. 848</p> <p><b>SUBMIT SPRINKLER PLAN PER N.F.P.A. # 13, SEC. 1.9</b></p> <p>BUREAU OF FIRE PREVENTION &amp; PUBLIC SAFETY</p> <p>7/15/91</p>	<p>DATE: _____</p> <p>REASON: _____</p> <p>NOTIFIED MR. _____</p>
<p>APPROVED: _____</p> <p><i>[Signature]</i> 6/19/91</p> <p>BUREAU OF BLDG. INSPECTION</p>	<p>DATE: _____</p> <p>REASON: _____</p> <p>NOTIFIED MR. _____</p>
<p>APPROVED: _____</p> <p><i>Arthur M. Bee</i> 6/20/91</p> <p>PAD-MECH</p>	<p>DATE: _____</p> <p>REASON: _____</p> <p>NOTIFIED MR. _____</p>
<p>APPROVED: _____</p> <p>DEPARTMENT OF PUBLIC HEALTH</p>	<p>DATE: _____</p> <p>REASON: _____</p> <p>NOTIFIED MR. _____</p>
<p>APPROVED: _____</p> <p>REDEVELOPMENT AGENCY</p>	<p>DATE: _____</p> <p>REASON: _____</p> <p>NOTIFIED MR. _____</p>
<p>APPROVED: _____</p> <p>INSPECTION DIVISION</p>	<p>DATE: _____</p> <p>REASON: _____</p> <p>NOTIFIED MR. _____</p>

HOLD SECTION - NOTE DATES AND NAMES OF ALL PERSONS NOTIFIED DURING PROCESSING

I agree to comply with all conditions or stipulations of the various departments or departments noted on this application, and attached documents of conditions or stipulations, which are hereby made a part of this application.

CONTRACTOR'S SIGNATURE

CENTRAL PERMIT BUREAU  
450 McALLISTER STREET  
SAN FRANCISCO, CA 94102

Appl. # 9104361  
Address 1049 Market St

LICENSED CONTRACTOR'S STATEMENT

Licensed Contractor's Declaration

Pursuant to the Business and Professions Code Sec. 7031.5, I hereby affirm that I am licensed under the provisions of Chapter 9 (commencing with Sec. 7000) of Division 3 of the Business and Professions Code, and that my license is in full force and effect.

License Number 100507 License Class R/C10  
Expiration Date 3/24/91 Contractor HARCON CONSTRUCTION

[Signature]  
SIGNATURE

Owner-Builder Declaration

I hereby affirm that I am exempt from the Contractor's License Law, Business and Professions Code (Sec. 7031.5). (Mark the appropriate box below.)

I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044). I further acknowledge that I understand and agree that in the event that any work is commenced contrary to the representations contained herein, that the Permit herein applied for shall be deemed cancelled.

architect, agent  
 I, as owner, am contracting with licensed contractors to construct this project (Sec. 7044). I certify that at the time such contractors are selected, I will have them file a copy of this form (Licensed Contractors Declaration) prior to the commencement of any work. I further acknowledge that I understand and agree that, in the event that said contractors fail to file a copy of the Declaration with the Central Permit Bureau, that the Permit herein applied for shall be deemed cancelled.

I am exempt under Business and Professions Code Sec. \_\_\_\_\_

Reason \_\_\_\_\_

Architect (PRINT) \_\_\_\_\_

Date 3/18/91  Agent (PRINT) \_\_\_\_\_

Owner (PRINT) \_\_\_\_\_

(SIGNATURE) \_\_\_\_\_

NOTICE: "Any violation of the Bus. & Prof. Code Sec. 7031.5 by any permit applicant shall be subject to a civil penalty of not more than five hundred dollars (\$500)." Bus. & Prof. Code Sec. 7031.5.

**City and County of San Francisco  
Contractor Information Sheet**

*Please print or type the following information*

Verified by: _____	Date: _____
Expires: _____	
License Standing: _____	
Input by: _____	Date: _____
PMD USE ONLY	

Company Name  
(as shown on contractor's license): Harcorn Construction Corp

Company Address: 81 Larkin St #207  
San Francisco, CA

Mailing Address (if different): \_\_\_\_\_

Company Telephone Number: Area Code 415 Number 546-7977

Contractor Contact Person: Dennis Oates

California Contractors State  
License Number: 600507 License Classifications: B, C10

**IF APPLICABLE:**

City of San Francisco Business/Tax License Number: _____	Expiration Date: _____
---	------------------------

*Please provide the names and signatures of individuals authorized  
to obtain building permits using the above license number.*

Print Name: Harvey Riskin Signature: [Signature]

Print Name: Dennis Oates Signature: [Signature]

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_

*I verify that the above information is true and correct:*

CSLB Qualifier Name (please print): Harvey Riskin

CSLB Qualifier Signature: [Signature] Date: \_\_\_\_\_

**NOTE:** It is recommended that you retain a copy of this information sheet for your records.

**RETURN TO:** City and County of San Francisco Dept. of Public Works  
c/o Pacific Management Dynamics Corp.  
2856 Arden Way, Suite 200  
Sacramento, CA 95825 (916) 974-3999

<b>NOTE:</b> This form will not be processed unless it is filled out completely. Incomplete forms will be returned.
--

City and County of San Francisco  
Contractor Information System

**NOTE TO CONTRACTORS:**

Please send this completed form directly to your insurance agent or carrier.  
Do not send it to the City of San Francisco or Pacific Management Dynamics Corp.

**Insurance Release Form**

I hereby authorize the GOLDMANN Insurance Agency to issue an original Certificate of Insurance to the City of San Francisco Department of Public Works, Bureau of Building Inspection. The Certificate of Insurance should specify my workers compensation insurance coverage, including the number of individuals covered and policy limits. An Acor Form 25-S may be used for this purpose.

The Certificate of Insurance shall provide the certificate holder, City of San Francisco Department of Public Works, Bureau of Building Inspection, with at least ten (10) days written notice of change and/or expiration of my workers compensation policy.

Please include my contractor's license number 600507 along with my firm name and address on the Certificate to assist in the processing of the Certificate by the City of San Francisco.

The above named agency is directed to mail the Certificate of Insurance to:

City and County of San Francisco Dept. of Public Works,  
Bureau of Building Inspection  
c/o Pacific Management Dynamics Corp.  
2856 Arden Way, Suite 200  
Sacramento, CA 95825  
(916) 974-3999

Please forward the above described Certificate of Insurance within five (5) business days of receipt of this notice.

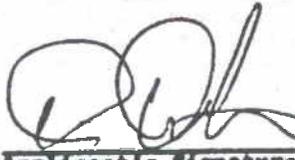
Hanson Construction Corp  
Contractor/Firm Name  
81 Lansing St  
Address  
San Francisco, CA 9  
City/State/Zip Code

[Signature]  
Authorized Signature  
3/18/91  
Date

CERTIFICATION OF AUTHORIZED AGENT

I hereby certify that for the purpose of filing an application for a building or other permit with the Central Permit Bureau, or completion of any form related to the S.F. Building Code, or to City and County ordinances and regulations, or to state laws and codes, I am the agent of the owner and am authorized to sign all documents connected with this application or permit.

I declare under penalty of perjury that the forgoing is true and correct.

 , Project Mgr.  
Applicant's Signature

Dennis Oates  
Type or Print Name

U0182009  
Identification  
(Drivers Lic. No., etc.)

1049 Market St Assoc.  
Owner/Lessee

3/18/91  
Date

RECEIVED

MAY 17 1991

SE ~~RECORDED~~ MAY 16 1991

CITY & COUNTY OF S.F.  
DEPT. OF PUBLIC WORKS

RECORDING REQUESTED BY

And When Recorded Mail to

NAME: Rifkin Realty Partners

ADDRESS: 81 Lansing St. #207

CITY & San Francisco, CA 94105  
STATE

CONFORMED COPY of document recorded on \_\_\_\_\_

at 2:38 as No. E 906779

This document has not been compared with  
the original

SAN FRANCISCO COUNTY RECORDER.

Space Above This Line For Recorder's Use

NOTICE OF SPECIAL RESTRICTIONS UNDER THE CITY PLANNING CODE

I (We) 1049 Market Street Ass., the owner(s) of that certain real property situated in the City and County of San Francisco, State of California, more particularly described as follows:  
(or see attached sheet marked Exhibit A on which property is more fully described)

The 6th floor tenant units, shown on architectural drawings dated 2/17/91 submitted to the City of San Francisco, Department of Public Works for building application #9104782 (not including common areas, not including any ground floor units), comprising approximately 5004 square feet, on the west side of the existing building located on the lot COMMERCIAL at a point on the westerly line of Market Street, distant thereon 374 feet, 11-1/4 inches southerly from the southerly line of 6th Street; running thence southerly along said line of Market Street 50 feet, 3/4 inch or inch; thence at a right angle southerly 100 feet to the westerly line of Stevenson Street; thence northerly along said line of Stevenson Street 49 feet, 11-1/2 inches; thence northerly 66 feet and a fraction of an inch to a point 66 feet northerly from the northerly line of Stevenson Street, measured on a line drawn perpendicularly to said line of Stevenson Street, which last mentioned point is also distant 375 feet southerly from the southerly line of 6th Street, measured on a line drawn perpendicularly to said southerly line of 6th Street; and thence northerly to a straight line 95 feet and a fraction of an inch to the point of commencement.

BEING Assessor's Block 100, Lot 393, hereby give notice that there are special restrictions on the use of said property under Part II, Chapter II of the San Francisco Municipal Code (City Planning Code).

Said conditions consist of conditions attached to the approval of Building Permit Application No. 9104752 by the Department of City Planning and are conditions that had to be so attached in order that said application could be approved under the City Planning Code. (Building Form X, Y or (3))

The restrictions and Conditions of which notice is hereby given are:

1. That the Live/Work units shall meet all the applicable provisions of the San Francisco Planning Code including but not limited to Sections 102.2, 102.13. Section 102.13 defines Live/Work units and specifically establishes limits on occupancy and the numbers of occupants who must be involved in arts related work in each unit.

NOTICE OF SPECIAL RESTRICTION UNDER THE CITY PLANNING CODE

2. That Live/Work units tenancy shall be restricted to arts related activities as defined in Section 102.2 of the San Francisco Planning Code. Section 102.2 defines arts related activities which are permitted as work activities in Live/Work units. Sections 209 and 227 restrict occupancy of Live/Work units to arts related activities unless a project sponsor applies for and receives Conditional Use authorization from the San Francisco Planning Commission for other non-arts related uses in the project.

The use of said property contrary to these special restrictions shall constitute a violation of the City Planning Code, and no release, modification or elimination of these restrictions shall be valid unless notice thereof is recorded on the Land Record by the Zoning Administrator of the City and County of San Francisco; except that in the event that the zoning standards above are modified so as to be less restrictive and the uses herein restricted are thereby permitted and in conformity with the provisions of the City Planning Code, this document would no longer be in effect and would be null and void.

DATED: 5/11/91 at San Francisco, California  
1049 Market Street  
a limited partnership  
By: [Signature]  
 (signature of owner)

Henry Kikris

(Partnership)

STATE OF CALIFORNIA }  
 COUNTY OF San Francisco } ss.

On May 14 1991  
 before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_

\_\_\_\_\_ personally knows to me (or proved to me on the basis of satisfactory evidence)

to be \_\_\_\_\_ of the partners of the partnership that executed the within instrument, and acknowledged to me that each partnership executed the same.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Name (Typed or Printed) \_\_\_\_\_

the  
 town to  
 in(s)  
 je to



(al seal)



# SAN FRANCISCO PLANNING DEPARTMENT

## NOTICE OF ENFORCEMENT

September 22, 2015

**Property Owner**

1049 Market Street LLC  
16351 Skyline Boulevard  
Woodside, CA 94062

1049 Market Street LLC  
1005 Market Street #310  
San Francisco CA, 94103

**Site Address:** 1049 Market Street  
**Assessor's Block/ Lot:** 3703/ 067  
**Complaint Number:** 2015-012037ENF  
**Zoning District:** C-3-G, Downtown- General  
**Code Violation:** Section 306.7(c) – Office Conversion, Violation of Board of Supervisor Interim Controls, Board File No. 150087 & Section 303 – Conditional Use Authorization Required  
**Administrative Penalty:** Up to \$250 Each Day of Violation  
**Response Due:** Within 15 days from the date of this Notice  
**Staff Contact:** Dario Jones, (415) 558-6477; or, Dario.Jones@sfgov.org

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

The Planning Department has received a complaint that a Planning Code violation exists on the above referenced property that needs to be resolved. As the owner of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below:

### DESCRIPTION OF VIOLATION

The complaint alleges that multiple residential units at the subject property have been illegally converted to office space without Conditional Use authorization, a violation of interim controls enacted by the Board of Supervisor in 2015 (Board File No. 150087, attached).

Per Board File No. 150087, "if a residential use has been established, the re-establishment of a commercial use that has been converted to residential use shall require Planning Commission approval through a conditional use authorization application " This control applies to the area bounded by Market Street from Van Ness Street east to 5th Street on the north side and east to 2nd Street on the south side, 2nd Street south to Brannan Street, Brannan Street west to Division Street, and South Van Ness Street north to Market Street.

Pursuant to Planning Code Section 171, structures and land in any zoning district shall be used only for the purposes listed in this Code as permitted in that district, and in accordance with the regulations established for that district. Further, pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures. Failure to comply with any of Planning Code provisions constitutes a violation of Planning Code and is subject to enforcement process under Code Section 176.

## HOW TO CORRECT THE VIOLATION

You must contact the Staff Planner listed above to arrange for an inspection of the subject property within 15 days from the date of this notice. Should the subject property be found in violation of the interim controls, you must immediately proceed to abate the violation by converting the unauthorized office space back to residential use.

You may seek a Conditional Use authorization for the conversion of the residential units and to re-establish office use; however, until a Conditional Use authorization is granted you may not convert any residential units to office space at the subject property. In addition to the Conditional Use authorization, Office Allocation authorization may be required under Section 322 (Proposition M).

As the responsible party, you will need to provide adequate evidence to demonstrate that either no violation exists or that the violation has been abated. You may also need to obtain a building permit to restore the residential units. Please contact the Department of Building Inspection (DBI), 1660 Mission Street, San Francisco, CA 94103, telephone: (415) 558-6088, website: [www.sfgov.org/dbi](http://www.sfgov.org/dbi), regarding the Building Permit Application process. Please visit the Planning Information Counter located at the first floor of 1660 Mission Street for any questions regarding the planning process.

## TIMELINE TO RESPOND

The responsible party has fifteen (15) days from the date of this notice to contact the staff planner noted at the top of this notice and submit evidence to demonstrate that the corrective actions have been taken to bring the subject property into compliance with the Planning Code. A site visit may also be required to verify the authorized use at the above property. The corrective actions shall be taken as early as possible. Any unreasonable delays in abatement of the violation may result in further enforcement action by the Planning Department.

## PENALTIES AND APPEAL RIGHTS

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code within fifteen (15) days from the date of this notice will result in issuance of a **Notice of Violation** by the Zoning Administrator. Administrative penalties of up to \$250 per day will also be assessed to the responsible party for each day the violation continues thereafter. The Notice of Violation provides appeal processes noted below.

- 1) Request for Zoning Administrator Hearing. The Zoning Administrator's decision is appealable to the Board of Appeals.
- 2) Appeal of the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation exists, excluding the period of

time the matter has been pending either before the Zoning Administrator or before the Board of Appeals.

### **ENFORCEMENT TIME AND MATERIALS FEE**

Pursuant to Planning Code Section 350(c) (1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department's Conditions of Approval. Accordingly, the responsible party may be subject to an amount of \$1,271 plus any additional accrued time and materials cost for Code Enforcement investigation and abatement of violation. This fee is separate from the administrative penalties as noted above and is not appealable.

### **OTHER APPLICATIONS UNDER CONSIDERATION**

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until the violation is corrected. We want to assist you in ensuring that the subject property is in full compliance with the Planning Code. You may contact the enforcement planner as noted above for any questions.

Enc: Board File No. 150087

cc: Rosemary Bosque, Chief Housing Inspector, Department of Building Inspection, San Francisco  
Jennifer Rakowski, Rent Board Supervisor, Rent Board, San Francisco

**中文詢問請電: 558.6378**

Para información en Español llamar al: **558.6378**



# SAN FRANCISCO PLANNING DEPARTMENT

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## Suspension Request

October 28, 2013

Mr. Tom Hui, CBO  
Director, Department of Building Inspection  
1660 Mission Street  
San Francisco, CA 94103

**Building Application No.:** 201307262890  
**Property Address:** 1049-1051 Market Street  
**Block and Lot** 3703 / 067  
**Zoning District:** C-3-G / 90-X  
**Staff Contact:** Dario Jones, Acting Chief of Enforcement – (415) 558-6477  
[dario.jones@sfgov.org](mailto:dario.jones@sfgov.org)

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

Dear Director Hui,

This letter is to request that the Department of Building Inspection (DBI) suspend **Building Permit Application Number 201307262890** ("Permit") for the building located at 1049-1051 Market Street ("Building"). The Permit was sought in order to demolish office walls on the first through fifth floors of the Building and was approved and issued by DBI on August 2, 2013.

The Planning Department did not review or approve the Permit, and is now aware of evidence that calls into question the current authorized use of the Building under the Planning Code. This, in turn, may affect the review and approval process for the office use proposed under the Permit. Accordingly, we are requesting suspension of the Permit in order to obtain and analyze permits, plans, and relevant occupancy information related to the existing and proposed uses of the Building.

Evidence thus far suggests that nearly all of the Building was converted to some type of residential use more than five years ago. This evidence includes (1) materials associated with DBI Complaint Number 200711850, which substantiated allegations of conversion to some type of residential occupancy, (2) testimony received at the Building Inspection Commission hearing on October 16, 2013 by individuals who represented themselves as current or previous residential tenants of the Building, (3) articles in the San Francisco Chronicle and San Francisco Examiner during the week of October 8, 2013, and (4) verbal reports by the property owners themselves during a meeting with DBI and Planning Department Staff on October 13, 2013.

The application for the Permit identifies office space as the existing use at the subject property. If that use (considered "preexisting office space" under Planning Code §320(k)) was converted to another use more than five years ago, it may be considered abandoned. A resumption of that use on the first through fifth floors of the Building may then be subject to Planning Commission authorization under the City's Office Development Annual Limit Program (Planning Code §320 et. seq; also known as

Tom Hui, Director - DBI  
Suspension Request  
1049-1051 Market Street  
October 28, 2013

Proposition M), payment of associated development impact fees, and other applicable requirements of the Planning Code.

This issue is particularly relevant because the owners of the subject property also control the property at 1067-1071 Market Street (Parcel Number 3703/063). Very similarly, that property also appears to (1) have historically been used as office space, and (2) have more recently been converted to a residential-type use. A similar Planning Code analysis may be required to return 1067-1071 Market Street to an office use.

As staff from both the Planning Department and DBI have previously made clear to the property owners, there are multiple ways in which both properties – and the existing residential-type uses - can be maintained and improved in a fashion consistent with the Planning and Building Codes. The Planning Department remains prepared to collaborate with the property owners but at the present time respectfully requests that you suspend the Permit so that we can further investigate this matter.

**APPEAL:** Any aggrieved person may appeal this letter to the Board of Appeals within fifteen (15) days after the date of the issuance of this letter. For further information, please contact the Board of Appeals in person at 1650 Mission Street, Room 304, or call 575-6880.

Sincerely,



Corey A. Teague  
Acting Zoning Administrator

- cc: Mr. John Gall - 1005 Market St #310, San Francisco CA 94103 (property owner)  
Mr. Terry Bogart - 16351 Skyline Blvd, Woodside CA 94062 (property owner)  
Mr. Daniel Lowrey, DBI  
Mr. Patrick O'Riordan, DBI  
Mr. Joe Duffy, DBI  
Mr. Bernie Curran, DBI  
Mr. Tom Venizelos, DBI  
Ms. Yin Pei, DBI  
Mr. Ben Man, DBI  
Mr. Daniel Sider, Planning Department  
Mr. Mark Luellen, Planning Department  
Mr. Dario Jones, Planning Department



# SAN FRANCISCO PLANNING DEPARTMENT

## Release of Suspension Request

February 2, 2015

Mr. Tom Hui, S.E., CBO  
Director  
Department of Building Inspection  
1660 Mission Street  
San Francisco, CA 94103

**Building Application No.:** 201307262890  
**Property Address:** 1049-1051 Market Street  
**Block and Lot** 3703 / 067  
**Zoning District:** C-3-G / 90-X  
**Staff Contact:** Corey Teague, Assistant Zoning Administrator  
(415) 575-9081 or [corey.teague@sfgov.org](mailto:corey.teague@sfgov.org)

Dear Director Hui,

This letter is to request that the Department of Building Inspection (DBI) **release suspension of Building Permit Application Number 201307262890** ("Permit") for the property at 1049-1051 Market Street.

On October 28, 2013, Corey A. Teague (Acting Zoning Administrator) submitted a Request for Suspension for the Permit because it was not reviewed by the Planning Department, and there was a question as to whether the work proposed in the Permit triggered additional requirements and/or procedures under the Planning Code.

That Request for Suspension was appealed to the Board of Appeals by John Gall on November 13, 2013. Planning Department staff met with John Gall and others representing the subject property in January 2014. The result of the meeting was a shared understanding that the property owner(s) would request a letter of determination from the Zoning Administrator regarding the possibility of converting some or all of the unpermitted habitable space referenced in DBI Notice of Violation No. 200711850 into dwelling units that are integrated with the working space of artists, artisans and other craftspersons, pursuant to Planning Code Section 204.4(b). Subsequent to that meeting, the appeal of the Request for Suspension was withdrawn on February 19, 2014.

Despite the outcome of the January 2014 meeting the Planning Department received no communication from the permit holder or property owner(s) until December 2014. At that time, counsel for the property owner(s) requested that the Department either seek reinstatement or revocation of the Permit. The Department understood it to be implicit in this request that the permit holder and property owner(s) no longer intended to move forward with a conversion of

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

Tom Hui, Director of Building Inspection  
Release of Suspension Request  
1049-51 Market Street  
February 2, 2015

the preexisting office space to dwelling units that are integrated with the working space of artists, artisans and other craftspersons, as had been previously discussed.

As such, it is my determination that the current legal use of the portion of the building subject to the Permit is the last legal use, which was office space here. Absent an abandonment of use recognized by the Planning Code, when a legal use of a property is changed without the benefit of a permit, the legal use remains the last legal use if that use is permitted as of right. While the principle of abandonment may apply in some circumstances to change this presumption, there is no provision for abandonment in the Code for a principally permitted use. The Planning Code provides for abandonment of nonconforming uses (Section 183) and conditional uses (Section 178). Here, the preexisting office space was legally established, and office is permitted as of right in the C-3-G Zoning District. Office is neither a nonconforming use nor a conditional use on the subject property. As such, the construction of walls and other facilities for the purpose of residential use in the subject building did not constitute abandonment under the Planning Code of the preexisting legal office space. Because the office space was not abandoned, the subject permit does not constitute a change of use or reestablishment of the office use, nor any associated Planning Code provisions that would apply to such activity.

As noted in the Request for Suspension, staff from both the Planning Department and DBI maintain that there are multiple ways in which residential uses at this Property and another property controlled by the owners of the subject property, 1067-1071 Market Street, may be maintained and improved in a manner consistent with the Planning and Building Codes. The Planning Department remains prepared to work with the property owners toward such a solution.

Therefore, the Planning Department is requesting that the Department of Building Inspection reinstate the Permit.

**APPEAL:** Any aggrieved person may appeal this letter to the Board of Appeals within fifteen (15) days after the date of the issuance of this letter. For further information, please contact the Board of Appeals in person at 1650 Mission Street, Room 304, or call 575-6880.

Sincerely,



Scott F. Sanchez  
Zoning Administrator

CC: Mr. John Gall - 1005 Market St #310, San Francisco CA 94103 (property owner)  
Mr. Terry Bogart - 16351 Skyline Blvd, Woodside CA 94062 (property owner)  
Mr. Daniel Lowrey, DBI  
Mr. Patrick O'Riordan, DBI  
Mr. Ron Tom  
Mr. Ed Sweeny  
Mr. Joe Duffy, DBI  
Mr. Bernie Curran, DBI

Tom Hui, Director of Building Inspection  
Release of Suspension Request  
1049-51 Market Street  
February 2, 2015

Ms. Yin Pei, DBI  
Mr. Ben Man, DBI  
Mr. Daniel Sider, Planning Department  
Mr. Mark Luellen, Planning Department  
Mr. Dario Jones, Planning Department  
Mr. Corey Teague, Planning Department  
Ms. Susan Cleveland-Knowles, City Attorney's Office

## Eviction Notices

Case No.	Property Address	File Date	Zip	Reason
<b>M131974</b>	1049 Market Street #301	10/07/13	94103	Demolition
<b>M131975</b>	1049 Market Street #302	10/07/13	94103	Demolition
<b>M131976</b>	1049 Market Street #303	10/07/13	94103	Demolition
<b>M131977</b>	1049 Market Street #305	10/07/13	94103	Demolition
<b>M131978</b>	1049 Market Street #306	10/07/13	94103	Demolition
<b>M131979</b>	1049 Market Street #307	10/07/13	94103	Demolition
<b>M131980</b>	1049 Market Street #308	10/07/13	94103	Demolition
<b>M131981</b>	1049 Market Street #310	10/07/13	94103	Demolition
<b>M131982</b>	1049 Market Street #311	10/07/13	94103	Demolition
<b>M131983</b>	1049 Market Street #312	10/07/13	94103	Demolition
<b>M131984</b>	1049 Market Street #313	10/07/13	94103	Demolition
<b>M131985</b>	1049 Market Street #314	10/07/13	94103	Demolition
<b>M131986</b>	1049 Market Street #316	10/07/13	94103	Demolition
<b>M131987</b>	1049 Market Street #401	10/07/13	94103	Demolition
<b>M131988</b>	1049 Market Street #402	10/07/13	94103	Demolition
<b>M131989</b>	1049 Market Street #403	10/07/13	94103	Demolition
<b>M131990</b>	1049 Market Street #404	10/07/13	94103	Demolition
<b>M131991</b>	1049 Market Street #405	10/07/13	94103	Demolition
<b>M131992</b>	1049 Market Street #406	10/07/13	94103	Demolition
<b>M131993</b>	1049 Market Street #408	10/07/13	94103	Demolition
<b>M131994</b>	1049 Market Street #409	10/07/13	94103	Demolition
<b>M131995</b>	1049 Market Street #410	10/07/13	94103	Demolition
<b>M131996</b>	1049 Market Street #411	10/07/13	94103	Demolition
<b>M131997</b>	1049 Market Street #412	10/07/13	94103	Demolition
<b>M131998</b>	1049 Market Street #413	10/07/13	94103	Demolition
<b>M131999</b>	1049 Market Street #414	10/07/13	94103	Demolition
<b>M132000</b>	1049 Market Street #501	10/07/13	94103	Demolition
<b>M132001</b>	1049 Market Street #502	10/07/13	94103	Demolition
<b>M132002</b>	1049 Market Street #503	10/07/13	94103	Demolition
<b>M132003</b>	1049 Market Street #504	10/07/13	94103	Demolition
<b>M132004</b>	1049 Market Street #505	10/07/13	94103	Demolition
<b>M132005</b>	1049 Market Street #507	10/07/13	94103	Demolition
<b>M132006</b>	1049 Market Street #509	10/07/13	94103	Demolition
<b>M132007</b>	1049 Market Street #510	10/07/13	94103	Demolition
<b>M132008</b>	1049 Market Street #511	10/07/13	94103	Demolition
<b>M132009</b>	1049 Market Street #513	10/07/13	94103	Demolition
<b>M132010</b>	1049 Market Street #514	10/07/13	94103	Demolition
<b>M132011</b>	1049 Market Street #515	10/07/13	94103	Demolition
<b>M132012</b>	1049 Market Street #516	10/07/13	94103	Demolition
<b>M132192</b>	1049 Market Street #101	10/28/13	94103	Demolition

## Eviction Notices

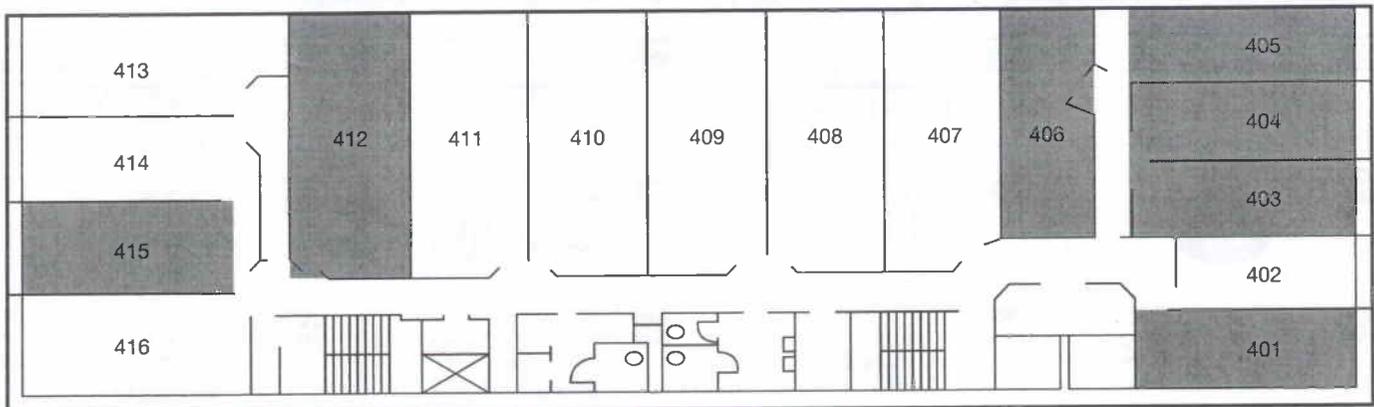
Case No.	Property Address	File Date	Zip	Reason
<b>M132193</b>	1049 Market Street #102	10/28/13	94103	Demolition
<b>M132194</b>	1049 Market Street #103	10/28/13	94103	Demolition
<b>M132195</b>	1049 Market Street #104	10/28/13	94103	Demolition
<b>M132196</b>	1049 Market Street #105	10/28/13	94103	Demolition
<b>M132197</b>	1049 Market Street #106	10/28/13	94103	Demolition
<b>M132198</b>	1049 Market Street #107	10/28/13	94103	Demolition
<b>M132199</b>	1049 Market Street #108	10/28/13	94103	Demolition
<b>M132200</b>	1049 Market Street #121	10/28/13	94103	Demolition
<b>M132201</b>	1049 Market Street #122	10/28/13	94103	Demolition
<b>M132202</b>	1049 Market Street #123	10/28/13	94103	Demolition
<b>M132203</b>	1049 Market Street #124	10/28/13	94103	Demolition
<b>M132204</b>	1049 Market Street #201	10/28/13	94103	Demolition
<b>M132205</b>	1049 Market Street #203	10/28/13	94103	Demolition
<b>M132206</b>	1049 Market Street #204	10/28/13	94103	Demolition
<b>M132207</b>	1049 Market Street #205	10/28/13	94103	Demolition
<b>M132208</b>	1049 Market Street #206	10/28/13	94103	Demolition
<b>M132209</b>	1049 Market Street #207	10/28/13	94103	Demolition
<b>M132210</b>	1049 Market Street #208	10/28/13	94103	Demolition
<b>M132211</b>	1049 Market Street #209	10/28/13	94103	Demolition
<b>M132212</b>	1049 Market Street #210	10/28/13	94103	Demolition
<b>M132213</b>	1049 Market Street #211	10/28/13	94103	Demolition
<b>M132214</b>	1049 Market Street #212	10/28/13	94103	Demolition
<b>M132215</b>	1049 Market Street #213	10/28/13	94103	Demolition
<b>M132216</b>	1049 Market Street #214	10/28/13	94103	Demolition
<b>M132217</b>	1049 Market Street #215	10/28/13	94103	Demolition
<b>M132218</b>	1049 Market Street #216	10/28/13	94103	Demolition
<b>B150677</b>	1049 Market Street #105	03/30/15	94103	
<b>B150678</b>	1049 Market Street #201	03/30/15	94103	
<b>B150679</b>	1049 Market Street #205	03/30/15	94103	
<b>B150680</b>	1049 Market Street #206	03/30/15	94103	
<b>B150681</b>	1049 Market Street #209	03/30/15	94103	
<b>B150682</b>	1049 Market Street #306	03/30/15	94103	
<b>B150683</b>	1049 Market Street #401	03/30/15	94103	
<b>B150684</b>	1049 Market Street #505	03/30/15	94103	
<b>B150685</b>	1049 Market Street #510	03/30/15	94103	
<b>B150686</b>	1049 Market Street #516	03/30/15	94103	

## 1049 Market Street

AVAILABLE SPACE	
<b>4th Floor</b>	
Suite 401	±260 RSF
Suite 403	±250 RSF
Suite 404	±250 RSF
Suite 405	±322 RSF
Suite 406	±240 RSF
Suite 412	±435 RSF
Suite 415	±270 RSF
Suite 416	LEASED
<b>6th Floor</b>	
Suite 602	±1,000 RSF



### 4TH FLOOR PLAN



Floor plan not to scale

### Contact

**Mario Previtali**  
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mariop@kiddermathews.com  
LIC #01902075

**Evan Housel**  
415.948.3729  
ehousel@kiddermathews.com  
LIC #01882475

## 1049 Market Street



**1**  
OFF THE GRID

**4**  
MONTESACRO  
PISNERIA - ROMANA - ENOTECA

**7**  
Blue Bottle Coffee Co

**10**  
TAQUERIA CANCUN

**2**  
Miyoko's

**5**  
Dotties

**8**  
Tu Lan

**11**  
[Logo]

**3**  
DAVID RIO  
SAN FRANCISCO

**6**  
MONARCH

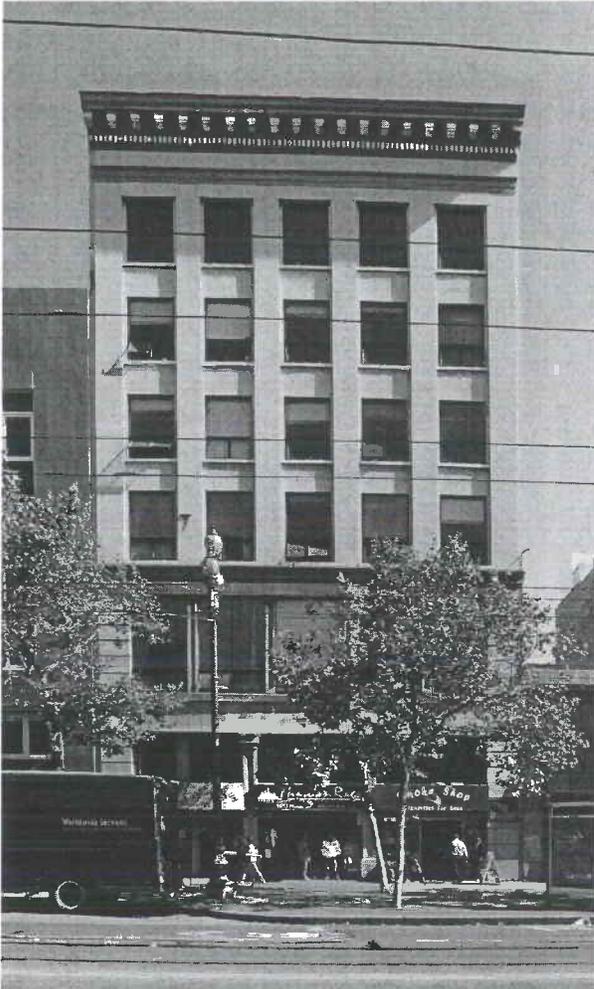
**9**  
HOME SKILLET

**12**  
THE HALL

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## Creative Small Suites

1049 Market Street  
San Francisco, CA

±240 RSF to ±1,000 RSF non-contiguous

Open layout, with exposed brick and high ceilings

Hardwood floors

Operable window lines with abundant natural light

Private large common area conference room

Mid-Market location

One block to Civic Center Bart/Muni stop

Rate & Term: Inquire with broker

### Location

### Contact



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**Evan Housel**

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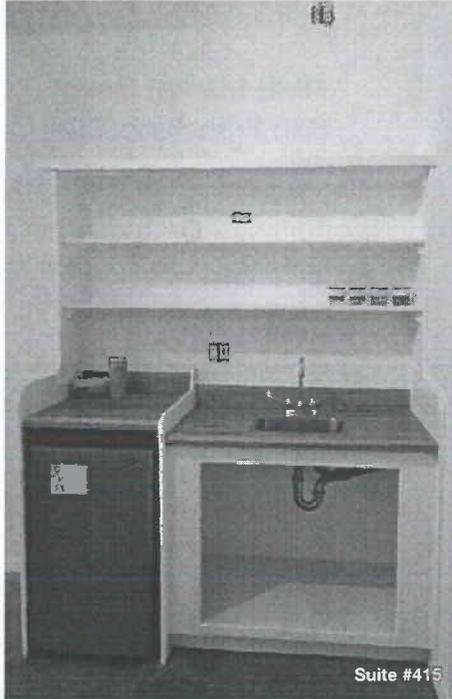
LIC #01882475



## 1049 Market Street



Suite #412



Suite #415



Suite #405



Suite #415



Suite #403



Suite #602



Suite #602

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1049 MARKET - UNIT 306



NEWS FIX ([HTTP://WW2.KQED.ORG/NEWS/PROGRAMS/NEWS-FIX](http://ww2.kqed.org/news/PROGRAMS/NEWS-FIX))

## Tenants in Mid-Market Building Get Temporary Eviction Reprieve

By **Bryan Goebel** (<http://ww2.kqed.org/news/author/bgoebel>)

FEBRUARY 19, 2014



([http://blogs.kqed.org/newsfix/2014/02/19/market-street-ar/rs7537\\_1049\\_market\\_0250\\_web/](http://blogs.kqed.org/newsfix/2014/02/19/market-street-ar/rs7537_1049_market_0250_web/))

Marcele Wilson, a resident of 1049 Market St., showed a group of reporters his single occupancy loft, which has no window. He's fighting an eviction. "I moved to San Francisco to live in San Francisco. To be an artist in San Francisco. I don't want to leave," he said last November. (Sara Bloomberg/KQED)

The owners of an 83-unit live/work building in San Francisco's rapidly changing Mid-Market neighborhood have withdrawn an appeal that, if successful, would have cleared the way for a mass eviction of low-income tenants (<http://blogs.kqed.org/newsfix/2013/11/12/despite-citys-help-sf-tenants-still-fighting-mid-market-eviction/>) who are mostly artists.

"He hasn't withdrawn the eviction orders so we're not claiming this as a total victory, but it is a victory," said Tommi Avicelli Mecca of the Housing Rights Committee.

John Gall, a former major league baseball player who is one of the owners, did not immediately return a phone call seeking comment.

But a spokesman for the Department of Building Inspection confirmed that an appeal challenging the suspension of a demolition permit at 1049 Market St. was withdrawn this morning. The permit would have allowed the owners to evict the tenants and convert the live/work lofts into offices.

The building is zoned for commercial use and the owners had been trying to bring the units up to code, but claimed they could not "overcome the city of San Francisco's overly restrictive" residential building requirements.

### 'We're Not Leaving'

The permit was revoked last fall after Mayor Ed Lee and Supervisor Jane Kim intervened, pledging to work with the owners to ease code requirements so the tenants could stay.

"This is about evicting working-class tenants and artists so that they can convert our apartments into offices and cash in on the Mid-Market tech boom," said resident Marcelle Wilson. "But these are our homes. We're not leaving."

Whether the owners plan to continue with the evictions remains unclear, but Avicolli Mecca said they would have less legal standing in court.

“My understanding is at this point, he cannot proceed with the unlawful detainers, which are the next step, because he doesn’t have the permits for demolition,” said Avicolli Mecca. “Why he withdrew and what he’s up to now, I have no clue, but we will continue to fight the evictions.”

As KQED’s Dan Brekke reported, 11 tenants [filed suit against the landlord \(http://blogs.kqed.org/newsfix/2014/01/10/tenants-of-1049-market-street-fight-eviction\)](http://blogs.kqed.org/newsfix/2014/01/10/tenants-of-1049-market-street-fight-eviction) early last month:

The specific allegations in the suit include breach of implied warranty of habitability, tenant harassment, wrongful attempt to recover possession of a rental unit, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of covenant of good faith and fair dealing, and breach of covenant of quiet enjoyment.

Housing advocates and tenants were expected to hold a City Hall press conference late Wednesday afternoon.

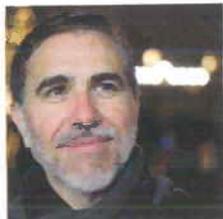
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0 Comments ([http://www.kqed.org/news/2014/02/19/market-street-ar/#disqus\\_thread](http://www.kqed.org/news/2014/02/19/market-street-ar/#disqus_thread))

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#### AUTHOR



#### BRYAN GOEBEL

Bryan Goebel is a reporter focused on transportation and housing issues. He was previously the editor of Streetsblog San Francisco, and an anchor/editor at KCBS Radio. He’s a lifelong Californian and has also worked at radio stations in Barstow, Redding and Sacramento.

[VIEW ALL POSTS BY THIS AUTHOR \(http://www.kqed.org/news/author/bgoebel\)](http://www.kqed.org/news/author/bgoebel)

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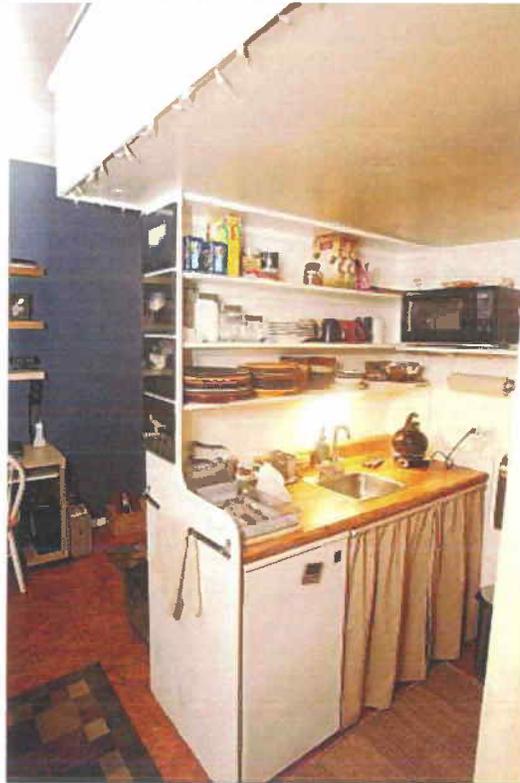
# 1049 MARKET - UNIT 301

**SFGATE** <http://www.sfgate.com/bayarea/article/It-s-time-to-say-yes-to-innovative-housing-3261292.php>

## It's time to say 'yes' to innovative housing

On San Francisco

By **C.W. Nevius** Published 4:00 am, Thursday, November 20, 2008



Craig Lee / The Chronicle

### IMAGE 3 OF 3

Single room living spaces, with a loft (usually just enough room for a bed) at 1005 and 1049 Market street that rents around \$700 a month, in San Francisco, Calif., on November 19, 2008. A kitchen built underneath the loft.

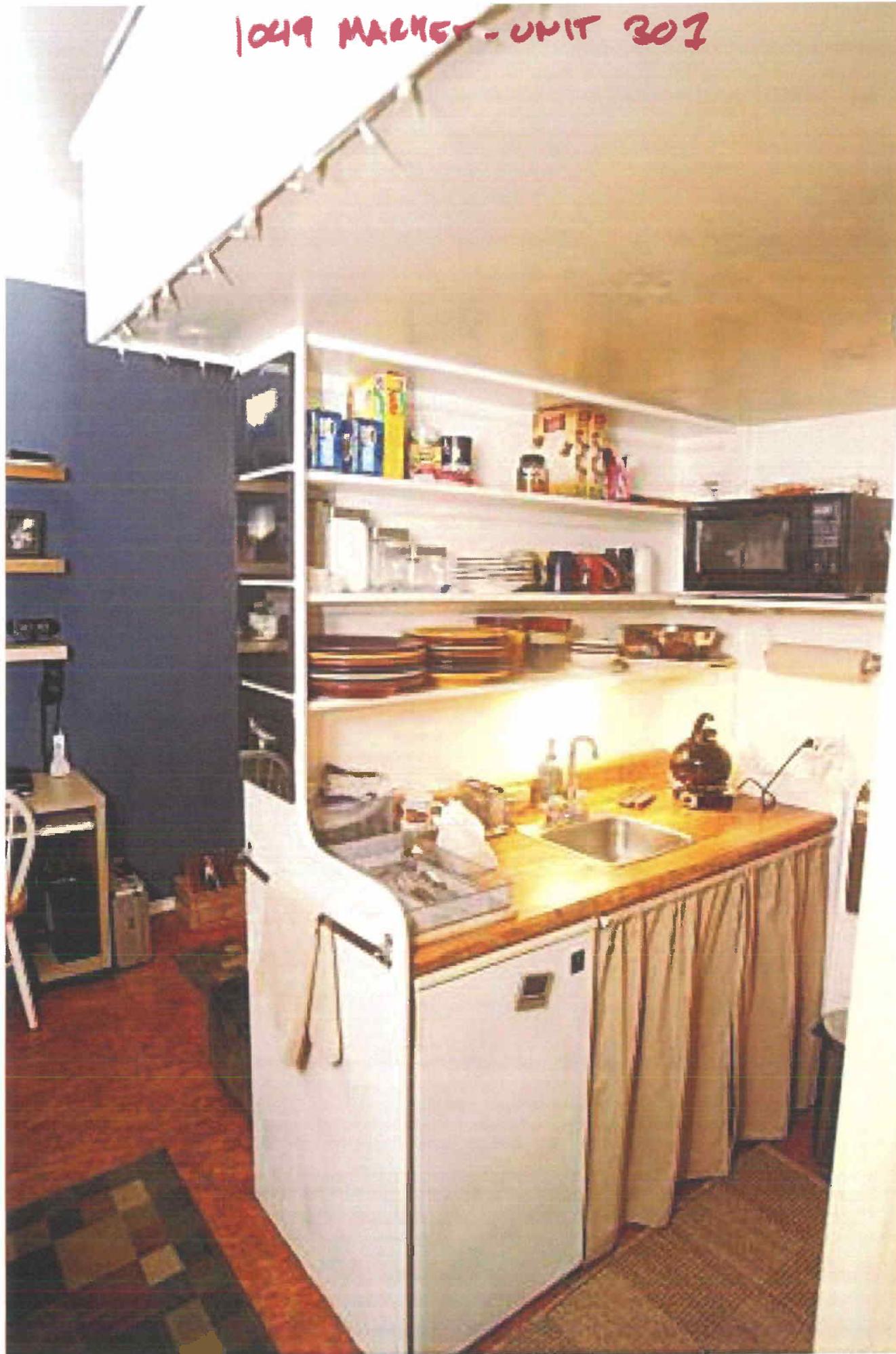
Across the street from a boarded-up billiard parlor and down the block from the guy in the wheelchair who just needs a little spare change is something unexpected. In the scruffy, graffiti-tagged **Market Street center** of San Francisco there is a great place to live.

Two floors up, **Curtis Cole**, a photography student at the **San Francisco Academy of Art**, stood in his small but well-designed apartment on Wednesday and peered out his large, double windows at the corner of Sixth and Market.

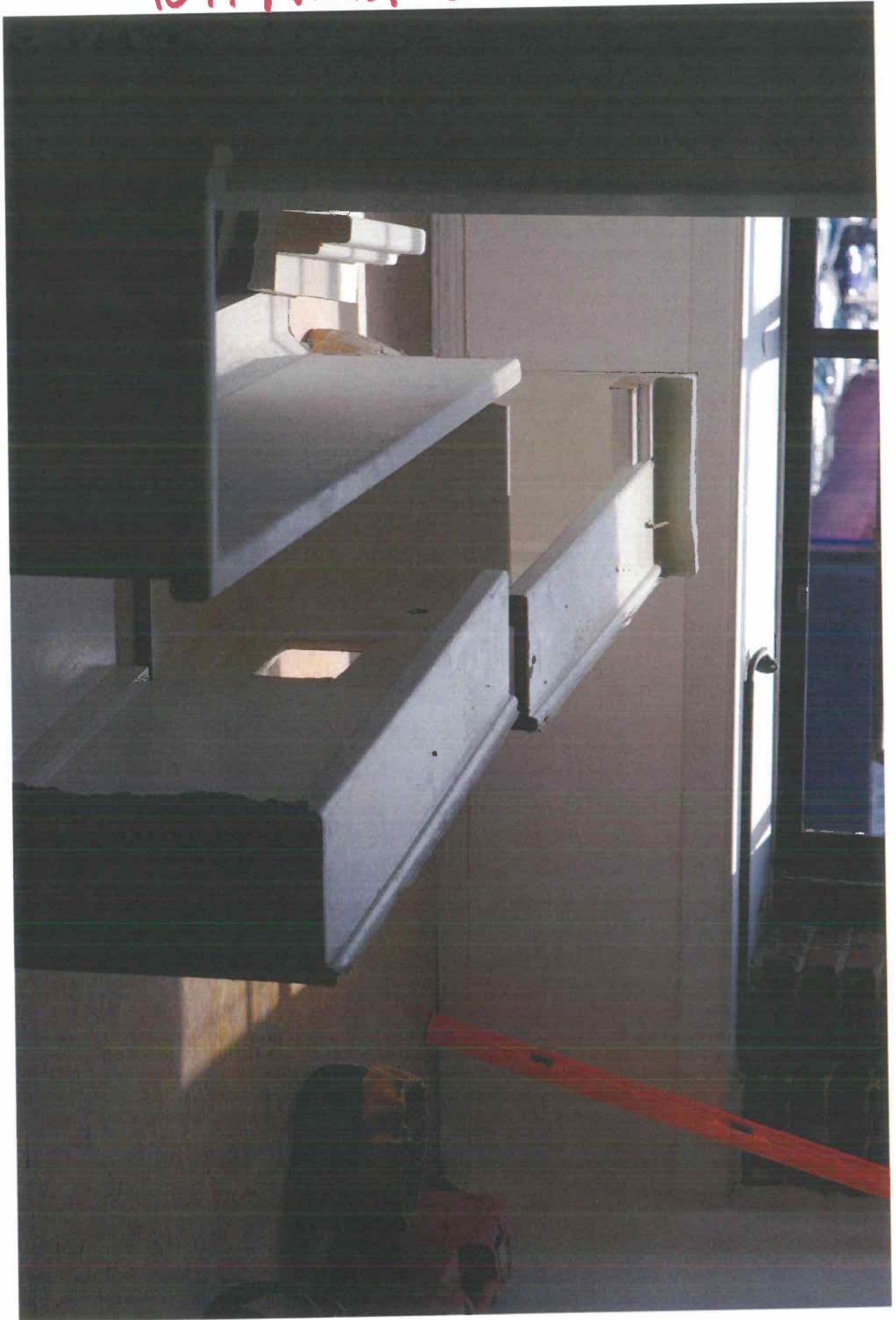
"I saw a crackhead with a stun gun in the middle of the street once. That was cool," he said. "I actually kind of enjoy the scene outside."

Cole also enjoys the low rent. He pays \$700 a month for his place, which may be small but has

1049 MARKET - UNIT 307

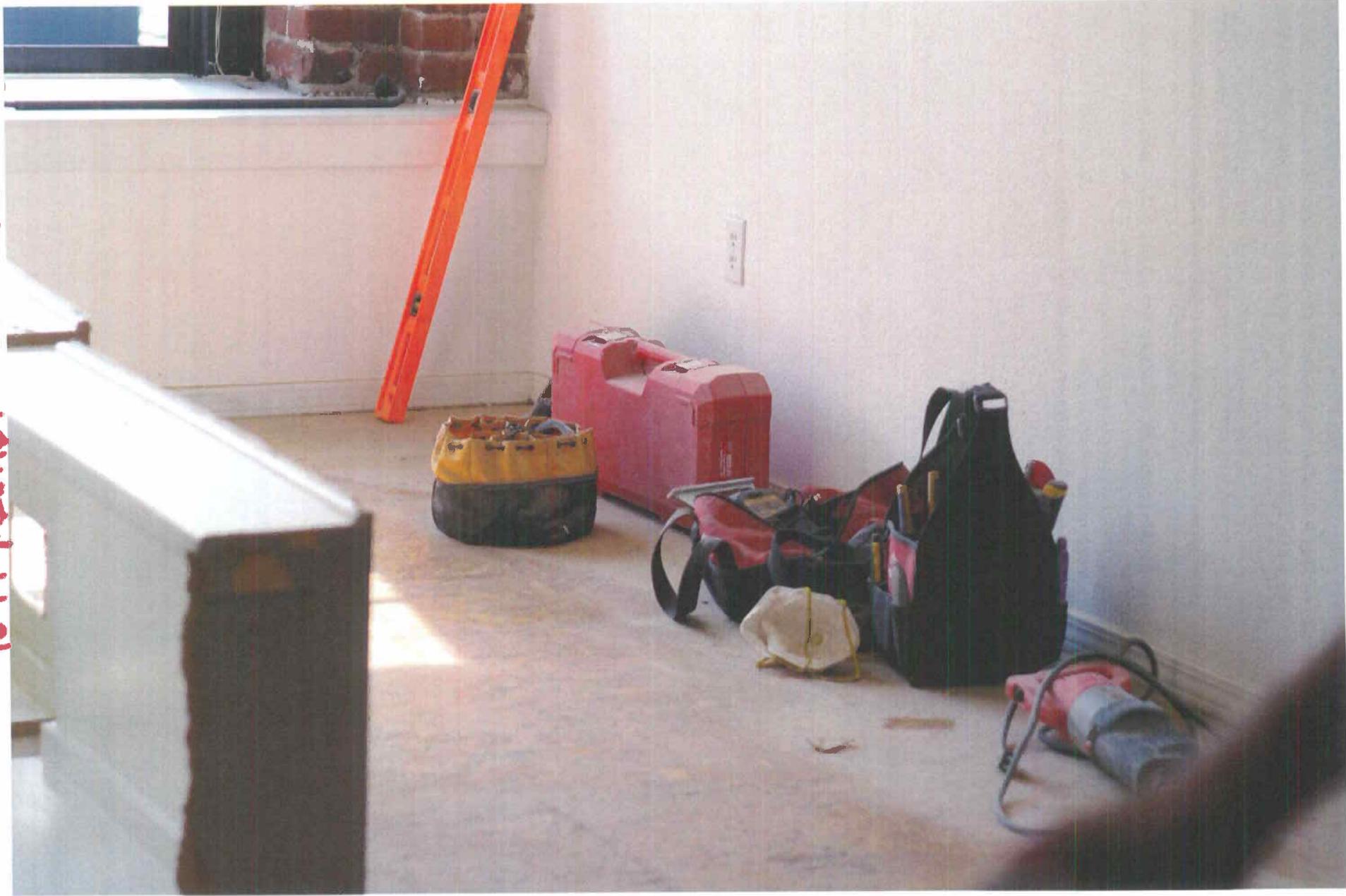


1049 MARKET - UNIT 315



ORIGINAL OF LAST

1049 MARKET - UNIT 315



RENTALS OF LOFT

1049 MARKET - UNIT 901



## Eviction uptick draws notice from pols

NEWS

by Seth Hemmelgarn  
s.hemmelgarn@ebar.com

Published 11/07/2013



One sign-holding man makes his feelings known about the Ellis Act during a recent rally against evictions in the Mission district. (Photo: Jane Philomen Cleland)

### ARTICLE TOOLS

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Evictions in San Francisco have been drawing increased attention in recent months, with special focus on stories involving a longtime Castro resident living with AIDS and LGBT residents of a Mid-Market building who've all been faced with the possibility of having to find new homes in a competitive rental market. Elected officials both locally and at the state level are taking on the issue.

Tuesday, November 5, gay Supervisor David Campos announced he would ask City Attorney Dennis Herrera to draft legislation doubling the amount of relocation assistance landlords must pay tenants when they evict them under the Ellis Act. Another supervisor said she had made progress in protecting several tenants in her district.

Campos called for a hearing Thursday, November 14 to address the report he commissioned on tenant displacement in the city. The report, released Tuesday by the budget and legislative analyst, shows what Campos's office called "a dramatic upswing in the number of evictions," including an increase of 170 percent in Ellis Act evictions reported to the city's rent board between 2010 and 2013.

"There is a housing crisis in San Francisco," stated Campos, who's running against Board President David Chui for the 17th Assembly District seat set to be vacated by gay Assemblyman Tom Ammiano (D-San Francisco), who's being termed out.

The report connects the increase in Ellis Act evictions to an increase in the market value of San Francisco's residential properties. Average home prices have gone from \$735,828 in 2009 to \$897,338 this year, a 21.9 percent increase, while the median rental rate in June 2013 for all types of apartments has risen to \$3,414, according to the report.

"If you are evicted today in San Francisco, given the outrageous rental costs and purchase prices of homes, you will most likely be forced to leave the city," said Campos, who indicated he'd be introducing more legislation soon. "The diversity and vibrancy of our city is disappearing by the day. We must act to ensure that more than just the ultra rich can live here."

The Ellis Act is a 1986 state law that allows landlords to evict tenants in order to get out of the rental business. The landlord must remove all units from the rental market. Such tenants are paid relocation expenses to move. The amount they receive can vary depending on how many individuals occupy a unit, the tenants' ages, or disability/HIV status. The amounts can range from \$5,000-\$15,000 per tenant, with an additional \$3,403 paid to tenants who are senior/disabled, according to information from the Tenants Union website. For most tenants, the money doesn't go far in San Francisco's sizzling rental market.

Under the law, Jeremy Mykaels, 63 and a long-term AIDS survivor, had faced eviction from the Noe Street home he's lived in for 17 years.

But in October, San Francisco Superior Court Judge Ronald Quidachay threw out the eviction, citing the fact that Mykaels's landlord stated his rent incorrectly in the eviction notice.

His landlords reserve the right to re-start the eviction process. Mykaels said around the time of the judge's decision that he was relieved, but "the stress and worry never goes away and still weighs on my health. Until this situation is resolved one way or another, I doubt it ever will."

As with Mykaels, the fate of tenants at 1049 Market Street, not far from City Hall, has also garnered several stories in the media recently. For years it's been home to several LGBTs and others who reside in live-work lofts.

Department of Building Inspection data show that, in 2007, a complaint was filed because the owner was "renting out office spaces

# 1049 MARKET - UNIT 401

as residential in a commercial building."

An inspector at the time noted, "Investigation revealed all spaces are live-work units (approximately 60-plus). Permit research showed only six conversions were permitted."

In September, residents received an email from the building's management that said, "Over the past several months, the current ownership group" of the building "has spent extraordinary time and money with the hopes" to remedy the situation. A tenant shared the email with the *Bay Area Reporter*.

The message said that "due to a long-standing Notice of Violation we have been forced by Code Enforcement to get a building permit to change the current unit configuration entirely." The email also said, "Per these city orders, the building must be entirely vacated." But in an email to the *B.A.R.*, William Strawn, a spokesman for the Department of Building Inspection, said those statements "are not correct."

Neither the building nor planning department's "require evictions; that is a building owner's decision," said Strawn.

Officials have had "several discussions with the owners over the past 18 months and advised them that the city could offer a pathway" to legalize the residential units that have been lived in for more than the past five years and update sprinkler, heating, and similar systems "and thus provide a safe building," he said.

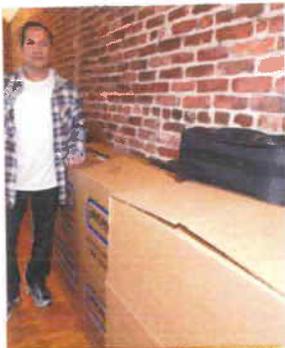
"To date, the owners have not yet responded to this offer," said Strawn, but "we continue to be hopeful that such an initiative by the owners will be forthcoming."

According to one tenant, current owner John Gall has owned the building for about two years, well after the 2007 complaint was filed. Gall didn't respond to an interview request.

Management said in its email that it would start evictions from the fifth floor and work down, potentially giving tenants on lower floors several months to find new homes. The email also said, "Move-out monies" per the city's ordinance "will also be provided."

Since the September email, many tenants have received eviction notices. Tenants have been meeting with Supervisor Jane Kim, whose District 6 includes the building, and others to try to remedy the situation.

In an emailed statement Tuesday, Kim said, "I am encouraged by my recent conversation with John Gall. He is committed to exploring a no eviction pathway with his investors to preserve the affordable units at 1049 Market Street."



Victor Arreola, who lives in a Mid-Market building where tenants face eviction, may move to Seattle. (Photo: Jane Philomeno/Credentia)

But in an interview in late October, Victor Arreola indicated that he's done fighting and was packing up after 14 years in his unit, where his rent was set to be \$817 as of November 1. Rent control rules have kept the price low.

"I decided that rather than battle" being evicted, "my health was more important," said Arreola, a gay 58-year-old who works at Macy's as a make-up artist but has recently been out on medical leave after a gym-related injury. He said he planned to leave at the end of November. He said the 60-day eviction notice he received cited demolition as the reason, and he has been offered about \$5,200 in relocation funds. After living on his own for so long, he'd have to move into a place with roommates, he said.

"If I lived alone, just to get a studio here in the city probably would be around \$1,700 to \$1,900," he said. There's also first and last month's rent, a deposit, and moving expenses to consider. He's also thinking about moving to Seattle to stay at a friend's house, which would mean he'd have to find a new job.

Like others in the city, Arreola blames Twitter, which has its headquarters just a few blocks from his apartment, for driving up rents in the area as the social media company and others like it grab office space and draw in well-paid workers seeking homes.

In late October, Kim introduced interim planning controls "to prevent property owners from obtaining building permits when there is known residential occupancy in a commercial building," a news release from Kim's office said. The controls are meant to prevent evictions similar to those facing tenants of 1049 Market and a neighboring building, according to the release. The city will conduct a survey on the loss of residential units in the South of Market neighborhood, which is "experiencing a development boom."

"We must balance the success of the city's revitalization efforts with a commitment to protecting the existing residents in our impacted neighborhoods," stated Kim.

In an interview last week, Kim said she and others are considering two other pieces of legislation. One of them involves the San Francisco Tenants Union, said Kim, who declined to share details. "We don't want to give too much of a heads up" to people who may oppose it, she said.

## Scope and solutions

While many have called the eviction situation a "crisis," LGBTs who've faced evictions anywhere in the city firsthand can be hard to find. In the Castro district, the number of Ellis Act evictions has increased, but there is still only a handful.

According to rent board data for the 94114 Zip code, there was one such eviction in 2011, and eight in 2012. As of late September, there have been six so far this year. There were 51 citywide in the same period. The data, which are pulled from owners' filings of notice of intent to withdraw rental units under the act, don't show the number of units covered by each notice.

Queer housing rights advocate Tommi Aviccolli Mecca, who works for San Francisco's Housing Rights Committee, has been sounding the alarm on the use of the Ellis Act and other eviction methods and their impact on LGBTs for years.

Either written or verbally, a landlord may tell tenants that if they don't accept a buyout, the landlord will use the Ellis Act, effectively

# 1049 MARKET - UNIT 901

forcing tenants out. Such cases aren't recorded in city data, but Aviccolli Mecca said he's seen them "over and over." He also said he talks to many people who are living with AIDS and don't want to discuss their situations publicly.

Aviccolli Mecca urges people who get eviction notices to "stay and fight."

"It's not completely hopeless, as we've seen lately," said Aviccolli Mecca, referring to Mykaels and tenants at 1049 Market Street.

He also suggested the city declare a "state of housing emergency."

"Just like when there's a disease like AIDS or some epidemic going on, the city can invoke certain powers to do things, so I would like to see the city invoke whatever powers it can invoke" to halt Ellis and similar evictions, where tenants are pushed out of their homes through no fault of their own, "for say maybe five years." He also suggested freezing or rolling back rents, or putting a moratorium on market-rate housing.

Aviccolli Mecca noted former Mayor Gavin Newsom "defied state law" in 2004 when he ordered city officials to start issuing marriage licenses to same-sex couples.

"We could do the same thing with housing," he said. "We could lead the way. We could be the San Francisco we've always been and challenge the law."

In response to emailed questions, gay Supervisor Scott Wiener, whose District 8 includes the Castro, said, "I've been a long-time supporter of reforming the Ellis Act."

As an example, he pointed to gay state Senator Mark Leno's (D-San Francisco) failed proposal when he was in the Assembly "to require that someone own a building for at least five years before being eligible to use the Ellis Act."

"I'm open to additional measures to address abuse of the Ellis Act in San Francisco, as long as those measures will actually help tenants," said Wiener. "Passing local measures that are illegal under state law and that will surely be struck down by the courts – like purporting to place a local moratorium on the Ellis Act or requiring all rents to be reduced – while making us feel good, will not help any tenants facing eviction. We need to focus not on illegal feel-good measures but rather on tangible steps we can take locally to reduce the incentive to use the Ellis Act, as well as continuing to encourage state-level reform. Fundamentally, the state Legislature needs to act."

In an interview, Leno said, "My concern is if we don't do something, with the current market, it only gets worse, it doesn't get better, and then the question is how many buildings need to be emptied out before you take action?"

He said, "What we're seeing today, and what we saw 10 years ago, was the Ellis Act being abused by people who aren't landlords, who don't pretend to be landlords, and don't intend to be landlords. They are speculators, and that is an abuse of the statutory right, which was created for landlords. The idea was to put into law a requirement that someone owns the building for a while to substantiate that they are indeed landlords."

Such a requirement "wouldn't end the problem entirely," added Leno, but he's still working on legislation to address evictions. He said he's "meeting with stakeholders and advocacy groups, and we are discussing some ideas that could become legislation when we get back to Sacramento in January." Like Kim, Leno wouldn't share many details about what he's working on.

However, he said in San Francisco, "Clearly, we need more affordable options for both rental and for purchase, but every Ellis unit is a loss of our most affordable housing stock, and it will never be replaced. If someone loses a rent-controlled unit, they're likely going to have to leave the city."

*Campos's hearing on the evictions report is set for a special committee meeting of the board's Neighborhood Services and Safety Committee at 2 p.m. on November 14 in Room 250 at City Hall, 1 Dr. Carlton B. Goodlett Place. The full report is available at <http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=47040>.*

2 Comments

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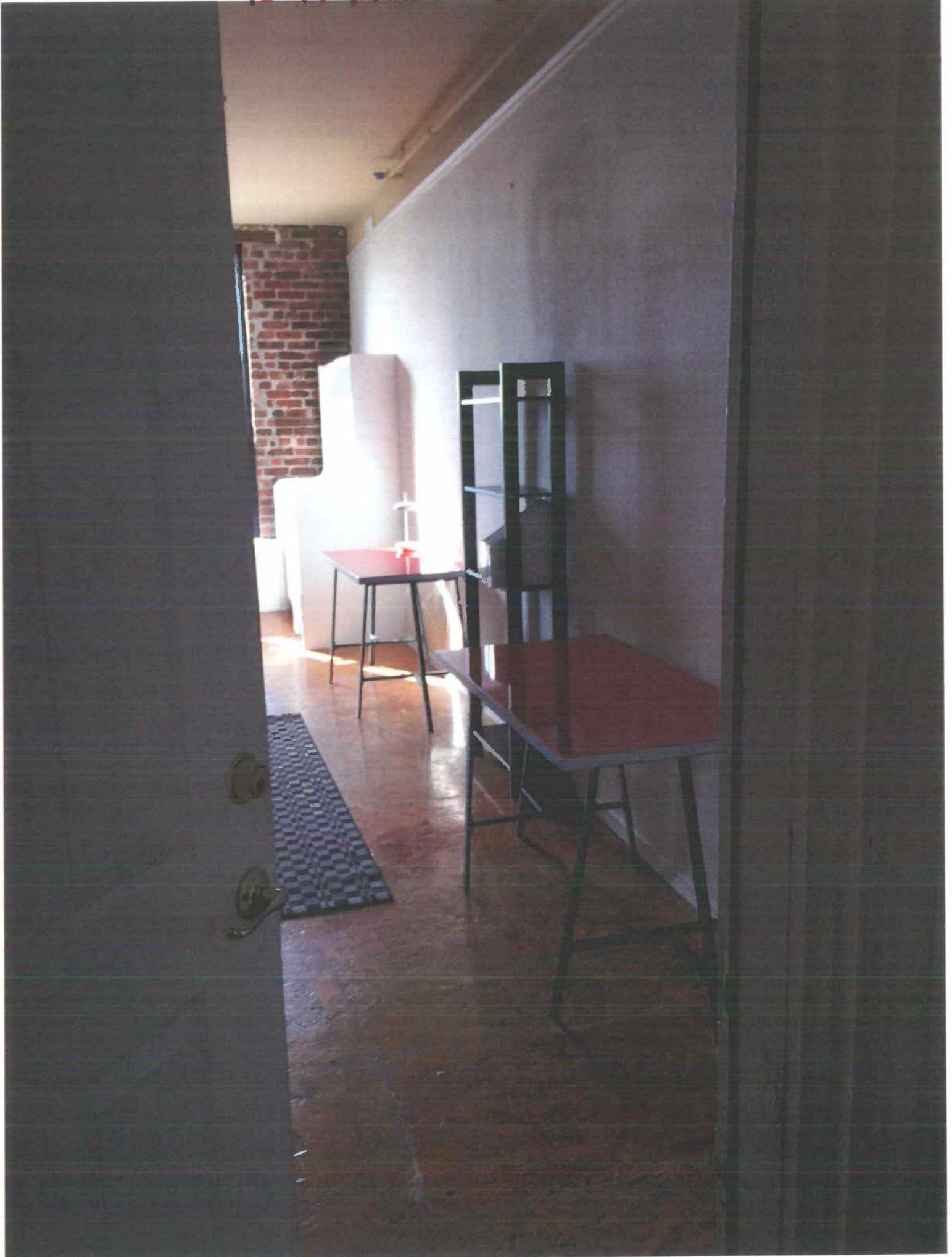
I have not heard of one single idea out of Wiener that is truly designed to benefit tenants.

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1049 MARKET- UNIT 912 - REMOVAL 08/20/07



1049 MARKET - UNIT 412 - REMOVAL OF LOFT.



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11 BOARD OF APPEALS

12 CITY AND COUNTY OF SAN FRANCISCO

13 1049 MARKET STREET, LLC,

14 Appellant,

15 vs.

16 DEPARTMENT OF BUILDING  
17 INSPECTION, ZONING  
18 ADMINISTRATOR,

19 Respondents.

) Appeal Nos. 16-111, 16-112, 16-113

)  
) **TENANTS' BRIEF IN OPPOSITION**  
) **TO APPEALS**

) Date: April 5, 2017

) Time 5:00 pm

) Place: City Hall Room 416

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I.

INTRODUCTION

1  
2  
3 Twenty (20) years ago, the owners of 1049 Market Street (the premises) converted the  
4 premises from a commercial building to live/work “office lofts” without the benefit of permit.  
5 They chose to do so in large part due to the difficulty of securing commercial tenants in the  
6 “blighted” mid-Market Street corridor. Not surprisingly, artists, writers, performers, and low-  
7 income small business owners moved into this challenging neighborhood and created a vibrant  
8 and sharing community where they conduct their craft and support one another.

9 In late-2012, the former owners transferred the building to Appellant 1049 Market  
10 Street, LLC (Appellant), an LLC formed by the managers of the property. By the summer of  
11 2013, Appellant decided to evict the long-term tenants in the building, convert floors one  
12 through five to commercial use, and rent the building as offices to the City’s burgeoning tech  
13 industry. To facilitate the evictions, Appellant covertly filed an application with the San  
14 Francisco Department of Building Inspection (DBI) for an over-the-counter permit to demolish  
15 the tenants’ units without informing any of the tenants it planned to demolish their long-term  
16 homes. For this reason, the tenants did not appeal the issuance of the permit to this Board  
17 within the 15-day time period.

18 In order to expedite one of the largest “no fault” mass evictions in San Francisco in  
19 decades, Appellant’s demolition permit application misrepresented to DBI the long-term  
20 residential use of the premises and failed to inform DBI that the permit would eliminate over  
21 (70) units of affordable housing. The permit application also stated, incorrectly, that Appellant  
22 sought to comply with a 2007 Notice of Violation (NOV) issued by DBI, although the NOV  
23 required Appellant to legalize the long-standing live/work use at the property, not demolish  
24 affordable, rent-controlled housing units and evict tenants.

25 When the City realized Appellant had concealed the long-term live/work use of the  
26 property in its demolition permit application, the City’s Zoning Administrator suspended the  
27 permit. Undaunted by its self-inflicted errors, Appellant plowed forward with its mass evictions  
28

1 pursuant to the defective permit and has succeeded in driving out over three-quarters of the  
2 tenants through eviction, buyouts and reduced maintenance and services in the building.

3 Appellant refused to accept rent from its tenants while simultaneously pursuing eviction  
4 actions against them pursuant to the invalidated permit, and then sued the tenants for the back-  
5 rent Appellant refused to accept. Appellant finally dismissed its eviction action and withdrew  
6 its eviction notices, and now seeks to evict the tenants under the Ellis Act. It is still refuses to  
7 collect rent, which Appellant alleges allows the tenants to live “rent free.” All Appellant’s  
8 grievances could be easily remedied by collecting rent from the tenants and legalizing  
9 live/work use at the premises as required by the 2007 NOV, and as the City has stated  
10 (repeatedly) that it would allow. The maxim that Appellant has “no one to blame but itself” is  
11 particularly apt in describing its decision to engage in mass evictions at the premises and the  
12 financial consequences that Appellant now faces based on that decision.

13 Unfortunately, Appellant made up its mind to evict its tenants in August 2013 and  
14 completely abandoned collaborative efforts with the City to legalize live/work use at the  
15 premises after January 2014. When the Zoning Administrator requested a release of the  
16 demolition permit suspension in early-2015, the Board of Appeals granted the Tenants’ appeal  
17 of that decision and determined Appellant’s demolition permit was fatally defective because  
18 Appellant failed to disclose that the permit would demolish dozens of affordable housing units  
19 and change the occupancy from live/work to commercial office use.

20 Appellant responded to the Board of Appeals decision by filing additional lawsuits  
21 against the City, the Board of Supervisors, Planning Department, DBI, the Building Inspection  
22 Commission, and Board of Appeals. Although the decision of the Board of Appeals was  
23 reversed by the Superior Court on the question of whether it had jurisdiction to review the  
24 demolition permit itself, DBI has since revoked the permit based upon current City law which  
25 requires Planning Commission review of the removal of residential occupancies.

26 The appeals should be denied because the revocation of the permit is proper, and  
27 Appellant’s invocation of the Ellis Act does not allow it to escape zoning requirements under  
28 the Planning Code.

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II.

**STATEMENT OF FACTS**

**A. The Tenants**

The current long-term tenants<sup>1</sup> Ben Cady, Chandra Redack, Peter Taylor, Chad Benjamin Potter, Ann Cooper, Melissa Bracero, Adam Wojewidka, Brad K. Alder, Chris Baker, Brendan Barthel, Carina C. Zona, Karl Hass, Darren Brown, Ronnie Johnson and Anthony Breaux (hereinafter “Tenants”) are live/work tenants of 1049 Market Street, San Francisco, CA. (the premises). (Collier Decl., Exh. 1 (Administrative Record (AR))<sup>2</sup>, Vol. 1 at 486-505, 562-567, 569 at ¶ 29, & 623-624.)

Tenants are long-term tenants of the premises, each living in separate units in floors one through six at the premises<sup>3</sup>, and many Tenants have lived at the premises for over ten years. (*Id.*) Each rental unit has a sleeping loft, a sink, and shared bathrooms, including two showers, on each floor. (*Id.* at 620 at ¶ 5.) Tenants’ units are covered by the San Francisco Residential Rent Stabilization and Arbitration Ordinance (Rent Ordinance), and Tenants’ rents range between \$643.00 and \$1,150.00 per month. (*Id.* at 562-567, 569 at ¶ 29 & 623-624.) At least five of the Tenants’ rental units on floors 1-5 (Barthel, Redack, Zona, Bracero, and Alder), and all six of the rental units on floor 6, have large windows that allow natural light into the units. (*Id.* at 48-51.)

The premises was originally built as a commercial building (a furniture store) with a ground floor retail storefront, but since at least 1995, the premises’ owners have knowingly rented the premises (other than the storefront) for residential use to tenants as their home as

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<sup>1</sup> Tenants refer to themselves as long-term tenants to distinguish them from the newer commercial tenants that Appellant has been leasing vacant units to.

<sup>2</sup> Tenants reference the Administrative Record from the previous Board of Appeals matter regarding this property, *Cady v. Zoning Administrator*, Case No. 15-022, as part of the supporting evidence in this Appeal. A copy of the relevant portions of the Administrative Record is being submitted with this brief as Exhibit 1 to the Declaration of Stephen Collier.

<sup>3</sup> Tenants Ronnie Johnson and Anthony Breaux reside on the 6<sup>th</sup> floor in separate permitted live/work units.

1 “live-work” lofts.<sup>4</sup> (*Id.* at 40:11-14, 97:15-17, 486-505 & 620.) In the 1990s, the 6<sup>th</sup> floor of  
2 the premises was converted into six artist live/work units pursuant to permit. (*Id.* at 620:9-18.)

3 Appellant and the former owners rented the units to Tenants as “live/work” units, and  
4 Tenants have lived in their units as live/work tenants with their landlords’ knowledge and  
5 approval throughout their tenancies. (*Id.* at 40:11-14, 486-505, 569 at ¶ 29, 621 at ¶ 7 & 623-  
6 624.) In fact, Appellant and the former owners advertised the units on Craigslist as residential  
7 units, stating “[l]oft takes a queen sized mattress,” “[b]athrooms are shared and cleaned daily,”  
8 and “[l]aundry in building.” (Collier Decl., Exh. 2 (Real Parties in Interest Request for Judicial  
9 Notice (“RFJN”) in *1049 Market LLC v. Miller, et al.*), Exh. A; Exh. 1, AR, Vol. 1 at 95:6-25  
10 & 621 at ¶ 7.)

11 Although the Tenants’ leases are denominated as commercial leases, the San Francisco  
12 Residential Rent Stabilization and Arbitration Board (Rent Board) has determined that the  
13 tenants’ occupancies are subject to the Rent Ordinance, pursuant to Rent Board Regulation §  
14 1.17(g). (*Id.* at 623-624.)<sup>5</sup>

15 The tenants has never made any effort to hide their residential use of the premises  
16 because they believed, based on the owners’ representations, that residential use was legal. (*Id.*  
17 at 486-505 & 621 at ¶ 7.) Appellant never informed the tenants it believed residential use of  
18 the premises was not permitted until Appellant began eviction proceedings to demolish the  
19 Tenants’ homes and convert the premises into office space for tech companies in September  
20 2013. (*Id.*, at 531-539.)

---

24 <sup>4</sup> “Live-work” as used here means dwelling units that are integrated with the working space of  
25 artists, artisans and other crafts persons pursuant to Planning Code § 204.4(b).

26 <sup>5</sup> Live/work units are only exempt from the Rent Ordinance definition of rental units when the  
27 following conditions have been met: (1) a lawful conversion to commercial/dwelling use  
28 occupancy has occurred; (2) a Certificate of Occupancy has been issued by the San Francisco  
Department of Building Inspection after June 13, 1979; and (3) there has been no residential  
tenancy in the building of any kind between June 13, 1979 and the date of issuance of the  
Certificate of Occupancy. (Rent Board Reg. § 1.17(g).)

1 **B. Appellant 1049 Market Street, LLC**

2 Appellant 1049 Market Street, LLC purchased the premises in December 2012. (*Id.* at  
3 196 at ¶ 2.) Appellant is owned and/or operated by John Gall, Haley Bogart and Amy Bogart.  
4 (*Id.* at 68-69.) Haley and Amy Bogart’s father is Terry Bogart, the local agent for the off-shore  
5 former owner of the premises who oversaw the conversion and renting of the premises for  
6 residential use in the mid-1990s, continued acting as an agent for the subsequent owner after  
7 selling the premises, and has remained “intimately involved” throughout his daughters’  
8 ownership. (*Id.* at 39:26-27, 40:1-2, 40:11-14, 97:15-17 & 196-197.)

9 John Gall is Appellant’s managing member, and a family friend of the Bogarts. Mr.  
10 Gall acted as an agent for the former owners prior to forming 1049 Market Street, LLC and  
11 purchasing the premises with Haley and Amy Bogart. (*Id.* at 53-54; Exh. 2, RFJN, Exh. B.) Mr.  
12 Bogart and, later, Appellant’s members have solicited and condoned residential live/work use  
13 at the premises for many years. (Exh. 1, AR, Vol. I at 40:11-14, 95:6-25, 97:15-17, 562-567, &  
14 621 at ¶ 7; RFJN, Exh. A.)

15 **C. Notice of Violation 200711850**

16 After over ten years of the owners collecting rent from the low-income residents at the  
17 premises, on October 25, 2007, in response to a complaint, DBI inspected the premises and  
18 issued NOV 200711850. (Exh. 1, AR, Vol. I at 43.) NOV 200711850 stated that although the  
19 owner had a permit for six live/work units on the 6<sup>th</sup> floor of the building, all the other units on  
20 floors one through five had been converted to habitable space. (*Id.*) The NOV required the  
21 owner to “legalize the residential live-work occupancy” on these floors. (*Id.* at 43 & 128:17-  
22 19.)

23 Following issuance of the NOV, the former owners and Appellant continued to rent  
24 units to residential tenants despite the NOV, including entering into new residential leases for  
25 at least 18 units. (*Id.* at 562-567.) Although the owners had over four years to legalize the  
26 live/work use as required by the NOV, they failed to do so. (Exh. 1, AR, Vol. 1 at 47 & 214.)  
27 Given this failure, DBI initiated abatement proceedings on February 16, 2013 and noticed a  
28 Director’s Hearing for September 27, 2013. (*Id.* at 524 & 526.)

1 **D. Appellant's Admissions That the Premises Is Safe For Residential Use**

2 Beginning in 2010, Appellant's managing member, John Gall, began assuring the City  
3 that there were no safety concerns or significant hazards at the premises:

4 After, a little research today I found that the building is definitely a type IIIA  
5 (good news). The natural air requirements are already met (3 fold), sprinklers are good  
6 to go, sound proofing is done, and Don [Fields, San Francisco Fire Department]  
7 answered my main question regarding the enclosed stairwells providing two means of  
8 egress for the current configuration.

9 (*Id.* at 53.) In 2011, Mr. Gall sent an email to the City and Appellant's structural engineer,  
10 Patrick Buscovich, confirming that commercial use of the premises had been abandoned long  
11 ago—"we already have a thriving artist colony in place in Mid-Market"—and confirming,  
12 again, that "[a]ll indications from Don Fields are that fire code is met due to sprinklers,  
13 (exits/etc.), and all walls being 1-hr fire rated. Natural light is currently our focus." (*Id.* at 54.)

14 On May 16, 2012, Mr. Gall and Amy Bogart appeared before the San Francisco  
15 Building Inspection Commission on behalf of the property owners regarding application of the  
16 natural light requirement for dwellings under S.F. Building Code § 1205.1. (Exh. 2, RFJN,  
17 Exh. B.)<sup>6</sup> Mr. Gall and Ms. Bogart testified that the building is safe for residential use, and  
18 confirmed the only barrier to legalizing residential occupancy was San Francisco's natural light  
19 requirement:

20 Mr. GALL: "We can do everything else that's required as far as fire and safety  
21 and the important stuff except for the natural light requirement." (*Id.*, time stamp  
22 2:08:00-2:08:18.)

23 Ms. BOGART: "The building is fire safe, completely sprinklered, seismically  
24 up-graded, proper ventilation and everything. It's just the natural light that makes it not  
25 economic-ally feasible for us to do it." (*Id.*)

26 <sup>6</sup> California Building Code § 1205 requires that habitable rooms "be provided with natural light  
27 by means of exterior glazed openings in accordance with Section 1205.2 or shall be provided  
28 with artificial light in accordance with Section 1205.3." (Exh. 2, RFJN, Exh. C.) San Francisco  
Building Code § 1205.1 is more restrictive because it requires "natural light by means of  
exterior glazed openings" without allowing for the artificial light contemplated by the State  
Code provision. (*Id.*, Exh. D.)

1 In addition to these admissions, at least thirty-nine units on floors 2 through 5, including five of  
2 Tenants rental units on those floors, have large windows that allow natural light in the units,  
3 thereby satisfying San Francisco Building Code § 1205.1.<sup>7</sup> (Exh. 1, AR, Vol. I at 48-51.)

4 In 2013, Mr. Gall again admitted to the City that (1) the premises is “occupied by artists  
5 and have been for several years;” (2) the premises is “fully sprinklered, seismically upgraded,  
6 2-hour fire rated and is in very good shape;” (3) Appellant’s architects and engineers—*i.e.*, Mr.  
7 Buscovich—confirm the “major issue” is that “several units do not have ‘natural light;” (4) the  
8 natural light issue “is NOT a life safety issue;” and (5) “[w]e have concluded that to bring in  
9 natural light, as the code is currently written, is cost prohibitive and structurally difficult.” (*Id.*  
10 at 57.) After stating emphatically that the lack of natural light is the only barrier to live/work  
11 legalization, Mr. Gall explained that “[t]his [natural light exception] is part of the local SF  
12 building code added in 2007. . . . Anywhere else in California would not require ‘natural light’  
13 for our use.” (*Id.*; *see also id.* at 328:7-8 (February 23, 2015 public testimony of Amy Bogart:  
14 “legalization would not be possible due to the natural light requirements”).)

15 **E. Appellant’s August 2013 Decision to Evict Its Tenants, The Defective Demolition**  
16 **Permit, and Its Failure to Provide Notice to the Tenants**

17 In the summer of 2013, Appellant decided to evict the long-term tenants living on  
18 floors one through five in order to convert the premises to commercial use and rent the building  
19 as offices to the City’s burgeoning tech industry. (*Id.* at 87-88 & 531-539.) Appellant’s  
20 decision to eliminate seventy-seven (77) units of affordable housing is one of the largest mass  
21 evictions in San Francisco since the 1970s. (Exh. 1, AR, Vol. I at 11:12-18.)

22 To facilitate its mass evictions, on August 2, 2013, Appellant filed an application with  
23 DBI for an over-the-counter permit to demolish the tenants’ units. (*Id.* at 87-88.) DBI issued  
24 the demolition permit on the same day without referring the permit to the Planning Department  
25 for a determination of compliance with San Francisco zoning requirements. (*Id.*, at 447.)  
26

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27 <sup>7</sup>The thirty-nine units on floors one through five with windows are Units 106-108, 201-205,  
28 213-216, 301-305, 313-316, 401-405, 413-416, 501-505 and 513-516. (Exh. 1, AR Vol. I at 48-  
51.)

1 Civil Code § 1940.6(a)(2) mandated that Appellant give written notice to its tenants  
2 prior to applying for a permit to demolish any “residential dwelling.”<sup>8</sup> Appellant never  
3 informed the tenants of its intent to apply for a demolition permit. (Exh. 1, AR, Vol. I at 486-  
4 505.) Appellant’s actions not only violated California law regarding written notice of a  
5 demolition permit, but Appellant also kept the tenants in the dark regarding the demolition  
6 permit during the 15-day time period in which the tenants could appeal the issuance of the  
7 permit to the San Francisco Board of Appeals (*i.e.*, August 2nd through 17th, 2013). (*Id.* at  
8 486-505.)

9 Appellant’s deceptive behavior extended to the information it provided (and withheld)  
10 in the demolition permit application itself. The permit application incorrectly described the  
11 work to be done as follows: “to comply with Notice of Violation #200711850. Demo of office  
12 walls on Fifth Fl. through First Fl. Live/work only on 6<sup>th</sup> Floor.” (*Id.* at 87-88 & 532-539.)  
13 Contrary to Appellant’s representations, NOV 200711850 required Appellant to legalize the  
14 live/work use (“obtain building permit with Planning Department approval for conversion of  
15 office units to live/work units”), not demolish the tenants’ rental units to facilitate mass  
16 evictions. (*Id.*, at 43 & 128:17-19.)

17 Moreover, the demolition permit was misleading and fatally defective because it  
18 incorrectly identified the present use as “office/retail/live work” and the proposed use as  
19 “office/retail/live work.” (*Id.* at 87-88.) The permit application did not state that the current  
20 use was live-work, that the previous office use had been converted to live/work approximately  
21 20 years earlier, that there was no office use in the building, or that the live/work occupancies  
22  
23

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24 <sup>8</sup> Civil Code § 1940.6(a)(2) states: “The owner of a residential dwelling unit or the owner’s  
25 agent who applies to any public agency for a permit to demolish that residential dwelling unit  
26 shall give written notice of that fact to. . . a current tenant. . . prior to applying to the public  
27 agency for the permit to demolish that residential dwelling unit.” Civil Code §§ 1940.6(f)(1)  
28 and 1940(c) broadly define “residential dwelling unit” as “a structure or the part of a structure  
that is used as a home, residence, or sleeping place by one person who maintains a household  
or by two or more persons who maintain a common household.”

1 were being eliminated. (*Id.*; *see also id.* at 40:11-14, 95:6-25, 97:15-17, & 621 at ¶ 7; Exh. 2,  
2 RFJN, Exh. A.)

3 Likewise, the permit never informed DBI that residential tenants lived in the premises,  
4 or that the demolition permit would result in the permanent removal of over 70 affordable,  
5 rent-controlled housing units. (Exh. 1, AR, Vol. I at 87-88.) To the contrary, the permit  
6 application indicated that floors one through five were offices, and by stating that the present  
7 use was identical to the proposed use (paragraphs 7A & 7), the permit application  
8 misrepresented the actual use of the premises and failed to notify DBI or the Planning  
9 Department that the permit sought to reinstate a lapsed office use. (*Id.*) Appellant also checked  
10 “NO” on the portion of the permit application that asks whether the alteration allowed by the  
11 permit would constitute a “change of occupancy.” (*Id.*)

12 After covertly filing its demolition permit application with DBI, Appellant then waited  
13 over forty (40) days before it finally communicated with the tenants living in the premises. (*Id.*  
14 at 486-505 & 531-532.) Even when Appellant did communicate with the affected tenants, it  
15 still did not provide the notice required by law. Instead, approximately one month after the  
16 permit appeal period passed, Appellant sent the following email to the tenants:

17 Over the past several months, the current ownership group of 1049 Market St.  
18 has spent extraordinary time and money with the hopes to accommodate a local  
19 building code ordinance that is necessary for accessory residential use at 1049 Market  
20 St. It has long been our belief that this was achievable and we would be able to keep  
this unique and affordable community.

21 Despite these efforts and the support of many high-level city officials, we were  
22 not able to overcome the City of San Francisco’s overly restrictive local building code  
23 requirements. The unfortunate result is that due to a long-standing Notice of Violation  
we have been forced by Code Enforcement to get a building permit to change the  
current unit configuration entirely.

24 Per these City orders, the building must be entirely vacated.

25 (*Id.* at 531-532.)

26 Appellant’s September 13, 2015 email to the tenants again misrepresents the 2007  
27 NOV, which expressly required Appellant to legalize the live/work use. (*Id.* at 43, 128:17-19,  
28 & 531-532.) The email, like the demolition permit, is false and misleading because residential

1 use of the 6<sup>th</sup> floor was approved by the City many years ago, but Appellant tells the tenants  
2 “the building must be entirely vacated.” (*Id.* at 531-532.) Finally, Appellant’s statement that  
3 “we were not able to overcome the City of San Francisco’s overly restrictive local building  
4 code requirements”—*i.e.*, the natural light requirement—ignores the fact that many of the  
5 rental units on floors one through five have large windows that allow natural light in the units.  
6 (*Id.* at 48-51.)<sup>9</sup>

7 **F. Appellant’s September and October 2013 Evictions**

8 Despite the gross misrepresentations apparent on the face of the demolition permit and  
9 Appellant’s failure to comply with State law by providing notice of the permit application to its  
10 tenants, Appellant plowed forward with its mass evictions at the premises. On September 27,  
11 2013, Appellant issued 60-Day Notices of Termination of Tenancy (Notices) to all the tenants  
12 on floors 3-5, and on October 28, 2013, Appellant issued the same Notices to all the tenants on  
13 floors 1 and 2. (*Id.* at 226-232 & 534-539.)

14 The Notices stated that they were issued pursuant to Rent Ordinance § 37.9(a)(10) “in  
15 order to demolish or otherwise permanently remove the units from housing use . . . .,” but  
16 Appellant did not attach a copy of the demolition permit to its Notices. (*Id.*) The Notices again  
17 confirmed the residential tenancies at the premises are subject to the Rent Ordinance. (*Id.*)

18 **G. The Zoning Administrator’s October 28, 2013 Suspension of The Demolition**  
19 **Permit**

20 On October 28, 2013, the Zoning Administrator (ZA) suspended the demolition permit  
21 after he discovered Appellant had avoided Planning Department review by misrepresenting the  
22 existing use of the premises as office space and by failing to disclose that dozens of residential  
23 tenants lived in the rental units slated for demolition. (*Id.* at 552-553.) The ZA’s Suspension  
24 Request determined the premises was converted to “some type of residential use more than five  
25 years ago” and stated:

26 <sup>9</sup> The City would later confirm that DBI was willing to waive the local natural light  
27 requirement under DBI Administrative Bulletin (AB)-005’s local equivalencies. (Exh. 1, AR,  
28 Vol. I at 130:7-21,145:1-5, 332-333, 768-769 & 822; Exh. 2, RFJN, Exh. E.) However,  
Petitioner abandoned any good-faith efforts to comply with NOV 200711850, legalize  
live/work use at the premises, and cooperate with the City after January 2014. (*Id.* at 222.)

1 As staff from both the Planning Department and DBI have previously made clear to the  
2 property owners, there are multiple ways in which [the premises]—and the existing  
3 residential-type uses—can be maintained and improved in a fashion consistent with the  
Planning and Building Codes. The Planning Department remains prepared to collaborate  
with the property owners. . . .

4 (*Id.*) DBI suspended the permit before Appellant commenced any work.

5 **H. Appellant’s Abandoned Appeal of the Permit Suspension**

6 On November 13, 2013, Appellant appealed the Suspension Request to the Board of  
7 Appeals, Appeal No. 13-144, claiming “vested rights” prohibited the suspension. (Exh. 1, AR,  
8 Vol. 1 at 381-387.) During the pendency of the appeal, Appellant met with officials from DBI  
9 on December 6, 2013, met with officials from the Planning Department on December 12, 2013,  
10 and met with City officials again in January 2014 regarding legalizing the residential  
11 occupancy of the units. (*Id.* at 541-543, 752 & 774-776.) As stated by the ZA:

12 The result of the [January 2014] meeting was a shared understanding  
13 that the property owner(s) would request a letter of determination from the  
14 Zoning Administrator regarding the possibility of converting some or all of  
15 the unpermitted habitable space referenced in DBI Notice of Violation No.  
200711850 into dwelling units that are integrated with the working space of  
16 artists, artisans and other craftspersons, pursuant to Planning Code Section  
204.4(b).

17 (*Id.* at 555-556.)

18 Tenants and others living at the premises filed an Opposition to Appellant’s appeal of  
19 the demolition permit suspension on February 13, 2014 and explained that Appellant’s  
20 demolition permit was defective because the permit “did not state that the original office use  
21 had been converted to live/work, and that the use was to revert back to office use.” (*Id.* at 606.)  
22 The tenants also argued that the permit application (1) falsely informed DBI that the demolition  
23 permit was to comply with the 2007 NOV when the NOV required the owners to legalize,  
24 rather than demolish, the rental units; (2) misrepresented the present, actual use and occupancy  
25 of the premises; (3) failed to notify DBI or the Planning Department that it sought to reinstate a  
26 lapsed office use; and (4) violated the Planning Code. (*Id.* at 606 & 612-615.)

27 On the date of Appellant’s hearing, Appellant withdrew its appeal, and the permit  
28 remained suspended. (*Id.* at 555-556, 559, 727 & 730.) After withdrawing its appeal,

1 Appellant abandoned any remaining efforts to cooperate with the City and comply with the  
2 2007 NOV by converting the units into live/work spaces. (*Id.* at 222 (“[d]espite the outcome of  
3 the January 2014 meeting the Planning Department received no communication from  
4 [Appellant] until December 2014”).)

5 **I. Appellant Continues Its Mass Evictions Under The Defective Permit**

6 After dismissing its appeal of the permit suspension, Appellant retained Andrew Zacks  
7 as its eviction attorney and took a very different tack regarding the premises. In December  
8 2014, Mr. Zacks met with Planning Department staff and the City Attorney and “requested that  
9 the Department either seek reinstatement or revocation of the Permit. The Department  
10 understood it to be implicit in this request that the owner no longer intended to move forward  
11 with a conversion of the preexisting office space to [live/work].” (Exh. 1, AR, Vol. I at 222.)  
12 Appellant terminated all communications with the City from January 2014 through December  
13 2014, and when Appellant next contacted the City, it no longer had any intention of complying  
14 with NOV 200711850. (*Id.*)

15 As a result of the meeting with Appellant’s eviction attorney, ZA reviewed the permit  
16 according to the Planning Code in effect at the time and released the suspension request on  
17 February 2, 2015. (*Id.*) Four days later, on February 6, 2015, Appellant filed an eviction  
18 action, *1049 Market Street, LLC v. Potter, CGC-15-543999*, against Tenants. (*Id.* at 561-573.)  
19 This eviction lawsuit sought to displace Tenants from their rental units and to recover the back-  
20 rent Appellant refuses to accept. (*Id.*)

21 Although Appellant has chosen, since at least the summer of 2013, to focus its  
22 resources on displacing the tenants living at the premises through eviction (*id.* at 561-573),  
23 buyouts (*id.* at 531-532), and reduced maintenance and services in the building (*id.* at 337:18-  
24 25, 238-255, 261-275 & 277-291), it claims the City is somehow forcing Appellant to evict its  
25 tenants and/or allow the tenants to live allegedly “rent free.” (Appellant’s Brief, at p. 5, line  
26 27.) However, Appellant’s refusal to collect monthly rent from these tenants is a problem  
27 entirely of its own making that could be remedied by complying with NOV 200711850,  
28

1 legalizing the live/work units, and collecting rent the tenants would willingly pay. (Exh. 1, AR,  
2 Vol. I at 43, 128:17-19 & 569 at ¶ 31.)

3 Nevertheless and despite the City’s efforts, Appellant completely abandoned  
4 collaborative efforts with the City after January 2014 and now uses its refusal to collect rent to  
5 bolster its claims in the many lawsuits it has filed against its tenants and the City—all while  
6 blaming the City for the self-inflicted financial consequences of its decision to initiate mass  
7 evictions at the premises and suing its tenants for back-rent it refuses to accept. Appellant has  
8 already succeeded in driving out over two-thirds of the tenants who lived at the premises when  
9 it originally purchased the property. (*Id.*, at 262 at ¶¶ 1-4 & 263 at ¶¶ 5-8; *see, e.g., 1049*  
10 *Market Street, LLC v. Antoni*, CGC-15-545613; *1049 Market Street, LLC v. Stoker*, CGC-15-  
11 545069.)

12 **J. The Board of Appeals Determines The Demolition Permit Is Defective**

13 On February 3, 2015, Tenants appealed the ZA’s Release of Suspension Request to the  
14 Board of Appeals. (Exh. 1, AR, Vol. I at 651.) Tenants requested that “the building permit  
15 that the landlord seeks to carry out these mass evictions should remain suspended or be  
16 revoked” and explained in detail why the permit is defective. (*Id.* at 471:19-21, 473:22-28,  
17 474:1-7, 475:20-22 & 480:3-9.)

18 Tenants explained to the Board that Appellant had failed to notify the tenants “prior to  
19 applying . . . for a permit to demolish” their units, as required by Civil Code § 1940.6(a)(2),  
20 and explained that if Appellant had complied with the law and notified the tenants that it had  
21 applied for a demolition permit, then the tenants could have sought Discretionary Review prior  
22 to its issuance. (*Id.* at 474:8-14, 478:6-9 & 480:9-13.)

23 The public testimony at the April 8, 2015 hearing threw Appellant’s bad-faith dealings  
24 with the City in high relief. During the hearing, Joe Duffy of DBI confirmed that DBI was  
25 willing to waive the local natural light requirement of the Building Code in the exercise of  
26 discretion under DBI Administrative Bulletin (AB)-005, as long as essential health and safety  
27 requirements were met. (*Id.* at 130:7-21 & 145:1-13l, Exh. 2, RFJN, Exh. E.) Although  
28 Appellant had admitted for many years that San Francisco’s natural light requirement was the

1 only barrier to legalizing the live/work units without windows (*id.* at 54-57 & 328:7-8; Exh. 2,  
2 RFJN, Exh. B), Appellant’s structural engineer, Mr. Buscovich, changed course after hearing  
3 Mr. Duffy’s testimony and informed the Board that “Section 1029 of the California Building  
4 Code” was the problem (Exh. 1, AR, Vol. I at 137:12-15).

5 Mr. Duffy then explained, correctly, that an exception to Building Code § 1029.1 would  
6 apply to windowless units at the premises, and Section 1029.1, therefore, does not prevent  
7 live/work use of the units without windows. (*Id.* at 145:6-9; Exh. 2, RFJN, Exh. F.) Tenants’  
8 attorney also explained, in detail and based on Appellant’s own admissions, why Section  
9 1029.1 does not prevent live/work legalization at the premises. (Exh. 1, AR, Vol. I at 96:1-25  
10 & 97:1.)<sup>10</sup> Thus, the testimony and evidence provided at the hearing by DBI and Tenants  
11 established once again that the only real barrier to legalizing the live/work units is Appellant’s  
12 own desire to evict its tenants.<sup>11</sup>

13 After hearing public comment and considering Tenants’ and Appellant’s arguments and  
14 evidence, the Board granted Tenants’ appeal on the grounds that the permit was fatally

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16 <sup>10</sup> Consistent with Mr. Duffy and Tenants’ testimony, California Building Code § 1029.1  
17 contains an egress exception for the premises because, the premises is fully sprinklered. (Exh.  
18 1, AR, Vol. I at 57; *see* Exh. 2, RFJN, Exh. F (Exception 1 to Section 1029.1 applies to  
19 “Groups R-1 and R-2 occupancies constructed of Type I, Type IIA, Type IIIA or Type IV  
20 construction equipped throughout with an approved automatic sprinkler system in accordance  
21 with Section 903.3.1.1”).)

22 <sup>11</sup> The record also shows that at the February 23, 2015 Board of Supervisors’ hearing on the  
23 interim controls, Mr. Buscovich testified that “[t]o comply with city and state building code  
24 would require light shafts to be cut from the roof all the way down to the fourth floor resulting  
25 in 30 percent of the floor of these buildings to be removed” at exorbitant expense. (Exh. 1, AR,  
26 Vol. I at 331:12-15.)

27 District 6 Supervisor Jane Kim explained to Mr. Buscovich that “DBI through its  
28 discretion decided that they would make an exception [to the local natural light requirement],”  
and Supervisor Kim asked Mr. Buscovich “[s]o if the city is making an exception that the  
building owner no longer has to make these very changes that you just enlisted, enumerated as  
being incredibly expensive and very difficult to do, which we agree with, why would you be  
bringing these points up now?” (*Id.* at 332:1-7.) Mr. Buscovich then stated, nonsensically, that  
DBI could not grant an exception to San Francisco’s natural light requirement, which—again,  
as Appellant freely admits—exists *only* in San Francisco. (*Id.* at 333:8-14; *see also* Exh. 1, AR,  
Vol. I at 57.) Supervisor Kim concluded, “I think the Department of Building Inspection  
disagrees with you, but thank you for your response.” (*Id.* at 333:19-21.)

1 defective. (*Id.* at 2.) Appellant filed a Petition for Writ of Mandate of this decision, and on  
2 May 13, 2016, the Superior Court granted the Petition on the narrow ground that the Board  
3 exceeded its jurisdiction in invalidating the permit after the time to appeal the permit had  
4 expired. The Court denied the Petition on all other grounds asserted by Appellant. Appellant  
5 has appealed that decision to the Court of Appeal.

6 **K. The Enactment of Interim and Permanent Controls**

7 Due in part to the increase in evictions of tenants living non-permitted residential units  
8 throughout the City, including in the mid-Market area impacted by the tech boom, the City  
9 enacted zoning controls on the removal and conversion of unpermitted residential uses.  
10 Effective March 12, 2015, the Board of Supervisors enacted interim zoning controls for the  
11 area bordered by Market Street, 2<sup>nd</sup> Street, Brannan Street, Division Street and South Van  
12 Ness Avenue, which apply to the subject premises. (Board Resolution No. 61-15, referred  
13 herein as the 2015 or Interim Controls.)<sup>12</sup> The Interim Controls mandated that any permit  
14 subject to the controls to demolish or remove an unpermitted residential use cannot be issued  
15 without Conditional Use (CU) authorization from the Planning Commission. (Exh. 1, AR, Vol.  
16 I at 575-581.)

17 On February 23, 2016, the Board of Supervisors passed Resolution No. 23-16  
18 (“Permanent Controls”), requiring CU authorization for the removal of any residential unit in a  
19 C-3 (Downtown Commercial) District, whether permitted or unpermitted, and to exempt from  
20 the CU requirement illegal units where there is no path for legalization. The Permanent  
21 Controls took effect on March 24, 2016, and prohibit DBI from re-issuing Appellant’s permit  
22 without Appellant first obtaining CU authorization. On March 8, 2016, the Board of  
23 Supervisors extended the Permanent Controls to apply to all zoning districts City-wide,  
24 through Ordinance No. 33-16.

25  
26  
27  
28 <sup>12</sup> The 2015 Controls re-enacted and expanded an earlier set of interim controls adopted on December 10, 2013.  
(Board File No. 131068; Resolution No. 428-13.)

1 **L. Appellant Invokes the Ellis Act**

2 On February 23, 2016, Appellant issued Notices of Termination of Tenancy to Tenants  
3 and other residential occupants of the Property, purporting to terminate their tenancies under  
4 the Ellis Act. On February 24, 2016, Appellant filed a Notice of Intent to Withdraw  
5 Residential Units from the Rental Market (“Notice of Intent”) with the Rent Board. The Notice  
6 of Intent identified the “strictly commercial” units at the Property (in contrast to the Tenants’  
7 units) and stated that these tenancies had not been terminated. (Collier Decl., Exh. 3.)

8 Under the Ellis Act and Rent Ordinance, the rental units where Appellant terminated  
9 tenancies are withdrawn from the rental market 120 days after the filing of the Notice of Intent  
10 on February 24 (i.e., June 23, 2016.). For tenants asserting a claim for extension of their  
11 tenancy, the units are withdrawn one year after the filing of the Notice of Intent with the Rent  
12 Board. All Tenants asserted claims of extension, and if Appellants’ Ellis Act withdrawal is  
13 lawful, their tenancies expired on February 24, 2017. (Gov. Code § 7060.4(b); Rent Ordinance  
14 § 37.9A(f)(4).)

15 **M. Appellant’s Planning Code Violations**

16 After Appellant issued eviction notices in the fall of 2013, many tenants at the premises  
17 vacated their units. Appellant then started renting vacated units to commercial tenants in  
18 violation of the 2013 and 2015 Interim Controls and the 2016 Permanent Controls. Beginning  
19 in 2013, the Planning Department began to receive anonymous complaints against the  
20 property regarding the unpermitted conversion of dwelling units to commercial use. (May 26,  
21 2016 ZA’s Notice of Violation and Penalty Decision, at p. 2.) In August 2015, Tenants began  
22 documenting these illegal commercial rentals and Tenant Karl Haas submitted complaints to  
23 the Planning Department on September 3 and 8, 2015. Evidence of commercial rentals include  
24 advertisements for commercial rental of units on floors 1-5 (Collier Decl., Exh. 4), and  
25 Appellant’s own Notice of Intent filed with the Rent Board on February 24, 2016. (Collier  
26 Decl. Exh. 3.)

27 On September 22, 2015, the Planning Department issued a Notice of Enforcement  
28 against Appellant detailing the complaint and requesting an interior inspection of the property.

1 (Notice of Violation, January 13, 2016, at p. 3.) Appellant refused the request for an  
2 inspection. On January 13, 2016, the ZA issued a Notice of Violation. (*Id.*) Appellant then  
3 requested a hearing before the ZA on the violation, which was held on February 26, 2016.

4 Appellant presented no evidence of compliance with the Interim Controls at the  
5 hearing. Additional evidence was presented by Tenants and their attorney as follows:

- 6 1. Carina C. Zona stated that she has lived at the subject property  
7 since 2011 in unit 316, and submitted demonstrative evidence  
8 including advertisements for commercial use tor unit 607.
- 9 2. Anthony Breaux stated he lives on the 6th floor since 2004 and at  
10 one time every unit on the 6th floor was a residence and he  
11 personally knew the previous residential tenants.
- 12 3. Chandra L. Redack stated she has been a resident of subject  
13 property since 2004 and her unit was advertised as a residential  
14 unit. She stated that none of the tenants were notified of the  
15 demolition of the residential units and that their units are under  
16 rent control.
- 17 4. Chris Baker, stated he has been a resident of subject property since  
18 2002; and, he stated the units were always represented by the  
19 property manager as residential uses.
- 20 5. Anne Cooper stated she has been a resident since 1998 on the 2nd  
21 floor.
- 22 6. Ronnie Johnson stated she has been a resident in unit 606 and has  
23 seen only residents on the 6th floor until recently when a  
24 commercial tenant (lighting company) moved in to two units with  
25 one unit being used as an office/conference room.
- 26 7. Darren Brown stated that he is a resident of unit 408 and has seen  
27 demolition occurring next door in unit 407.

28 (Notice of Violation and Penalty Decision, May 26, 2016, at p. 5.)

Although Appellant had started the process of invoking the Ellis Act by serving  
eviction notices by mail on February 23 and filing a Notice of Intent to Withdraw on February  
24 with the Rent Board, Appellant did not mention or refer to these actions at the February 26  
25 hearing.

On May 26, 2016, the ZA determined that Appellant was in violation of Planning Code  
§ 317 by converting both permitted and unpermitted residential units at the property without

1 conditional use authorization. (*Id.*) The ZA assessed penalties of \$250 per day for each day  
2 Appellant remains in violation. On May 26, 2016, the ZA also requested that DBI revoke the  
3 suspended demolition permit because issuance of the permit would violate the Planning Code –  
4 specifically the controls against removal of residential uses without conditional use approval.  
5 On May 27, 2016, DBI acted on the revocation request and revoked the suspended demolition  
6 permit.

7 **III.**

8 **ARGUMENT**

9 **A. The Zoning Administrator Did Not Err or Abuse His Discretion in Finding a**  
10 **Violation and Assessing Penalties**

11 Under the standard of review for appeals of a decision by the ZA, the Board is required  
12 to defer to the ZA unless the Board finds that the ZA erred or abused his discretion. (See  
13 Special Instructions for Parties.) The ZA did not err or abuse his discretion because there was  
14 abundant evidence that Appellant was renting formerly residential units to solely commercial  
15 occupants without having obtained CU authorization.

16 There was abundant evidence that Appellant rented formerly residential units to  
17 commercial tenants. Advertisements for the rental of specific units listed as “available space”  
18 (unit nos. 401, 403, 404, 405, 406, 412, 415, 416 & 602 (see Attachment to ZA’s NOV dated  
19 January 13, 2016)) were obtained by the ZA, and additional documentation was submitted by  
20 the tenants. Tenants also testified as to prior residential occupancy of the units that had been  
21 rented to solely commercial tenants. Appellant did not contest this evidence or attempt to rebut  
22 it. Additional evidence submitted by Tenants with this brief further substantiates the  
23 continuing commercial rental of the property without CU authorization. (Collier Decl., Exh 4.)

24 Appellant also argues that the ZA committed error in finding that the Permanent  
25 Controls were also violated by these rentals, since the Permanent Controls were not in place at  
26 the time of the hearing. But it was undisputed that the commercial rentals were ongoing, and  
27 therefore Appellant continued to rent these units to commercial occupants after the effective  
28 date of the Permanent Controls. Appellant never disputed any of the evidence presented of

1 commercial rentals, or indicated that it would cease renting commercially, in an attempt to  
2 establish that it would comply with the Permanent Controls.

3 Appellant also argues that the Controls only apply to permits to remove residential use  
4 obtained after their enactment, and therefore cannot apply to the 2013 demolition permit  
5 because it is “final.” Not so. The 2013 demolition permit is not final because it was suspended  
6 prior to the commencement of any work under the permit. Furthermore, the Interim and  
7 Permanent Controls explicitly apply to permits that were already issued to which rights have  
8 not vested.<sup>13</sup> As determined by the San Francisco Superior Court and as argued again (see Part  
9 III.D), Appellant’s rights under the demolition permit did not vest, and therefore the suspension  
10 and subsequent revocation of the demolition permit is valid. (Order Granting in Part and  
11 Denying in Part Petition of Writ of Mandate, pp. 7-10, *1049 Market Street, LLC v. Miller*, S.F.  
12 Superior Court Case No. CGC-15-545950, Patterson Decl., Exh. A.)

13 Appellant also argues that the Interim Controls cannot apply to the suspended 2013  
14 demolition permit because the Controls only apply where the posting of a notice of permit  
15 issuance is required. The argument is that since the Controls imposed a new requirement for  
16 posting issuance of a permit, they cannot apply to permits issued before this requirement was  
17 enacted. But the specific language of the Controls states that it applies to permits “already  
18 issued.” Those permits “shall not remain effective.” Since the new posting requirement could  
19 not have applied to permits “already issued” before the Controls took effect, Appellant’s  
20 argument eliminates the provision of the interim Controls that states that the permit “shall not  
21 remain effective.” An interpretation of the Ordinance that would render a related provision  
22 without significance or effect must be avoided. (*People v. Mendoza* (2000) 78 Cal.App.4<sup>th</sup>  
23 918, 929.)

24  
25 <sup>13</sup> The language of the Interim Controls applicable to this permit states: “. . . during the  
26 pendency of these interim controls . . . any commercial use that has been converted in whole or  
27 in part to residential use without benefit of a permit shall be deemed abandoned. Any permit,  
28 subject to the posted notice and 15-day hold requirements above, to re-establish any  
commercial use shall not be issued or reinstated, *or, if already issued, shall not remain  
effective*, unless the project sponsor obtains a Conditional Use authorization under Planning  
Code Section 303. . . .” (Ord. No. 61-15.)

1 **B. Appellant’s Invocation of the Ellis Act Is Immaterial to the Actions Appellant**  
2 **Appeals**

3 Appellant contends that its commencement of the process of withdrawing units from  
4 the residential rental market under the Ellis Act preempts the requirement of obtaining a CU  
5 authorization to change the use of these units. Appellant’s argument fails for a number of  
6 reasons.

7 **1. The Interim and Permanent Controls Were Enacted and the Demolition**  
8 **Permit was Revoked Before Appellant Withdrew the Property Under the**  
9 **Ellis Act.**

10 Appellant’s argument assumes that it properly invoked the Ellis Act and that the units  
11 will be withdrawn. This issue has not yet been determined because the Tenants’ challenges to  
12 the Ellis Act withdrawal have not yet occurred. Although the notices expired on February 24,  
13 2017, no litigation has commenced to test the sufficiency of the Ellis Act withdrawal and the  
14 eviction of the tenants.<sup>14</sup>

15 But assuming only for purposes of argument that Appellant properly invoked the Act,  
16 the process of withdrawal of the units does not permit Appellant to violate new zoning controls  
17 on its property which took effect long before it withdrew the property. The Controls require  
18 CU authorization to eliminate unpermitted residential uses. Appellant violated these Controls  
19 before it withdrew the newly rented units from the rental market (assuming that it has) on June  
20 23, 2016. Therefore, its permit to demolish units, no longer valid under the Controls without  
21 CU authorization, was properly revoked by DBI, well before Appellant withdrew any units  
22 from the rental market.

23 Furthermore, the demolition permit is not required for Appellant to withdraw the  
24 Property from the Rental Market. Nor is the demolition of the units needed to rent them to  
25 commercial tenants, as Appellant has shown. Appellant rented many units to commercial  
26 tenants while the permit was suspended and after it was revoked. Appellant violated the  
27 Controls by not obtaining a CU, and its Ellis Act withdrawal is not hindered by the Controls.

28 <sup>14</sup> Appellant has sought leave to amend its earlier eviction lawsuit against the Tenants to allege an “ejectment”  
cause of action based on the Ellis Act withdrawal. The hearing on that motion to amend is scheduled for April 4,  
2017.

1           **2. The ZA's Notice of Violation and Penalties Were for Appellant's**  
2           **Commercial Rentals Before the Units Were Withdrawn Under the Ellis**  
3           **Act.**

4           Even if Appellant has lawfully and properly invoked the Ellis Act, the units were  
5           withdrawn on June 23, 2106, 120 days after the filing of the Notice of Intent with the Rent  
6           Board. (Rent Ordinance § 37.9A(f)(4).) All Tenants were eligible for and received extensions  
7           of the withdrawal date of their units to February 24, 2017, one year after the filing of the  
8           Notice of Intent.

9           All the evidence of illegal commercial rentals in violation of the Controls which the ZA  
10          relied on occurred in 2015, and continued through the enactment of the Permanent Controls  
11          which took effect on March 24, 2016. As the vacated residential units were not withdrawn  
12          from the residential rental market until June 23, 2016 at the earliest, Appellant's use of the Ellis  
13          Act cannot shield it from violations and penalties based on conduct that occurred prior to  
14          withdrawal. The Ellis Act preempts local laws that conflict with the Act so as to prevent a  
15          landlord from going out of the residential rental business. It does not shield illegal conduct  
16          prior to the landlord's withdrawal of the property.

17           **3. Appellant Violated the Controls for Units Not Withdrawn Under the Ellis**  
18           **Act.**

19          The ZA found that Appellant violated the Interim Controls by renting a legal live/work  
20          unit, Unit 602, to a commercial tenant PritchardPeck Lighting Inc. Such rental violated the  
21          recorded use restrictions on the live/work units imposed when the units were constructed, as  
22          well as the Controls. (See Notice of Special Restrictions attached to ZA's Notice of Violation.)  
23          Unit 602's tenancy was not terminated under the Ellis Act withdrawn. The violation and  
24          penalties are based upon violations independent of the Controls, and as the tenancy for unit 602  
25          was not terminated, the penalties are not preempted by the invocation of the Ellis Act.

26           **4. The Invocation of the Ellis Act Does Not Permit Appellant to Violate**  
27           **Zoning Laws.**

28          Appellant attempts to use the Ellis Act for purposes not contemplated by the Act. In  
29          doing so, Appellant turns the Act on its head, using it as a vehicle to stay in the rental business

1 instead of going out of it. The purpose of the Ellis Act is to “permit landlords to go out of  
2 business.” (Gov. Code § 7060.7.) Here, Appellant is not “going out of business.” In fact, it is  
3 leasing out as many units as possible at the property. Appellant remains in the landlord  
4 business, while violating zoning controls that prohibit commercial uses without CU  
5 authorization. This is no different than if a landlord invoked the Ellis Act for residential  
6 apartments in an R-2 zoning district so that it could evict its residential tenants and rent the  
7 units as offices to commercial tenants in the tech industry. The landlord would be using the  
8 Ellis Act not to go out of business, but to change the zoning.<sup>15</sup>

9 The Ellis Act does not permit landlords to engage in “do it yourself rezoning” of  
10 property. As stated by the Court of Appeal in *Bullock v. City and County of San Francisco*  
11 (1990) 221 Cal.App.3d 1072, 1104:

12 Nothing in the Ellis Act gives any landlord invoking its protection the  
13 unilateral power to effect what amounts to a rezoning of his property  
14 simply by invoking his right under the Ellis Act to get out of the  
15 residential hotel business. The existence of such a do-it-yourself  
16 rezoning power cannot be harmonized with the Legislature’s expansive  
17 and express declaration that nothing in the Ellis Act “[d]iminishes ...  
18 any power which currently exists or which may hereafter exist in any  
19 public entity to grant or deny any entitlement to the use of real  
20 property, including, but not limited to, planning, zoning, and  
21 subdivision map approvals.” (Gov. Code, § 7060.1, subd. (b).)

18 As recognized by the Court in *Bullock*, the Ellis Act does not immunized landlords  
19 from valid provisions of the City land use laws, when the City determines “that land devoted to  
20 a particular portion of the private housing sector shall be limited in the uses to which the land  
21 may be employed.” (*Id.*, at p. 1103-04.)

22 Appellant relies on *Reidy v. City & County of San Francisco* (2004) 123 Cal.App.4th  
23 580, for its argument that the Ellis Act preempts the Controls. *Reidy* is distinguishable. In  
24 *Reidy*, there was no evidence that the landlord intended to change its three properties to  
25 nonresidential use. The Court in *Reidy* recognized that under the 2000 amendments to Ellis  
26

---

27 <sup>15</sup> The Act is frequently used in San Francisco to evict tenants so that a developer can sell units  
28 to future owner occupants who will not and cannot rent the units. It is not used to rent the units  
to a different, higher rent paying tenant, as is the case here.

1 Act, the City retains its power to restrict conversions of residential property to nonresidential  
2 use. (*Id.*, at p. 586, 592.) The Ellis Act “does not restrict local governments from exercising  
3 their police powers to regulate the use of the landlord’s property as to such matters as zoning,  
4 demolition, and development after it is taken off the rental market, so long as those regulations  
5 do not ‘otherwise’ prevent a residential landlord from going out of the rental business. (§  
6 7060.7.)” (*Id.*, at p. 592.) Unlike the landlord in *Reidy*, Appellant here is not going out of the  
7 rental business.

8 Nothing in the Controls prevent appellant from evicting its tenants and ceasing the  
9 business of being a landlord. The Controls regulate the demolition and conversion of the units,  
10 which the Act specifically allows the City to do, if and when Appellant achieves vacancy.

11 Appellant’s reliance on *San Francisco Apartment Assoc. v. City & County of San*  
12 *Francisco* (2016) 3 Cal.App.5th 463 is also misplaced. In that case, the Court of Appeal held  
13 that Planning Code § 317(e)(4) was preempted by the Ellis Act. Section 317(e)(4) prohibited  
14 the merger of residential units for 10 years when the owner had evicted tenants from the  
15 property under the no-fault eviction provisions in Rent Ordinance § 37.9(a)(8)-(14), which  
16 includes Ellis Act evictions. The Court in *San Francisco Apartment Assoc.* found that §  
17 317(e)(4) was preempted for those landlords who invoked the Act because it created a penalty  
18 for exercising rights under the Act.

19 [S]ection 317(e)(4) prohibits a landlord withdrawing a residential unit  
20 from the rental market from merging the unit with another unit for 10  
21 years. In doing so, section 317(e)(4) imposes a penalty on the very  
22 class entitled to protection under the Ellis Act—to wit, landowners  
23 seeking to exit the residential rental business. As such, under the legal  
24 authority cited above, section 317(e)(4) is indeed invalid.

25 (*San Francisco Apartment Assoc.*, 3 Cal.App.5<sup>th</sup> at p. 480.)

26 Here, the Controls do not create a penalty for landlords invoking the Ellis Act. The  
27 Controls modified the zoning in the C-3 District to require a CU when a landlord seeks to  
28 convert a residential use to a non-residential use. The Controls are not triggered by the landlord  
going out of the rental business, and apply to owners not in the rental business. As noted above,  
the Controls no more prevent Appellant from going out of the rental business in order to  
convert to offices than the residential zoning in R districts prevents landlords from going out of

1 the rental business to convert an apartment into an office. The Ellis Act plainly does not permit  
2 owners to use the Act to rezone their property without regard to “land use regulations,  
3 procedures, or controls that govern the demolition and redevelopment of residential property.”  
4 (Gov. Code § 7060.7(b); *San Francisco Apartment Assoc.*, 3 Cal.App.5<sup>th</sup> at p. 478.)

5 **C. The Interim and Permanent Zoning Controls Require That This Board Uphold**  
6 **the Permit Revocation.**

7 In *Russian Hill Imp. Ass’n v. Board of Permit Appeals* (1967) 66 Cal.2d 34, the  
8 California Supreme Court considered whether or not a permit’s legality could be affected by  
9 legislation which became effective subsequent to the time of the application for the permit. The  
10 Court held that under traditional principles of administrative law, the Board of Appeals in its *de*  
11 *novo* review is bound to apply the zoning ordinances in effect at the time of its final decision.  
12 (*Russian Hill Imp. Ass’n*, 66 Cal.2d at 46.)

13 As noted in *West Coast Advertising Co. v. City and County of San Francisco* (1967)  
14 256 Cal.App.2d 357, “even a permit which had achieved administrative finality can be revoked  
15 on the basis of a subsequent change in the zoning laws. The permittee could win immunity  
16 from such ‘ex post facto’ revocation only by constructing a substantial portion of the structure  
17 authorized by his permit in good faith reliance upon the prior law.” As noted above, Appellant  
18 did not engage in any construction or demolition pursuant to the permit before it was  
19 suspended in 2013.

20 Furthermore, DBI was well within his discretion in revoking the permit. As stated by  
21 the court in *West Coast Advertising Co.* and *Russian Hill Improvement Assoc.*, “the permit  
22 bureau has the discretion to deny the permit application on the ground that the [work]  
23 described therein would soon be rendered illegal by the pending ordinance.” (*Russian Hill*  
24 *Improvement Assoc.*, 66 Cal.2d at p. 37, n. 5; *West Coast Advertising Co.*, 256 Cal.App.2d at p.  
25 96.)

26 The demolition permit was revoked on May 27, 2016. The 2015 Interim Controls,  
27 which became effective on March 12, 2015, and the Permanent Controls, which became  
28 effective March 24, 2016, cover the premises and mandate that DBI not re-issue Appellant’s  
demolition permit without CU authorization from the Planning Commission. (Exh. 1, AR, Vol.

1 I at 575-581.) Therefore, the demolition permit suspension cannot be lifted and the permit  
2 issued without CU approval.

3 Under *Russian Hill Imp. Ass'n*, the Board of Appeals is bound to apply the 2015  
4 Interim Controls and the 2016 Permanent Controls because these ordinances are in effect at the  
5 time of the Board's final decision. (*Russian Hill Imp. Ass'n*, 66 Cal.2d at 46.) Therefore, it  
6 must uphold DBI's revocation of the permit.

7 **D. Appellant's Vested Rights Argument is Without Merit.**

8 Appellant waived its vested rights argument by abandoning its appeal of the permit  
9 suspension (Exh. 1, AR, Vol. I at 482:12-15). Therefore, this argument should be rejected. To  
10 the extent the Board considers the merits of Appellant's vested rights argument, the argument  
11 is easily refuted. A developer's right to complete a project does not vest until a valid building  
12 permit, or its functional equivalent, has been issued *and the developer has performed*  
13 *substantial work and incurred substantial liabilities in good-faith reliance on the permit.*

14 (*Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 322; *Avco Community Developers, Inc. v.*  
15 *South Coast Regional Com.*, (1976) 17 Cal.3d 785, 791; *Raley v. California Tahoe Regional*  
16 *Planning Agency* (1977) 68 Cal.App.3d 965, 975 & 985.) No right to develop vests until  
17 significant "hard costs" have been expended—*i.e.*, until substantial construction has occurred  
18 in reliance on a building permit. (*Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach*  
19 (2001) 86 Cal.App.4th 534, 552-553.) Expenditures for engineers, consultants and lawyers in  
20 connection with obtaining approvals, and other work undertaken pursuant to governmental  
21 approvals preparatory to construction of buildings cannot form the basis of a vested right. (*Id.*)

22 Appellant provides no evidence that it has incurred any costs sufficient to satisfy the  
23 vested rights standard. There is no evidence that Appellant has performed *any* construction  
24 work or incurred *any* "hard costs" pursuant to its demolition permit prior to its suspension.

25 The evidence cited by Appellant again consists of say-so declarations that discuss  
26 expenditures that pre-date the demolition permit (Exh. 1, AR, Vol. I at 41 at ¶ 9), construction  
27 costs Appellant never incurred (*id.* at 188 at ¶ 4), and contradictory statements regarding costs  
28 purportedly related to Appellant's unilateral decision to pursue mass evictions at the premises

1 (*id.* at 188 at ¶ 7 & 190 at ¶ 17). Likewise, Appellant’s claim that it “has been forced to spend  
2 exorbitant funds on defending lawsuits by its former tenants” does not concern construction  
3 costs, and Appellant fails to disclose that those lawsuits were based on Appellant’s failure to  
4 maintain the premises (*id.* at 337:18-25, 238-255, 261-275 & 277-291) and were litigated by  
5 insurance defense counsel (*id.* at 39; Exh. 2, RFJN, Exh. H).

6 Finally, a developer who relies on an invalid permit issued in violation of a city zoning  
7 ordinance has no vested rights, regardless of the amount of money expended in reliance on the  
8 permit. (*Stokes v. Board of Permit Appeals* (1997) 52 Cal.App.4<sup>th</sup> 1348, 1357  
9 [misrepresentation on permit application defeated vested rights and estoppel claims even when  
10 owner expended \$400,000 in reliance on the permit]; *Pettitt v. City of Fresno* (1973) 34  
11 Cal.App.3d 813, 821 & 824 [no vested rights when permit is invalid based on violation of  
12 zoning law]; *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d  
13 222 [developer spent in excess of \$600,000 in developing property pursuant to invalid  
14 permits].) Thus, even if there were any support for Appellant’s vested rights claim (there is  
15 not), Appellant’s defective permit forecloses its vested rights argument.

16 **E. Appellant Cannot Establish A Takings Claim**

17 Where government action does not result in any physical invasion of property, a taking  
18 only occurs when the action deprives the owner of “*all* economically beneficial or productive  
19 use of [the] land.” (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1015  
20 [emphasis in original]; *Lingle v. Chevron U.S.A., Inc.* (2005) 544 U.S. 528, 537-539 [the  
21 complete elimination of a property’s value is the determinative factor under *Lucas*].)

22 Appellant continues to derive income from the residential units on the sixth floor of the  
23 premises and street-level retail rentals, and the income Appellant derives from these portions of  
24 its property is completely unaffected by the revocation of the demolition permit for floors 1  
25 through 5. (Exh. 1, AR, Vol. I at 620:9-18.)

26 Furthermore, Appellant cannot establish a taking under the traditional *Penn Central*  
27 *Transp. Co. v. New York* (1978) 438 U.S. 104 analysis. Appellant was well aware when it  
28 purchased the property in 2012 that the 2007 NOV was outstanding and that residential tenants  
had been living on floors 1 through 5 for twenty years. Appellant’s members and agents

1 solicited and condoned residential live/work use at the premises for many years and continued  
2 to rent units to residential tenants despite the NOV, including entering into new residential  
3 leases for at least 18 units. (*Id.* at 40:11-14, 95:6-25, 97:15-17, 562-567, & 621 at ¶ 7; Exh. 2,  
4 RFJN, Exh. A.) Appellant’s members and agents admitted, under oath and in multiple  
5 communications with the City, that it permitted residential live/work use, there no were no  
6 safety hazards, and the only barrier to legalization of the live/work use was the City’s local  
7 natural light requirement. (Exh. 1, AR, Vol. I at 40:11-14, 53-57 & 328:7-8; Exh. 2, RFJN,  
8 Exh. B.)

9 Appellant’s revoked demolition permit and refusal to collect Tenants’ rent are problems  
10 entirely of its own making and could be remedied by collecting rent the tenants would  
11 willingly pay and/or legalizing live/work use at the property as required by NOV 200711850.  
12 If Appellant is losing income from its refusal to collect rent from its live/work rentals on floors  
13 1 through 5, this loss of income is because Appellant, not the City, chose to evict its tenants  
14 instead of maintaining their long-term tenancies. (Exh. 1, AR, Vol. I at 226-232 & 534-539.)

15 To the extent Appellant complains about the “delayed” suspension of its demolition  
16 permit, Appellant again has no one to blame but itself. Appellant originally appealed the  
17 permit suspension in November 2013, but abandoned its appeal on the eve of the hearing. (*Id.*  
18 at 381-387.) Although the City has informed Appellant that it would waive the only barrier to  
19 legalizing Tenants’ live/work units, Appellant decided many months ago that it would rather  
20 proceed with its mass evictions and litigate against, rather than collaborate with, the City. (*Id.*  
21 at 130:7-21, 145:1-5, 222, 332-33, 684, 768-769 & 822; Exh. 2, RFJN, Exh. E.)

22 Appellant and its agents now manufacture legal hurdles based on the local natural light  
23 requirement the City has agreed to waive (*id.* at 332-33) without completing the process to  
24 obtain an AB-005 waiver (*id.* at 130:7-21 & 768-769; Exh. 2, RFJN, Exh. E). Appellant also  
25 claims California Building Code § 1029.1 prevents legalization of the live/work units despite  
26 DBI’s explanation that Section 1029.1 contains an exception that would apply to windowless  
27 units at the premises. (Exh. 1, AR, Vol. I at 145:6-9; Exh. 2, RFJN, Exh. F.) Appellant largely  
28 ignores the fact that at least 27 units on floors 2 through 5, including 5 of Tenants’ units, have

1 large windows, thereby satisfying the local natural light requirement and Section 1029.1. (Exh.  
2 1, AR, Vol. I at 48-51.)

3 There is no credible argument showing any government action has interfered with any  
4 reasonable “investment-backed expectations” held by Appellant. The only evidence provided  
5 by Appellant to support this claim is the say-so declaration of John Gall (Gall Dec., ¶ 12),  
6 whose shape-shifting opinions have been refuted by the City at multiple public hearings. (Exh.  
7 1, AR, Vol. I at 332-333 & 145:6.) Appellant provides no financial evidence indicating a loss  
8 in value from the City’s actions – a tacit admission that it has no such evidence.

9 **IV.**

10 **CONCLUSION**

11 For all the reasons stated above, Tenants respectfully request that the Board deny all the  
12 Appeals.

13  
14 Dated: March 29, 2017



15 \_\_\_\_\_  
16 Stephen L. Collier  
17 Attorney for Tenants



1 STEPHEN L. COLLIER, ESQ., State Bar No. 124887  
2 TENDERLOIN HOUSING CLINIC, INC.  
3 126 Hyde Street, 2<sup>nd</sup> Floor  
4 San Francisco, CA 94102  
5 Telephone: (415) 771-9850  
6 Facsimile: (415) 771-1287  
7 E-mail: steve@thclinic.org

8 Attorney for Tenants Ben Cady, Chandra Redack, Peter Taylor, Brad K. Alder, Chad Benjamin  
9 Potter, Ann Cooper, Melissa Bracero, Adam Wojewidka, Chris Baker, Brendan Barthel, Carina  
10 C. Zona, Karl Hass, Darren Brown, Anthony Breaux, Ronnie Johnson

11 BOARD OF APPEALS

12 CITY AND COUNTY OF SAN FRANCISCO

13	1049 MARKET STREET, LLC,	)	Appeal Nos. 16-111, 16-112, 16-113
14		)	
15	Appellant,	)	<b>DECLARATION OF STEPHEN L.</b>
16	vs.	)	<b>COLLIER IN SUPPORT OF</b>
17		)	<b>OPPOSITION TO APPEALS</b>
18	DEPARTMENT OF BUILDING	)	
19	INSPECTION, ZONING	)	Date: April 5, 2017
20	ADMINISTRATOR,	)	Time 5:00 pm
21		)	Place: City Hall Room 416
22	Respondents.	)	
23		)	

24 I, Stephen L. Collier, hereby declare and state:

25 1. I am an attorney duly licensed to practice law in all Courts of the State of  
26 California, and I am counsel for tenants Ben Cady, Chandra Redack, Peter Taylor, Brad K.  
27 Alder, Chad Benjamin Potter, Ann Cooper, Melissa Bracero, Adam Wojewidka, Chris Baker,  
28 Brendan Barthel, Carina C. Zona, Karl Hass, Darren Brown, Anthony Breaux, and Ronnie  
Johnson at 1049 Market Street, San Francisco, CA. I make this declaration based upon  
personal knowledge, and if called to testify, could and would testify competently as follows.

2. Attached hereto as Exhibit 1 is a true and correct copy of the relevant portions  
of the Administrative Record in the prior Board of Appeals case *Cady v. Zoning Administrator*,  
Case No. 15-022. The Administrative Record was prepared for and submitted in the case *1049  
Market Street, LLC v. Miller, et al.*, S.F. Superior Court Case No. CGC-15-545950.



# **EXHIBIT 1**



Edwin M. Lee  
Mayor

Cynthia G. Goldstein  
Executive Director

# AFFIDAVIT OF SERVICE

**Ben Cady et al., Appellants  
c/o Stephen Collier, Attorney for Appellant  
126 Hyde Street, 2nd Floor  
San Francisco, CA 94102**

I, Victor F. Pacheco, Legal Assistant for the Board of Appeals, hereby certify that on this 7<sup>th</sup> day of May 2015, I served the attached Notice of Decision for **Appeal No. 15-022, Cady et al. vs. Zoning Administrator**, subject property at 1049-1051 Market Street, on the appellant by mailing a copy via U.S. mail, first class, to the address above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in San Francisco, California.

May 07, 2015  
Date

Victor F. Pacheco

cc: Scott Sanchez, Zoning Administrator  
Planning Department  
1650 Mission Street, 5th Floor  
San Francisco, CA 94103

OTHER PARTIES  
OR CONCERNED CITIZENS:

**John Gall & Terry Bogart, Permit Holder  
c/o Andrew Zacks, Attorney for Permit Holder  
235 Montgomery Street #400  
San Francisco, CA 94104**



BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of

Appeal No. 15-022

BEN CADY, CHANDRA REDACK, PETER TAYLOR,  
BRAD ALDER, CHAD BENJAMIN POTTER,  
MANUEL RODRIGUEZ, ANN COOPER,  
MELISSA BRACERO, ADAM WOJEWIDKA,  
CHRIS BAKER, BRENDAN BARTHEL, CARINA ZONA,  
KARL HASS, JUAN ESCOBEDO, DARREN BROWN,  
BO MARCOL & CHRISTOPHER FIGUEROA,

Appellant(s)

vs.

ZONING ADMINISTRATOR,

Respondent

**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN THAT on February 03, 2015, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on February 02, 2015, to John Gall & Terry Bogart, of a Request for Release of Suspension (asking that the Dept. of Building Inspection release the suspension against BPA No. 2013/07/26/2890 - comply with NOV No. 200711850; demo of office walls on 5th floor through 1st floor) at 1049-1051 Market Street.

**FOR HEARING ON April 08, 2015**

Address of Appellant(s):

Ben Cady et al., Appellants  
c/o Stephen Collier, Attorney for Appellant  
126 Hyde Street, 2nd Floor  
San Francisco, CA 94102

Address of Other Parties:

John Gall & Terry Bogart, Permit Holder  
c/o Andrew Zacks, Attorney for Permit Holder  
235 Montgomery Street #400  
San Francisco, CA 94104

**NOTICE OF DECISION & ORDER**

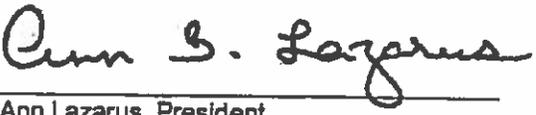
The aforementioned matter came on regularly for hearing before the Board of Appeals of the City & County of San Francisco on APRIL 08, 2015.

PURSUANT TO § 4.106 of the Charter of the City & County of San Francisco and Article 1, §14 of the Business & Tax Regulations Code of the said City & County, and the action above stated, the Board of Appeals hereby **GRANTS THE APPEAL AND ORDERS**

that the ISSUANCE of the subject Request for Release of Suspension by the ZONING ADMINISTRATOR is **OVERRULED** on the basis that the said Zoning Administrator **ERRED** in failing to recognize that the subject permit is defective.

BOARD OF APPEALS  
CITY & COUNTY OF SAN FRANCISCO

Last Day to Request Rehearing: April 20, 2015  
Request for Rehearing: May 06, 2015 (denied)  
Rehearing: None  
Notice Released: May 07, 2015

  
Ann Lazarus, President

  
Cynthia G. Goldstein, Executive Director

If this decision is subject to review under Code of Civil Procedure § 1094.5, then the time within which judicial review must be sought is governed by California Code of Civil Procedure, § 1094.6.

BOA\_000002

AR\_01\_000002

REPORTER'S PARTIAL TRANSCRIPT OF RECORDED HEARING  
CITY AND COUNTY OF SAN FRANCISCO

BOARD OF APPEALS

DATE: MAY 6, 2015

ITEM 10: 1049-1051 MARKET STREET PROPERTY

Transcribed by Kelly Paulson, CSR No. 8295

1 CITY AND COUNTY OF SAN FRANCISCO

2 BOARD OF APPEALS

3 MAY 6, 2015

4 \* \* \*

5 ITEM 10: Rehearing Request - Subject property  
6 at 1049-1051 Market Street - permit holders,  
7 requesting rehearing of Appeal No. 15-022  
8

9 MS. GOLDSTEIN: Welcome back to the May 6,  
10 2015, meeting of the San Francisco Board of Appeals.  
11 We are now calling Item 10 which is a rehearing  
12 request. The subject property is at 1049 to 1051  
13 Market Street.

14 The Board received a letter from John Gall and  
15 Terry Bogart, permit holders, requesting rehearing of  
16 Appeal No. 15-022, Cady, et al. versus the Zoning  
17 Administrator decided on April 8th, 2015. At that time  
18 the Board voted 4-to-1 with President Lazarus  
19 dissenting to overturn the request for release of  
20 suspension on the basis that the zoning administrator  
21 erred in failing to recognize that the permit is  
22 defective.

23 This is a zoning administrator order  
24 requesting that the Department of Building Inspection  
25 release the suspension of Building Permit Application

1 live-work, then that I would imagine should have been  
2 stated in the body. I just want to add that because  
3 it's in the brief. I get to read the brief, and I just  
4 wanted to state that. Thank you.

5 MS. GOLDSTEIN: Thank you. May I see a show  
6 of hands? How many people plan to speak under public  
7 comment? Okay. We will begin our public comment then.  
8 If the first person wants to step forward, please do,  
9 and if you haven't already, if you could fill out a  
10 speaker card and give it to Mr. Pacheco, that would be  
11 very helpful.

12 MR. MECCA: Hi. My name is Tommi Avicolli  
13 Mecca. I'm with the Housing Rights Committee. I think  
14 basically as far as we're concerned, what's at stake  
15 here is the removal of 77 affordable rent controlled  
16 units. It would be the largest mass eviction of  
17 tenants in San Francisco since the I Hotel of the late  
18 '70s and that's no exaggeration.

19 At this time of crisis, of our severe housing  
20 crisis, the City cannot afford to lose one unit let  
21 alone 77 rent controlled units where low income tenants  
22 are currently living, not to mention the mayor's  
23 directive which has been mentioned, but I also believe,  
24 as Carina does, that the mayor's directive does apply  
25 here.

1 Richard S. Diestel, No. 095059  
2 Tessa K. Weeks, No. 295860  
3 **BLEDSON, CATHCART, DIESTEL,**  
4 **PEDERSEN & TREPPA, LLP**  
5 601 California Street, 16th Floor  
6 San Francisco, California 94108-2805  
7 Telephone: (415) 981-5411  
8 Facsimile: (415) 981-0352

9  
10 Attorneys for  
11 Defendant 1049 MARKET STREET, LLC

12  
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

15 CLARENCE WILSON, JONATHAN  
16 STOKER, TORRANCE ANTONI, JASON  
17 GROHMAN, MARK TSE, MICHAEL  
18 GREENLEES, RONALD ROSEN, JUSTIN  
19 BERTHELSEN, MICHAEL MASON,  
20 STEBAN GUAVARA, ANDREW  
21 GREENLEES,

22 Plaintiffs,

23 v.

24 1049 MARKET STREET, LLC, and DOES 1  
25 TO 100, inclusive,

26 Defendants.

No. CGC-14 - 536672

**DECLARATION OF TERRY  
BOGART IN SUPPORT OF  
DEFENDANT 1049 MARKET  
STREET, LLC'S SPECIAL MOTION  
TO STRIKE PLAINTIFFS'  
COMPLAINT PURSUANT TO  
C.C.P. § 425.16**

Complaint Filed: January 8, 2014

Date: April 17, 2014

Time: 9:30 AM

Dept.: 501

27 I, Terry Bogart, declare:

28 1. I am a former owner of the building located at 1049 Market Street, San Francisco,  
California 94103, having purchased it over twenty-two years ago in 1992. Two of the current

BLEDSON, CATHCART, DIESTEL, PEDERSEN & TREPPA, LLP

BRUCE G. QUINN, PRESIDENT  
TERRY BOGART, PRESIDENT  
TERRA LLC

1 members of Defendant 1049 Market Street, LLC ("1049 Market") – Amy Bogart and Haley  
2 Bogart – are my daughters.

3 2. I am personally familiar with the facts set forth herein and if called upon to testify  
4 thereto in a court of law, I could and would do so competently.

5 3. I make this declaration in support of 1049 Market's Special Motion to Strike  
6 Plaintiffs' Complaint pursuant to Code Civ. Proc. §425.16.

7 4. At the time of purchase, the building's units were both used and permitted as  
8 commercial office space. However, due to the severe economic conditions in the Mid-Market  
9 area, my partner, Richard Lane, and I experienced difficulty renting vacant office space.

10 5. We eventually discovered that, unbeknownst to management, some of the  
11 commercial renters had begun living in their units. In late 1995, we decided to convert the  
12 building's office suites to live-work lofts, with the intention to change the use of the building  
13 from office to live-work pursuant to San Francisco's Artist Live Work Ordinance, Ord. 412-88.  
14 We also undertook this same conversion process as to other Market Street properties we owned.

15 6. In terms of changing the permitted use to live-work, we prioritized and focused  
16 our initial efforts on a property located at 1005 Market Street. These efforts however were  
17 interrupted in 2002, when the San Francisco Board of Supervisors imposed a permanent  
18 moratorium on the construction of all new live-work lofts. As a result of the moratorium, we  
19 were unable to obtain the necessary permits to change the use of either 1049 Market or 1005  
20 Market from office to live-work.

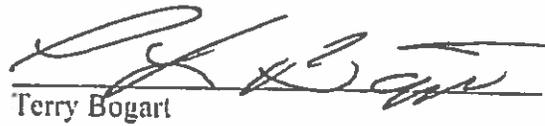
21 7. On October 25, 2007, the San Francisco Department of Building Inspection issued  
22 a Notice of Violation (the "2007 NOV") against the building, regarding the unpermitted  
23 residential use of the building. Attached hereto as Exhibit A is a true and accurate copy of the  
24 2007 NOV. Over the next year, former management hired attorneys, structural engineers, and  
25 code consultants to work towards abating the 2007 NOV. However, management did not hear  
26 anything further from the City with regards to the 2007 NOV until March 2013.

27 8. In July 2010, after a fifteen year process, former management was finally able to  
28 legalize the use one of its other buildings, located at 1005 Market Street, from commercial to

1 "commercial with residential accessory use" pursuant to §§ 204 and 204.3 of the San Francisco  
2 Building Code. Attached as Exhibit B is a true and accurate copy of Certificate of Final  
3 Completion and Occupancy, dated July 10, 2010, issued by the DBI for the building located at  
4 1005 Market Street. We then shifted our focus from 1005 Market to 1049 Market, and began  
5 workings towards legalizing 1049 Market in the same manner.

6 9. Between 2003 and 2011, former management spent in the upwards of hundreds of  
7 thousands of dollars in trying to obtain residential permits for 1049 Market.

8 I declare under penalty of perjury under the laws of the State of California that the  
9 foregoing is true and correct and that this Declaration was executed on \_\_ day of March 2014, in  
10 San Francisco, California.

11   
12 Terry Bogart

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BUSINESS DEVELOPMENT SERVICES & TRAINING



# NOTICE OF VIOLATION

of the San Francisco Municipal Codes Regarding Unsafe, Substandard or Noncomplying Structure or Land or Occupancy

2

## DEPARTMENT OF BUILDING INSPECTION

City and County of San Francisco  
1660 Mission St. • San Francisco, CA 94103 - 2414

- FIRST NOTICE
- SECOND NOTICE
- OTHER: \_\_\_\_\_

COMPLAINT NUMBER

200711850

ADDRESS 1049 Market St

DATE 10/25/07

OCCUPANCY / USE R-1 B-2

BLOCK 3703 LOT 067

CONST. TYPE 3

STORIES 6  BASEMENT

If checked, this information is based upon the observation only. Further research may indicate that legal use is different. If so, a revised Notice of Violation will be issued.

OWNER / AGENT \_\_\_\_\_

PHONE # \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_

ZIP \_\_\_\_\_

PERSON CONTACTED @ SITE \_\_\_\_\_

PHONE # \_\_\_\_\_

## VIOLATION DESCRIPTION:

WORK WITHOUT PERMIT (SFBC 106.1.1);  ADDITIONAL WORK-PERMIT REQUIRED (SFBC 106.4.7);

EXPIRED PERMIT (SFBC 106.4.4);  CANCELLED PERMIT (SFBC 106.3.7) PA# \_\_\_\_\_;

UNSAFE BUILDING (SFBC 102);  SEE ATTACHMENTS

CODE / SECTION #

A COMPLAINT HAS BEEN RECEIVED BY THE DEPARTMENT REGARDING THE ILLEGAL CONVERSION OF OFFICE SPACE TO LIVE/WORK UNIT BUILDING PERMIT # 9104752 WAS APPROVED FOR SIX LIVE/WORK UNITS ON TOP FLOOR SITE INSPECTION REVEALED EXISTING OFFICE UNIT CONVERTED TO HABITABLE SPACE ON REMAINING FLOORS NO PERMIT EXISTS FOR THIS CONVERSION

106-1.1  
3405  
109

BC - Building Code HC - Housing Code PC - Plumbing Code EC - Electrical Code MC - Mechanical Code

## CORRECTIVE ACTION:

STOP ALL WORK SFBC 104.2.4

FILE BUILDING PERMIT APPLICATION WITHIN 30 DAYS (S WITH PLANS) A Copy of This Notice Must Accompany the Permit Application.

OBTAIN PERMIT WITHIN 60 DAYS AND COMPLETE ALL WORK WITHIN 90 DAYS, INCLUDING FINAL INSPECTION AND SIGNOFF.

CORRECT VIOLATIONS WITHIN \_\_\_\_\_ DAYS.  NO PERMIT REQUIRED.

YOU FAILED TO COMPLY WITH THE NOTICE(S) DATED \_\_\_\_\_, THEREFORE THIS DEPT. HAS INITIATED ABATEMENT PROCEEDINGS.

FAILURE TO COMPLY WITH THIS NOTICE WILL CAUSE ABATEMENT PROCEEDINGS TO BEGIN. SEE REVERSE SIDE FOR ADDITIONAL WARNINGS.

OBTAIN BUILDING PERMIT WITH PLANNING DEPARTMENT APPROVAL FOR CONVERSION OF OFFICE UNIT TO LIVE/WORK UNITS

INVESTIGATION FEE OR OTHER FEE WILL APPLY See reverse side for further explanation

9x Fee (Work w/o Permit after 9/1/60)

2x Fee (Work Exceeding Scope of Permit)

Other \_\_\_\_\_

Reinspection Fee \$ \_\_\_\_\_

No penalty (Work w/o permit prior to 9/1/60)

APPROX. DATE OF WORK W/O PERMIT \_\_\_\_\_

VALUE OF WORK PERFORMED WITHOUT PERMITS \_\_\_\_\_

BY ORDER OF THE DIRECTOR, DEPARTMENT OF BUILDING INSPECTION

CONTACT INSPECTOR DUFFY

(Inspector - Print Name)

OFFICE HOURS 7:30 TO 8:30 AM AND 3 TO 4 PM

PHONE # 558 6170

By (Inspector's Signature) Daniel Duffy

DISTRICT # \_\_\_\_\_

CC:  DCP  EID  PID  BID  HIS  CED  CPC  DAD  SFFD  DPH  RPC

- Building Inspection Division  
3rd Floor, 1660 Mission St. 558-6096
- Housing Inspection Services  
6th Floor, 1660 Mission St. 558-6220
- Electrical Inspection Division  
3rd Floor, 1660 Mission St. 558-6030
- Plumbing Inspection Division  
3rd Floor, 1660 Mission St. 558-6054
- Code Enforcement Division  
3rd Floor, 1660 Mission St. 558-6454

M 8003 05 (Rev. 5/05)

Printed on recycled materials

BOA\_000043

AR\_01\_000043

11/6 - should to Jerry  
11/5 - hand & mailed original to Rocky



City and County of San Francisco  
Department of Building Inspection

CERTIFICATE OF FINAL COMPLETION AND OCCUPANCY

LOCATION: 1005 - Market St (number) 2037 (block and lot)

Permit Application No: 70102205001 Type of Construction: 1-A Stories: 1 Dwelling Units: 1/1

Basements: 1 Occupancy Classification: R-1 C.M. No. of Guestrooms: 1 with cooking facilities: 1

Description of Construction: Large two work occupancy 7 x 7 x 7 1/2 ft. 1005 Market St. 2037

To the best of our knowledge, the construction described above has been completed and, effective as of the date the building permit application was filed, conforms both to the Ordinances of the City and County of San Francisco and to the Laws of the State of California. The above referenced occupancy classification is approved pursuant to Section 109A of the San Francisco Building Code.

Any change in the use or occupancy of these premises--or any change to the building or premises--could cause the property to be in violation of the Municipal Code of the City and County of San Francisco and, thereby, would invalidate this Certificate of Final Completion and Occupancy. A copy of this Certificate shall be maintained on the premises and shall be available at all times. Another copy of this Certificate should be kept with your important property documents.

Before making any changes to the structure in the future, please contact the Department of Building Inspection, which will provide advice regarding any change that you wish to make and will assist you in making the change in accordance with the Municipal Code of the City and County of San Francisco.

This certificate issued on: 7-21-80  
Walter R. Shaw by: [Signature] Building Inspector

VIVIAN L. DAY, C.B.O., Director of Building Inspection

3 copies: White (original to submittant); Blue (to property owner); Yellow (to Building Inspector); Pink (to Planning Inspector)

Printed Name

## Permits, Complaints and Boiler PTO Inquiry

### Permit Details Report

Report Date: 3/16/2014 9:48:34 AM

Application Number: 2010215440

Form Number: 3

Address(es): 1701 100th St NW MARKET ST

Description: NO PHYSICAL WORK TO BE DONE. CHANGE OF OCCUPANCY FROM COMMERCIAL OFFICE TO COMMERCIAL OFFICE WITH RESIDENTIAL ACCESSORY USE FOR FLOORS 2 THRU 5

Cost: \$100.00

Occupancy Code: M.B.R.-2

Building Use: 10 - OFFICE

### Disposition Stage:

Action Date	Stage	Comments
1/15/2011	TRIAL	
4/15/2011	FILED	
5/15/2011	FILED	
5/2/2013	WITHDRAWN	

### Contact Details:

#### Contractor Details:

### Addenda Details:

#### Description:

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Phone	Hold Description
1	IBD-INSP	2/25/13	2/28/13			2/25/13	FESLER THOMAS	215-552-6096	
2	CTB	3/2/13	3/2/13			3/2/13	MCANNE	415-572-6070	3/2/13. Will review the Request. Customer had appointment and plans. Default application status.

### Appointments:

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots
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### Inspections:

Activity Date	Inspector	Inspection Description	Inspection Status
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### Special Inspections:

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks
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For information on how to file a complaint, call 355-3376 or visit us online at [www.pennstate.edu/boia](http://www.pennstate.edu/boia)

State and Local Disputes and Plans Numbers

Online Permit and Complaints Information

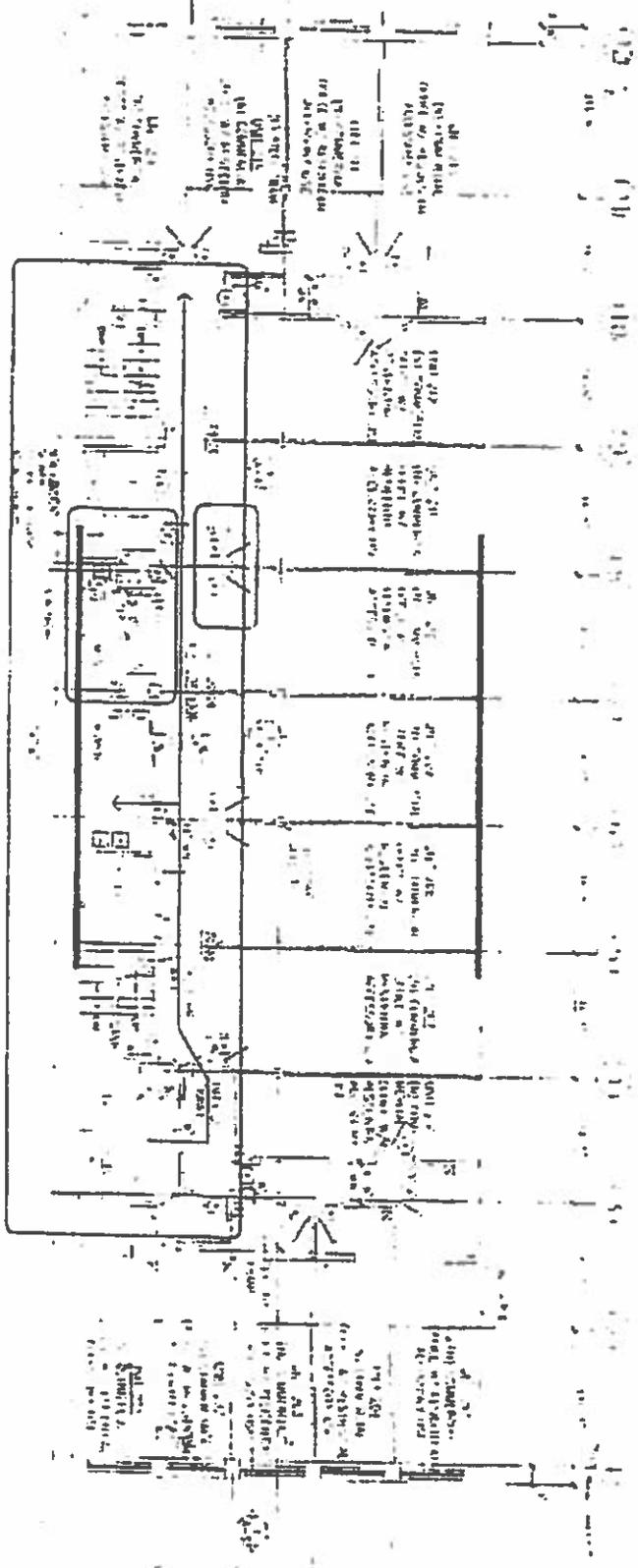
### Technical Support for Online Services

If you need help with a question on the site, please contact our ITV team

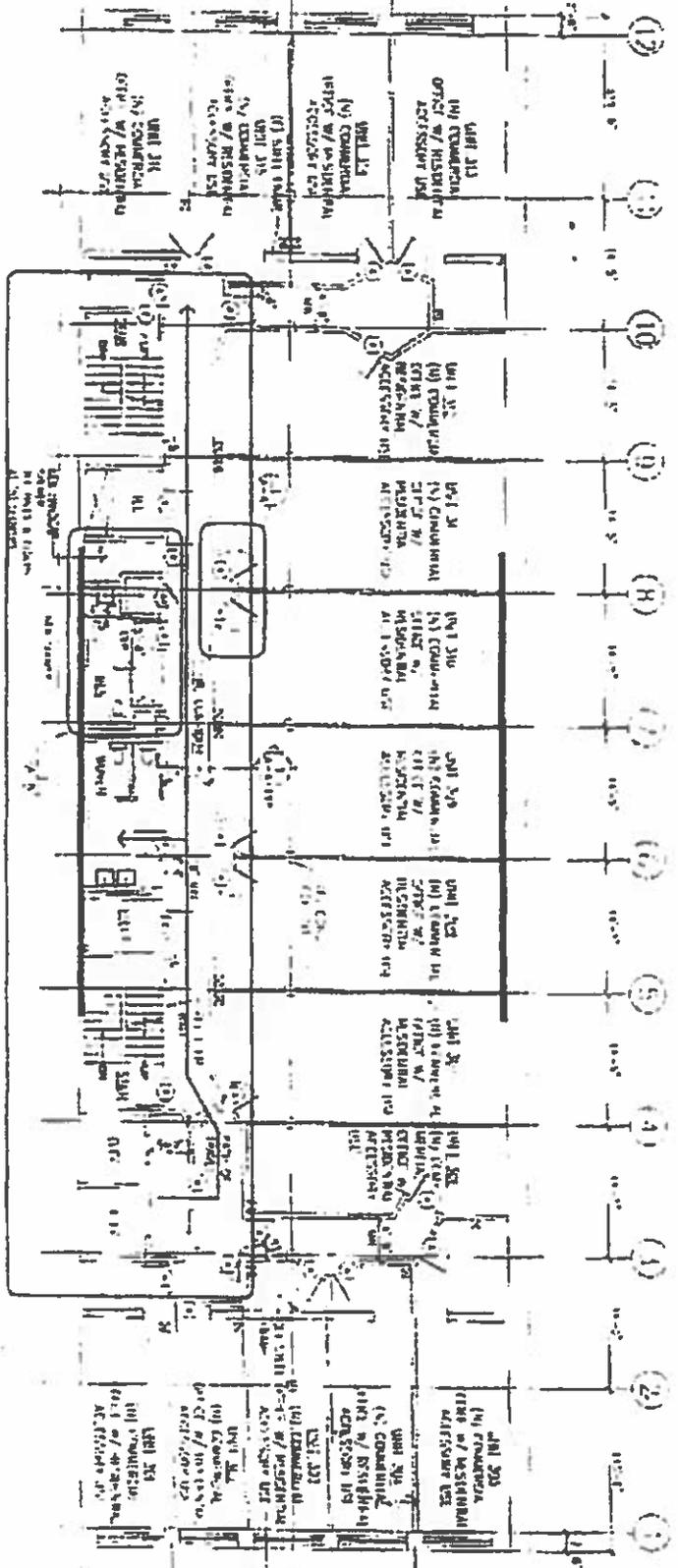
Contact: 800-368-3376

City and County: Harrisburg (717) 200-2000

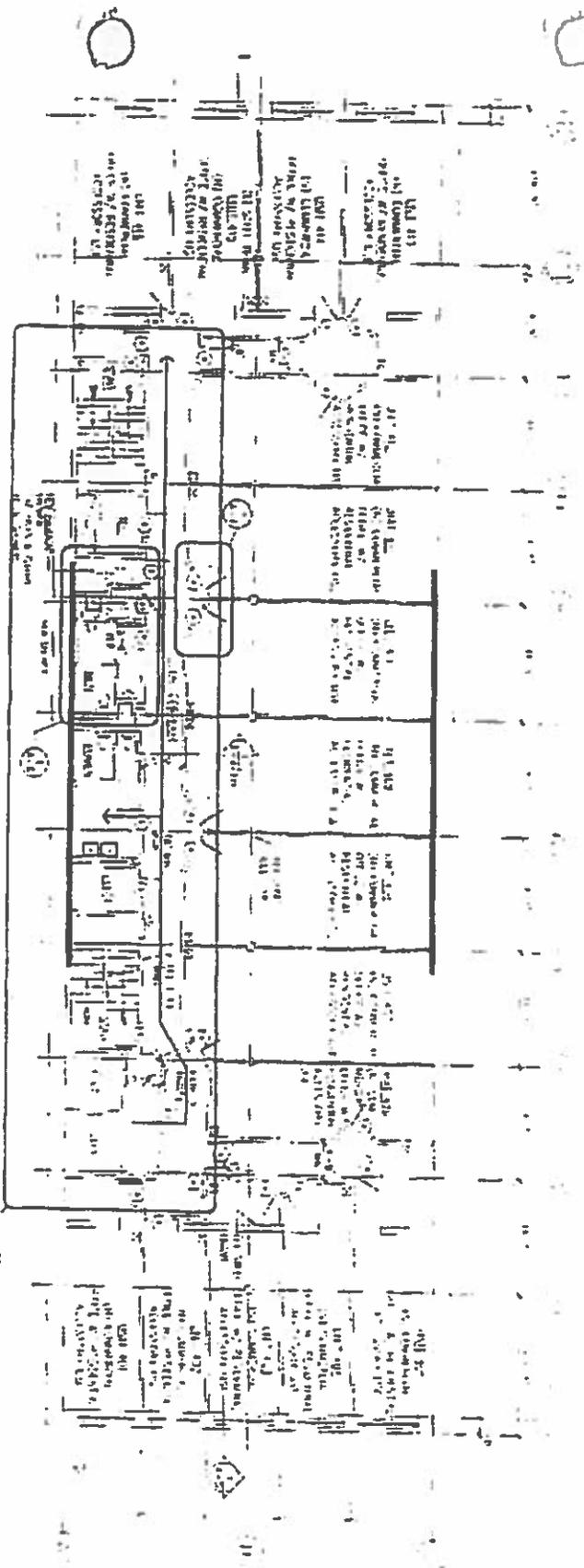
1. SECOND FLOOR PLAN FOR PROPOSED CHANGE IN USE  
 OF EXISTING BUILDING



1. THIRD FLOOR PLAN, LOOKING SOUTH, CHANCE OF USE



FOURTH FLOOR PLAN FOR PROPOSED CHANGE OF USE





## EXHIBIT 24

BOA\_000052

AR\_01\_000052

## Meeting today

From: John.gall@live.com on behalf of John Gall (john@stuffedelulis.com)  
Sent: Tue 12/07/10 6:25 PM  
To: jeremy.halliscy@sfgov.org

Jeremy,

Thanks for setting the meeting up today. It's good to have someone else in the room to take in all the information.

After a little research today I found that the building is definitely a type IIIA (good news). The natural air requirements are already met (3 fold), sprinklers are good to go, sound proofing is done, and Don answered my main question regarding the enclosed stairwells providing two means of egress for the current configuration.

I will do some research on the natural vs artificial light as per SF Code and also the seismic upgrades. If these issues "check out" on my end, I have current "change of use" plans that I'd like to submit to DBI. Ideally, I'd like to submit the plans under "commercial with residential auxiliary use of 25% of less" and comply with the same building codes I just dealt with at 1005 Market St. It may be that this would require getting these plans submitted before the first of the year. A tall task, timing-wise for sure.

If you have some time to talk on Wednesday or Thursday, let me know. Again, your help is appreciated....

John Gall, DRE #01876230  
SFOI Inv  
1005 Market St Suite 310  
San Francisco CA 94103  
ph 415 298-9107  
rx 415 676-6619

# FW: 1049 Market St

From: John.gall@live.com on behalf of John Gall (john@sfofficeofits.com)  
Sent: Mon 12/05/11 11:59 AM  
To: jeremy.hallisey@sfgov.org

From: john@sfofficeofits.com  
To: jeremy.hallisey@sfgov.org  
CC: patrick@buscovich.com  
Subject: 1049 Market St  
Date: Mon, 5 Dec 2011 11:03:50 -0800

Jeremy,

Hope all is well. I had spoken to Amy Cohen the other day and she thought getting back in touch with you would be a good idea since I could use a little help with a "change of use" permit.

It's been awhile since we first met at meeting at DBI, so I'll try to refresh your memory. We made contact through Amy Cohen about a year ago. I had been working on the Pearl's Deluxe Burger's deal at 1001 Market St and had mentioned to her about my desire to attain a "change of use" at 1049 Market St. I brought the current building plans for 1049 Market St and we met with Don Fields about fire requirements and Tom Hui (I think) about general questions.

The basic premise is that we already have a thriving artist colony in place in Mid-Market. We already have successfully changed 1005 Market Street from "commercial office" to "commercial office with residential accessory-use by artisans." SF Planning (Mark Luelan in our district and others) have given support due to our success at 1005 Market.

The challenge lies within DBI. Particularly, how they are to interpret the R-code as an accessory use for our particular building. I've been working with Pat Buscovich (he helped us on the last project) for quite some time trying to get answers on what is possible in our unique scenario. He believes with the right people on board, a solution is workable. All indications from Don Fields are that fire code is met due to sprinklers, (exits/etc), and all walls being 1-hr fire rated. Natural light is currently our focus.

I'd like to put a coffee together with us and Pat Buscovich. He will be able articulate our unique building and situation better than me.

Let me know if and when you are available. Hope to hear from you soon.

Cheers,

John Gall  
VP  
1049 Market St, # 110  
San Francisco, CA 94103  
415 440 9410

## EXHIBIT 25

BOA\_000055

AR\_01\_000055

**RE: 1049 Market St**

From: Luellen, Mark (mark.luellen@sfgov.org)

Sent: Wed 4/03/13 10:21 AM

To: John Gall (john.gall@live.com)

Cc: Hallisey, Jeremy (jeremy.hallisey@sfgov.org); Cohen, Amy (amy.b.cohen@sfgov.org)

Hi John,

Thank for your email

I have forwarded your email to Jeremy Hallisey in DBI, he will be able to find the appropriate staff person to assist you

Hopefully this can be resolved quickly,

Thank you

Mark

From: John Gall (mailto:john.gall@live.com)

Sent: Thursday, March 28, 2013 3:44 PM

To: Luellen, Mark

Subject: 1049 Market St

Mark,

Thanks for the return call. It's taken me a few days to get in front of a computer and best explain the 1049 Market St property. Hope you have a minute :)

The building is a mixed use building with retail on the front half of Market St ground floor, offices on

floors 2-5 and live work on 6th floor. The offices are currently occupied by [redacted] and have been for several years. The building is fully sprinklered, seismically upgraded, 2 hour fire rated and is in very good shape

1049 Market St received an NOV on 10/25/2007 for tenants living in offices for floors 2-5. Nothing more was sent until we just received a 2nd NOV on 2/10/2013 that indicated that Code Enforcement is going to initiate abatement proceedings. I have not received anything regarding a Director's Hearing yet.

The previous management company and ownership spent some time on resolving the NOV. I have spent considerably more time, energy and money over the past couple of years trying to come up with a way to abate the NOV without displacing the tenants. I have a large file of correspondence, invoices, plans, etc.

In a similar situation at 1005 Market St (same block/same art community), we successfully did a change of use to "commercial office with residential accessory -use for artists." We chose this use when there was still a moratorium on new "live work." It would make sense to get the same "use" at 1049 Market St.

There are two options. Either I figure out a way to change the use and keep the current artists or I'm gonna be forced to move out dozens of artists and do "tech office". I would prefer to keep the current art community in place.

Based on our meeting in 2010 with Kevin Guy and Dan Sider, I believe my artist community fits the SF planning vision and also has support of many community leaders. Currently I'm in talks with Theatre Bay Area, amongst others, regarding a build-out of 8000 sq ft of rehearsal space at 1049 Market St. The hold up is I can't get permits until I resolve the NOV.

I have consulted architects (Dave Sternberg) and structural engineers (Pat Buscovich) to resolve the major issue, which is several units do not have "natural light." This building code is part of the local SF building code added in 2007 and is NOT a life safety issue. Anywhere else in California would not require "natural light" for our use. We have concluded that to bring in natural light, as the code is currently written, is cost prohibitive and structurally difficult. I'm open to creative options to satisfy the code's intent, such as adding windows and/or light-wells with reflective light

In short, and if possible, I'd like to achieve an exemption of building code "natural light" requirement.

I'm not sure exactly how to get the exemption and I'm not sure how to start the process, since I can't submit plans that are not building code compliant. It's been difficult to get any help or direction from

1 BENJAMIN POTTER'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET  
2 ONE.

3  
4 **SPECIAL INTERROGATORY NO. 24:**

5 IDENTIFY all PERSONS who drafted architectural drawings for purposes of  
6 submission with and permit applications for any alteration or demolition of any portion of  
7 the SUBJECT PREMISES from January 1, 2005 to the present.

8  
9 **RESPONSE TO SPECIAL INTERROGATORY NO. 24:**

10 Responding Party objects on the grounds that it did not have an ownership interest  
11 in the SUBJECT PREMISES until December 28, 2012. As to the time period prior to  
12 December 28, 2012, Responding Party's response is based upon a review of the file and is  
13 not based upon personal knowledge. Investigation and discovery are ongoing.

14 Responding Party reserves the right to supplement or amend this response at a later date  
15 as information becomes available.

16 Subject to the general objections and without waiving the foregoing objection, the  
17 Responding Party answers that the below PERSONS drafted architectural drawings for  
18 purposes of permit applications for alteration or demolition of the SUBJECT PREMISES  
19 between January 1, 2005 to the present:

20  
21 Patrick Buscovich & Associates SE, Inc.  
22 235 Montgomery Street, Suite 823  
23 San Francisco, California 94104-3105  
(415) 788-2708

24 **SPECIAL INTERROGATORY NO. 25:**

25 IDENTIFY all current and former members of 1049 Market Street LLC.

26 ///

27 ///

28



APPROVED  
Dept. of Building Insp.

AUG 02 2013

Tom C. Hui  
TOM C. HUI, S.E.  
ACTING DIRECTOR  
DEPT. OF BUILDING INSPECTION

ED FOR ISSUANCE

PG. 3/8

255:200711850

APPLICATION FOR BUILDING PERMIT  
ADDITIONS, ALTERATIONS OR REPAIRS

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF BUILDING INSPECTION

FORM 3  OTHER AGENCIES REVIEW REQUIRED

APPLICATION IS HEREBY MADE TO THE DEPARTMENT OF BUILDING INSPECTION OF SAN FRANCISCO FOR PERMISSION TO BUILD IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS SUBMITTED HERewith AND ACCORDING TO THE DESCRIPTION AND FOR THE PURPOSE SET FORTH.

FORM 8  OVER-THE COUNTER ISSUANCE

NUMBER OF PLAN SETS 6/12

DO NOT WRITE IN THESE SPACES

NO. OF FLOORS	FLOOR AREA PER FLOOR (SQ. FT.)	(A) SQUARE FOOTAGE OF JOB	NO. OF ROOMS
13	4,212	10,000	12
NO. OF UNITS	NO. OF STORIES	NO. OF EXISTING ROOMS OF JOB	NO. OF ROOMS TO BE ADDED
1	12	12	0

APPLICATION NUMBER: 13-144  
APPROVAL NUMBER: 13-144

BOARD OF APPEALS

NOV 08 2013

APPEAL # 13-144

INFORMATION TO BE FURNISHED BY ALL APPLICANTS

LEGAL DESCRIPTION OF EXISTING BUILDING			
NO. OF FLOORS	NO. OF STORIES	NO. OF ROOMS	NO. OF UNITS
13	12	12	12
DESCRIPTION OF BUILDING AFTER PROPOSED ALTERATION			
NO. OF FLOORS	NO. OF STORIES	NO. OF ROOMS	NO. OF UNITS
13	12	12	12
ADDITIONAL INFORMATION			
IS THIS THE ALTERNATE PERMITTING METHOD?	IS THIS THE ALTERNATE PERMITTING METHOD?	IS THIS THE ALTERNATE PERMITTING METHOD?	IS THIS THE ALTERNATE PERMITTING METHOD?
NO	NO	NO	NO

LEGAL DESCRIPTION: 1375 CALIFORNIA STREET, SUITE 710 SAN FRANCISCO, CA 94109-3675

APPLICANT: [Signature]

IMPORTANT NOTICES

Be aware that the applicant is responsible for obtaining a Building Permit including such things as San Francisco Building Code and San Francisco Planning Code.

The project of building or structure or substantially altered during construction, to be done from 8:00 PM to 5:00 AM, shall be subject to the provisions of the San Francisco Building Code.

Permit to San Francisco Building Code, the building permit shall be posted on the job. The permit is non-transferable and cannot be used for any other building job.

It is the responsibility of the applicant to determine if the proposed work is subject to the provisions of the San Francisco Building Code, and to obtain the necessary permits and fees required under the Building Code for the proposed work.

ANY APPEALS MUST BE FILED WITHIN 30 DAYS OF THE DATE OF THE PERMITTING AGENCY'S DECISION.

PLEASE NOTE TO BE RECEIVED FROM THE PERMITTING AGENCY'S OFFICE OF PERMIT COMPLIANCE POSTED ON THE WEBSITE OF THE PERMITTING AGENCY.

APPROVAL OF THIS APPLICATION DOES NOT CONSTITUTE AN APPROVAL FOR THE ELECTRICAL WORK OR PLUMBING WORK. A SEPARATE PERMIT FOR THE WORK AND PLUMBING MUST BE OBTAINED FROM THE PERMITTING AGENCY'S OFFICE OF PERMIT COMPLIANCE.

THIS IS NOT A BUILDING PERMIT. NO WORK SHALL BE STARTED UNTIL A BUILDING PERMIT IS OBTAINED.

It is the responsibility of the applicant to determine if the proposed work is subject to the provisions of the San Francisco Building Code, and to obtain the necessary permits and fees required under the Building Code for the proposed work.

CHECK APPROVAL BOX

- COMPLETE
- UNDERWAY
- STOPPED
- OTHER

APPLICANT'S CERTIFICATION

I HEREBY CERTIFY AND AGREE THAT IF A PERMIT IS ISSUED FOR THE CONSTRUCTION DESCRIBED IN THIS APPLICATION, ALL THE REQUIREMENTS OF THE PERMIT AND ALL OTHER APPLICABLE LAWS WILL BE COMPLIED WITH.

[Signature]

APPLICANT COPY

NOTICE TO APPLICANT

HOLD HARMLESS CLAIMS. The permittee hereby certifies that the permit, approval or license is issued and held in accordance with the laws of the State of California, and that the permittee is not liable for any claims, damages or expenses for damages resulting from operations under this permit, approval or license of the City and County of San Francisco against its work, claims, damages or expenses.

In compliance with the provisions of Section 26000 of the Labor Code of the State of California, the applicant shall have a minimum of 72 hours of pre-employment training or shall include in the permit, approval or license, a minimum of 72 hours of pre-employment training or shall include in the permit, approval or license, a minimum of 72 hours of pre-employment training.

I hereby certify under penalty of perjury that I am the holder of the following information:

1. I have not and will not provide a certificate of approval to sell before for market, transportation, or distribution of the City and County of San Francisco from and against any work or claim, damages or expenses for damages resulting from operations under this permit, approval or license of the City and County of San Francisco against its work, claims, damages or expenses.
2. I have not and will not provide a certificate of approval to sell before for market, transportation, or distribution of the City and County of San Francisco from and against any work or claim, damages or expenses for damages resulting from operations under this permit, approval or license of the City and County of San Francisco against its work, claims, damages or expenses.
3. I have not and will not provide a certificate of approval to sell before for market, transportation, or distribution of the City and County of San Francisco from and against any work or claim, damages or expenses for damages resulting from operations under this permit, approval or license of the City and County of San Francisco against its work, claims, damages or expenses.
4. I have not and will not provide a certificate of approval to sell before for market, transportation, or distribution of the City and County of San Francisco from and against any work or claim, damages or expenses for damages resulting from operations under this permit, approval or license of the City and County of San Francisco against its work, claims, damages or expenses.
5. I have not and will not provide a certificate of approval to sell before for market, transportation, or distribution of the City and County of San Francisco from and against any work or claim, damages or expenses for damages resulting from operations under this permit, approval or license of the City and County of San Francisco against its work, claims, damages or expenses.

CONDITIONS AND STIPULATIONS

REFER TO: APPROVED: <i>Jane ably (Amw)</i> BUILDING INSPECTOR, DEPT. OF BLDG. INF.	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/> APPROVED: DEPARTMENT OF CITY PLANNING	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/> APPROVED: LOW-RISE "B" N/A July 8/2/13 BUREAU OF FIRE PREVENTION & PUBLIC SAFETY	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/> APPROVED: MECHANICAL ENGINEER, DEPT OF BLDG. INSPECTION	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input checked="" type="checkbox"/> APPROVED: struct. only Gary S. Ho, DBI JUL 26 2013 CIVIL ENGINEER, DEPT. OF BLDG. INSPECTION	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/> APPROVED: Street Space Only By <i>[Signature]</i> 8/1/13 Clinton Crox, O/W/BSM SUPERVISOR	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/> APPROVED: DEPARTMENT OF PUBLIC HEALTH	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/> APPROVED: REDEVELOPMENT AGENCY	DATE: 7/26/13 REASON: over to process (CES) 24 NOTIFIED MR. _____
<input type="checkbox"/> APPROVED: HOUSING INSPECTION DIVISION	DATE: _____ REASON: _____ NOTIFIED MR. _____

HOLD SECTION - NOTE DATES AND NAMES OF ALL PERSONS NOTIFIED DURING PROCESSING

BOARD OF APPEALS

NOV 08 2013

APPEAL # 13-144

I agree to comply with all conditions or stipulations of the various license or departments noted on this application, and attached statements of conditions or stipulations, which are hereby made a part of this application.

Number of attachments  OWNER'S AUTHORIZED AGENT \_\_\_\_\_

1 (reading) "we eventually discovered unbeknownst to  
2 management," "we eventually discovered unbeknownst to  
3 management some commercial renters had begun living in  
4 their units. In late 1995, we decided to convert the  
5 building's office suites to live-work lofts."

6 So this has been residential housing since at  
7 least 1995.

8 We have a craigslist ad here on the screen that  
9 was -- as you see, it says "San Francisco housing,  
10 apartments, housing." This is for Melissa Bracero's  
11 (phonetic), Appellant's unit. She made her notes here  
12 when she called.

13 WOMAN (OFF SCREEN): Would you continue to  
14 speak into the mic, please.

15 MR. COLLIER: Pardon me. It says, "loft takes  
16 a queen-size mattress. Kitchenette with sink and mini  
17 fridge. Bathrooms are shared and cleaned daily.  
18 Laundry in building."

19 Clearly, this is for residential occupancy.  
20 And this was from 2011.

21 Furthermore, the units have kitchenettes, as  
22 advertised. I just wanted to show you a couple of  
23 photos of kitchenettes. That's one of them in one of  
24 the units. And a second one. This is how the units are  
25 rented, with these kitchenettes under the loft.

1 I want to rebut the claim that the unit is not  
2 compliant with fire code. California Fire Code Section  
3 1021 requires two exits per story, not per unit. And,  
4 as noticed on the plans, there are two exits per story.

5 The requirement of a rescue window in R-2  
6 occupancy is exempted because the building is fully  
7 sprinklered. Thirty-six units in the building also have  
8 windows, so those units don't even -- they do have exit  
9 rescue windows.

10 And the permit holder has admitted this, as  
11 noted in our brief. They did it at the Building  
12 Commission, that the building is code compliant.

13 And Item 24, on the overhead, Mr. Gall admits  
14 in two e-mails in 2010 and 2011 that he had  
15 conversations with Don Fields, the fire inspector. He  
16 says, all indications from Don Fields are that fire code  
17 is met due to sprinklers, exits, et cetera, and walls  
18 being one-hour fire-rated.

19 He also says in the 2010 e-mail that Don  
20 answered my main question regarding enclosed stairwells  
21 providing two means of egress.

22 Also wanted to quickly show you that it is  
23 sprinklered in all the units. These -- this is a photo  
24 of sprinklers in the common area, and then each unit  
25 also is separately sprinklered. There's a couple of

1 pictures of sprinklers in various units.

2 So, essentially, the Zoning Administrator  
3 abused his discretion because he didn't address the  
4 Prop M requirements in his release letter. And I'll  
5 address that more in my rebuttal.

6 Would you want to take the exhibits?

7 COMMISSIONER LAZARUS: No, thank you.

8 EXECUTIVE DIRECTOR GOLDSTEIN: Mr. Zacks.

9 MR. ZACKS: Thank you very much. I'm Andrew  
10 Zacks.

11 Honorable Members of the Board, 1049 Market  
12 Street was constructed as a commercial building in 1907,  
13 and it has been a commercial office building since that  
14 date. It's not a residential building.

15 In the mid-1990s, the prior owner of the  
16 property permitted residential occupancies to occur at  
17 this property. However, in 2007, the City and County of  
18 San Francisco issued a notice of violation against those  
19 occupancies and demanded that they be addressed.

20 From 2007 until the property was sold in 2010  
21 to the new owner, the prior owner attempted to bring the  
22 building into compliance to allow for the residential  
23 occupancies, and that was unsuccessful.

24 After the current owner purchased the property  
25 in 2010, the owner continued its efforts to bring the

1 Inspection Services, and through the investigation, it  
2 revealed that all spaces are approximately 60 plus.  
3 Permit research showed only six conversions, on the  
4 sixth floor.

5 The result of that was that Housing Inspection  
6 Services actually transferred the case to Building  
7 Inspection Division or code enforcement, and we ended up  
8 writing a notice of violation. And I want to read it  
9 out as well.

10 A complaint has been received by the Department  
11 regarding the illegal conversion of office space to  
12 live-work units in the building. Permit Application  
13 9104752 was approved for six live-work units on the top  
14 floor. Site inspection revealed existing office units  
15 converted to habitable space on remaining floors. No  
16 permit exists for this conversion.

17 The action required was obtain a building  
18 permit with Planning Department approval for conversion  
19 of office units to live-work units.

20 That notice of violation was issued on the 25th  
21 of October 2007. The permit that was under suspension  
22 and then got released was to comply with that notice of  
23 violation, demolition of office walls on fifth floor  
24 through first floor, and that got issued on the 2nd of  
25 August 2013.

1 you can involve people from other departments. You can  
2 have Fire Department, mechanical, structural, building  
3 -- it's a good -- it's a good process.

4 That -- that process has not been followed up  
5 on. That's what I'm being told. That the -- that that  
6 is still outstanding.

7 There is a path to legalization for live-works  
8 in this building. There are exceptions in the San  
9 Francisco Building Code under AB005 which refer to the  
10 local equivalencies, and I believe that that would be a  
11 good -- an avenue if they wanted to go -- is there for  
12 them.

13 And regarding -- that would eliminate the need  
14 for the egress windows. And also, it would require life  
15 safety upgrades, sprinklers, fire alarms, but there are  
16 -- there are -- California code, as well, would allow  
17 conditions that exist to be legalized.

18 Really, that's about all that I have to say,  
19 apart from -- you know, it's -- it's there for them if  
20 they want to apply for it. We're still waiting on that  
21 formal request for a preapplication meeting.

22 And that's what -- that's what my research for  
23 tonight's hearing has led me, anyway.

24 So, and I have some -- I did get some documents  
25 from Mr. Maw today on the sections of code that they

1 address the specific fire code issues and cite to you  
2 the specific State Fire Code provisions that are  
3 applicable in this case.

4 I want to correct the record. My client bought  
5 the property in 2012, not 2010. I misspoke in that  
6 regard.

7 Last 30 seconds for Mr. Buscovich.

8 MR. BUSCOVICH: Good evening, Commissioners.

9 My advice about the danger of this building was  
10 to the previous owner. I don't know what that owner  
11 said to the current owner. It is a hazardous building,  
12 specifically, exiting, egress. One of the code  
13 sections, Section 1029 of the California Building Code,  
14 which the City does not have the authority to amend or  
15 change, requires egress requirements.

16 There's -- the entire Chapter 10 of the  
17 Building Code requires it, and they're enforced by the  
18 Fire Department, not the Building -- well, in addition  
19 to the Building Department. So the Building Department  
20 is saying they can change the code. They have to talk  
21 to the Fire Department about that, and no representative  
22 of the Fire Department is here.

23 Thank you.

24 COMMISSIONER WILSON: Could I -- I have a  
25 question.

1 MR. DUFFY: Commissioners, I just want to  
2 repeat that the D.B.I. has been asking for a formal  
3 preapplication meeting so that they can apply for a path  
4 to legalize as live-work. There are exceptions in the  
5 code that will allow this.

6 I have an information sheet here that addresses  
7 Section 1029.1, which Mr. Buscovich was referring to,  
8 that seems to allow for the lack of the egress windows  
9 in parts of the building.

10 So there are -- I just want to repeat that  
11 there are -- there are -- there may be code issues  
12 there, but there is an avenue for them to pursue that.

13 Okay. Thank you.

14 COMMISSIONER HONDA: I got a question. Is  
15 there anyone in the public, in our audience, that has  
16 rented after 2012? If so, please raise their hand.

17 Can you please step forward to the podium,  
18 please.

19 Go ahead. Ask your question.

20 So when did you sign the lease with the current  
21 landowner?

22 MR. CROSSMAN: I don't have the date. I didn't  
23 come here to present.

24 Kimo Crossman (phonetic).

25 COMMISSIONER HONDA: So was it in 2012?

1           4.     I am informed and believe that the Property's former owner embarked on a long,  
2 thorough, and costly attempt to legalize the residential use, including engaging engineers and  
3 other consultants at substantial cost and meeting with DBI officials. The Owner did the same. It  
4 became clear, however, that there was no feasible way to legalize the residential use. To create  
5 the required windows for residential occupancy, I am informed and believe that the Owner  
6 would have to cut multiple light courts into the center of the Property, from floor two through  
7 the top. This work would destroy 20-30 percent of floor space, and it would trigger a  
8 mandatory seismic retrofit (and ruin the Property's floor plan). Altogether, the cost of that work  
9 would exceed the value of the Property.  
10

11           5.     Although the Owner met with DBI and Planning officials numerous times, no  
12 path to legalization of residential use was ever presented in writing to the Owner, and in no  
13 event was a path suggested that would feasibly comply with the requirement for rescue access  
14 windows.  
15

16           6.     On August 2, 2013, the Owner obtained Building Permit No. 201307262890  
17 (the "Permit") to "comply with Notice of Violation # 200711850" by demolishing the units'  
18 walls (which were lawfully installed as office walls). The Property's legal use and the proposed  
19 use were and are "office/retail/live work."  
20

21           7.     The Owner then served 60-Day Notices to Quit on all occupants with residential  
22 use at the Property on September 27 and October 28, 2013 in complete reliance on the  
23 aforementioned Notices of Violation and the Permit. Along with these notices, the Owner spent  
24 more than \$120,000 on mandatory relocation payments. Some occupants vacated the Property  
25 in reliance thereon. I am informed and believe that both the Owner and the occupants relied on  
26 the Notices of Violation and the Permit in taking these action.  
27  
28

ZACKS & FRIEDMAN, P.C.  
235 MONTGOMERY STREET, SUITE 400  
SAN FRANCISCO, CALIFORNIA 94104

1           12.    The Owner has never had an intention to abandon the Property's commercial  
2 office use. The commercial-lease occupants were largely engaged in arts-related businesses in  
3 the units.

4           13.    All of the units combined on floors 1-5 would total between 25,000 and 26,000  
5 square feet. Not all of the units have experienced a break in commercial office use for more  
6 than five years. The occupied units only constitute approximately 11,261 square feet. I am  
7 informed and believe that much less than 25,000 square feet has ever been used for residential  
8 use for any period of five years on floors 2-5.

9           14.    If the Permit is revoked or suspended, the Owner will not have a permit to  
10 restore the Property's commercial office use. Without the ability to meet the state Fire Code  
11 requirements for residential use, the Owner will be unable to use floors 2-5 of the Property,  
12 which will dramatically affect the value of the Property as a whole, up to an 80 percent loss.

13           15.    I am informed and believe that legalization of the residential use would require a  
14 structural retrofit that would cost more than the Property itself is worth (and which would  
15 physically remove large portions of the Property, including lawful live/work units on the sixth  
16 floor, to create light-courts for rescue access).

17           16.    The Owner purchased the Property based on floors 2-5 being legally authorized  
18 for commercial office use, and the purchase price was based thereon.

19           17.    In good-faith reliance on the Notices of Violation and Permit, the Owner served  
20 60-Day Notices to Quit on all occupants with residential use at the Property. Along with these  
21 notices, the Owner spent more than \$325,000 on relocation payments to the occupants as  
22 required by the Rent Ordinance, in addition to substantial related fees paid to attorneys,  
23  
24  
25  
26  
27  
28

-  
DECLARATION OF JOHN GALL

ZACKS & FREEDMAN, P.C.  
235 MONTGOMERY STREET, SUITE 400  
SAN FRANCISCO, CALIFORNIA 94104

1 ANDREW M. ZACKS (SBN 147794)  
2 RYAN J. PATTERSON (SBN 277971)  
3 ZACKS & FREEDMAN, P.C.  
4 235 Montgomery Street, Suite 400  
San Francisco, CA 94104  
Tel: (415) 956-8100  
Fax: (415) 288-9755

5 Attorneys for John Gall and Terry Bogart

6  
7  
8 SAN FRANCISCO BOARD OF APPEALS

9  
10 DECLARATION OF TERRY BOGART

11 Appeal No.: 15-022  
12 Project Address: 1049-1051 Market Street  
13 Hearing Date: April 8, 2015

14 I, Terry Bogart, declare as follows:

15 1. I make this declaration based on facts personally known to me, except as to  
16 those facts stated on information and belief, which facts I believe to be true.

17 2. I purchased the property commonly known as 1049 Market Street, San  
18 Francisco, California (the "Property") in or about 1992 and sold the Property in or about 1992.  
19 I remained the new owner's agent until December 2012, when that owner sold the Property to  
20 1049 Market Street, LLC (the "Owner"). I have remained intimately involved with the  
21 Property's permitting to date. I have done extensive permit research on the Property and am  
22 familiar with its permitting history and historic use.

23 3. The Property is a six-story building in the mid-Market corridor. I am informed  
24 and believe that the Property was constructed ca. 1907 as a commercial office building with  
25 ground-floor retail. It has no kitchens, and with a few exceptions (in the front and rear) it has no  
26 windows. In the mid-1990s, a former owner entered into commercial leases with a number of  
27  
28

DECLARATION OF TERRY BOGART



**NOTICE OF VIOLATION**  
of the San Francisco Municipal Codes Regarding Unsafe,  
Standard or Noncomplying Structure or Land Use Occupancy

**DEPARTMENT OF BUILDING INSPECTION** NOTICE: 2  
City and County of San Francisco  
1660 Mission St. San Francisco, CA 94103

NUMBER: 200711850  
DATE: 16-FEB-13

ADDRESS: 1049 MARKET ST  
OCCUPANCY/USE: M (MERCANTILE)

BLOCK: 3703 LOT: 067

If checked, this information is based upon site-observation only. Further research may indicate that legal use is different. If so, a revised Notice of Violation will be issued.

PHONE #: -

OWNER/AGENT: SHIH, HO INC  
MAILING SHIH, HO INC  
ADDRESS % TERRY BOGART  
16351 SKYLAND BLVD  
WOODSIDE CA 94062

PERSON CONTACTED @ SITE: SHIH, HO INC

PHONE #: -

**VIOLATION DESCRIPTION:**

VIOLATION DESCRIPTION:	CODE/SECTION#
<input type="checkbox"/> WORK WITHOUT PERMIT	106.1.1
<input type="checkbox"/> ADDITIONAL WORK-PERMIT REQUIRED	106.4.7
<input type="checkbox"/> EXPIRED OR <input type="checkbox"/> CANCELLED PERMIT PA#:	106.4.4
<input type="checkbox"/> UNSAFE BUILDING <input type="checkbox"/> SEE ATTACHMENTS	102.1

You failed to comply with NOV dated 10/25/2007. Therefore this Department has initiated abatement proceedings against this property.

**CORRECTIVE ACTION:**

STOP ALL WORK SFBC 104.2.4

415-558-6008

FILE BUILDING PERMIT WITHIN DAYS  (WITH PLANS) A copy of This Notice Must Accompany the Permit Application  
 OBTAIN PERMIT WITHIN DAYS AND COMPLETE ALL WORK WITHIN DAYS, INCLUDING FINAL INSPECTION AND SIGNOFF.

CORRECT VIOLATIONS WITHIN DAYS.  NO PERMIT REQUIRED

YOU FAILED TO COMPLY WITH THE NOTICE(S) DATED 25-OCT-07, THEREFORE THIS DEPT. HAS INITIATED ABATEMENT PROCEEDINGS.

• FAILURE TO COMPLY WITH THIS NOTICE WILL CAUSE ABATEMENT PROCEEDINGS TO BEGIN.  
SEE ATTACHMENT FOR ADDITIONAL WARNINGS.

This case has been referred to our Code Enforcement Division. You will be notified of a time, place and date of a Director's Hearing.

INVESTIGATION FEE OR OTHER FEE WILL APPLY

9x FEE (WORK W/O PERMIT AFTER 9/1/60)  2x FEE (WORK EXCEEDING SCOPE OF PERMIT)  
 OTHER  REINSPECTION FEE \$  NO PENALTY  
(WORK W/O PERMIT PRIOR TO 9/1/60)

APPROX DATE OF WORK W/O PERMIT

VALUE OF WORK PERFORMED W/O PERMITS \$

BY ORDER OF THE DIRECTOR, DEPARTMENT OF BUILDING INSPECTION

CONTACT INSPECTOR: Robert J Power  
PHONE # 415-558-6008

DIVISION: BID

DISTRICT: 17

By: (Inspector's Signature) \_\_\_\_\_

Exhibit 4



# SAN FRANCISCO PLANNING DEPARTMENT

## Release of Suspension Request

February 2, 2015

Mr. Tom Hui, S.E., CBO  
Director  
Department of Building Inspection  
1660 Mission Street  
San Francisco, CA 94103

Building Application No.: 201307262890  
Property Address: 1049-1051 Market Street  
Block and Lot: 3703 / 067  
Zoning District: C-3-G / 90-X  
Staff Contact: Corey Teague, Assistant Zoning Administrator  
(415) 575-9081 or [corey.teague@sfgov.org](mailto:corey.teague@sfgov.org)

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2470

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

Dear Director Hui,

This letter is to request that the Department of Building Inspection (DBI) release suspension of Building Permit Application Number 201307262890 ("Permit") for the property at 1049-1051 Market Street.

On October 28, 2013, Corey A. Teague (Acting Zoning Administrator) submitted a Request for Suspension for the Permit because it was not reviewed by the Planning Department, and there was a question as to whether the work proposed in the Permit triggered additional requirements and/or procedures under the Planning Code.

That Request for Suspension was appealed to the Board of Appeals by John Gall on November 13, 2013. Planning Department staff met with John Gall and others representing the subject property in January 2014. The result of the meeting was a shared understanding that the property owner(s) would request a letter of determination from the Zoning Administrator regarding the possibility of converting some or all of the unpermitted habitable space referenced in DBI Notice of Violation No. 200711850 into dwelling units that are integrated with the working space of artists, artisans and other craftspersons, pursuant to Planning Code Section 204.4(b). Subsequent to that meeting, the appeal of the Request for Suspension was withdrawn on February 19, 2014.

Despite the outcome of the January 2014 meeting the Planning Department received no communication from the permit holder or property owner(s) until December 2014. At that time, counsel for the property owner(s) requested that the Department either seek reinstatement or revocation of the Permit. The Department understood it to be implicit in this request that the permit holder and property owner(s) no longer intended to move forward with a conversion of

[www.sfplanning.org](http://www.sfplanning.org)

**SIXTY DAY NOTICE OF TERMINATION OF TENANCY**

Jonathan Stoker  
All Occupants In Possession  
1049 Market Street, Unit 210  
San Francisco, California

2013 OCT 28 PM 1:59

THIS NOTICE IS GIVEN with respect to those certain premises ("Premises") located at 1049 Market Street, Unit 210, San Francisco, California.

NOTICE IS HEREBY GIVEN that, pursuant to Rent Ordinance Section 37.9(a)(10), Landlord seeks to recover possession in good faith in order to demolish or to otherwise permanently remove the Premises from housing use and has obtained all the necessary permits on or before the date upon which this notice to vacate is given, and does so without ulterior reasons and with honest intent.

YOU ARE HEREBY NOTIFIED that, effective sixty (60) days after service on you of this Notice of Termination of Tenancy, the tenancy by which you hold possession of the Premises will be terminated. At that time, you will be required to vacate and surrender possession of the Premises.

YOU ARE FURTHER NOTIFIED that Landlord shall pay relocation expenses as provided in Rent Ordinance Section 37.9C. Rent Ordinance Section 37.9C provides for additional relocation expenses to Eligible Tenants who are senior or disabled and for households with children. Each Eligible Tenant who is 60 years of age or older or who is disabled within the meaning of Section 12955.3 of the California Government Code, and each household with at least one Eligible Tenant and at least one child under the age of 18

years, shall be entitled to receive an additional payment of \$3,472.00, \$1,713.50 of which shall be paid within fifteen (15) calendar days of Landlord's receipt of written notice from the Eligible Tenant of entitlement to the relocation payment along with supporting evidence, and \$1,713.50 of which shall be paid when the Eligible Tenant vacates the Premises. A copy of Rent Ordinance Section 37.9C and the relocation payment benefits schedule under Rent Ordinance Section 37.9C are provided herewith.

A check in the amount of \$2,603.50 representing one-half (1/2) of the relocation expenses due is enclosed herewith. Landlord will pay the second half of the relocation expenses due when the Premises is vacated.

Dated: October 28, 2013.

MBV LAW LLP

By 

L. Peter Ryan

Telephone: (415) 781-4400

MBV Law LLP

855 Front Street

San Francisco, California 94111

Attorneys for 1049 Market Street, LLC

Advice regarding this notice is available from the San Francisco Residential Rent Stabilization and Arbitration Board at 25 Van Ness Avenue, San Francisco, CA 94102-6033 (415) 252-4602.

Please be advised that if this notice is posted in a conspicuous place on the Premises, the check for relocation benefits was sent by U.S. mail to the address of the Premises on the same day as the posting of the notice.

1 **Sec. 37.9C Tenants Rights To Relocation For No-Fault Evictions.**

2 [Added by Proposition H, effective December 22, 2006; annotated section  
3 37.9C(a)(1) to reference California Civil Code Section 1947.9, which went into  
4 effect on January 1, 2013]

5 (a) Definitions.

6 (1) Covered No-Fault Eviction Notice. For purposes of this section 37.9C, a  
7 Covered No-Fault Eviction Notice shall mean a notice to quit based upon Section 37.9(a)(8),  
8 (10), (11), or (12). [However, effective January 1, 2013, the amount of relocation payments for  
9 temporary displacement of a tenant household under Section 37.9(a)(11) for less than 20 days is  
10 governed by California Civil Code Section 1947.9 and not by this Section.]

11 (2) Eligible Tenant. For purposes of this section 37.9C, an Eligible Tenant shall  
12 mean any authorized occupant of a rental unit, regardless of age, who has resided in the unit for  
13 12 or more months.

14 (b) Each Eligible Tenant who receives a Covered No-Fault Eviction Notice, in addition to  
15 all rights under any other provision of law, shall be entitled to receive relocation expenses from  
16 the landlord, in the amounts specified in section 37.9C(e).

17 (c) On or before the date of service of a Covered No-Fault Eviction Notice, the landlord  
18 shall notify all occupant(s) in the unit in writing of the right to receive payment under this section  
19 37.9C and the amount of that relocation and shall provide a copy of section 37.9C. Such  
20 notification shall include a statement describing the additional relocation expenses available for  
21 Eligible Tenants who are senior or disabled and for households with children. The landlord shall  
22 file a copy of this notification with the Rent Board within 10 days after service of the notice,  
23 together with a copy of the notice to vacate and proof of service upon the tenant.

24 (d) A landlord who pays relocation expenses as required by this section in conjunction  
25 with a notice to quit need not pay relocation expenses with any further notices to quit based  
26 upon the same just cause under Section 37.9(a) for the same unit that are served within 180  
27 days of the notice that included the required relocation payment. The relocation expenses  
28 contained herein are separate from any security or other refundable deposits as defined in  
California Code Section 1950.5. Further, payment or acceptance of relocation expenses shall  
not operate as a waiver of any rights a tenant may have under law.

1 (e) Relocation expenses shall be:

2 (1) Each Eligible Tenant receiving a Covered No-Fault Eviction Notice shall  
3 receive \$4,500. \$2,250 of which shall be paid at the time of the service of the notice to quit, and  
4 \$2,250 of which shall be paid when the unit is vacated. In no case, however, shall the landlord  
5 be obligated under this section 37.9C(e)(1) to provide more than \$13,500 in relocation expenses  
6 to all Eligible Tenants in the same unit.

7 (2) In addition, each Eligible Tenant who is 60 years of age or older or who is  
8 disabled within the meaning of Section 12955.3 of the California Government Code, and each  
9 household with at least one Eligible Tenant and at least one child under the age of 18 years,  
10 shall be entitled to receive an additional payment of \$3,000.00, \$1,500.00 of which shall be paid  
11 within fifteen (15) calendar days of the landlord's receipt of written notice from the Eligible  
12 Tenant of entitlement to the relocation payment along with supporting evidence, and \$1,500 of  
13 which shall be paid when the Eligible Tenant vacates the unit. Within 30 days after notification to  
14 the landlord of a claim of entitlement to additional relocation expenses because of disability, age,  
15 or having children in the household, the landlord shall give written notice to the Rent Board of the  
16 claim for additional relocation assistance and whether or not the landlord disputes the claim.

17 (3) Commencing March 1, 2007, these relocation expenses, including the  
18 maximum relocation expenses per unit, shall increase annually, rounded to the nearest dollar, at  
19 the rate of increase in the "rent of primary residence" expenditure category of the Consumer  
20 Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose Region for  
21 the preceding calendar year, as that data is made available by the United States Department of  
22 Labor and published by the Board.

23 (f) The provisions of this Ordinance shall apply to all notices to quit served on or after  
24 August 10, 2006.



**Relocation Payments for Evictions based on Owner/Relative Move-In OR Demolition/Permanent Removal of Unit from Housing Use OR Temporary Capital Improvement Work OR Substantial Rehabilitation\***

Date of Service of Notice of Termination of Tenancy ("Eviction Notice")	Relocation Amount Due Per Tenant	Maximum Relocation Amount Due Per Unit	PLUS Additional Amount Due for Each Elderly (60 years or older) or Disabled Tenant or Household with Minor Children
3/01/12 - 2/28/13	\$5,153.00	\$15,480.00	\$3,436.00
3/01/13 - 2/28/14	\$5,207.00	\$15,821.00	\$3,472.00

\* See California Section 37.5C for additional relocation requirements for evictions under 37.5(a)(6) (owner/relative move-in), 37.5(a)(10) (demolition/permanent removal), 37.5(a)(11) (temporary work for capital improvement work) and 37.5(a)(12) (substantial rehabilitation). However, effective 1/1/13, the amount of relocation payments for temporary capital improvement evictions under 37.5(a)(11) is less than 20 days is governed by California Civil Code Section 1947.9 and not by the Ordinance Section 37.5C.

**Pagos de traslado por desalojo debidos a mudanza del propietario/pariente O por demolición/eliminación definitiva del uso de la unidad como vivienda O trabajos temporales de mejora de capital O rehabilitación sustancial\***

Fecha del servicio de entrega del aviso de desalojo	Monto de traslado correspondiente por inquilino	Monto de traslado máximo correspondiente por unidad	ADICIONAL Monto adicional correspondiente por cada persona mayor de edad (50 años o más) o inquilino discapacitado o familia con niños menores
3/01/12 - 2/28/13	\$5,153.00	\$15,480.00	\$3,436.00
3/01/13 - 2/28/14	\$5,207.00	\$15,821.00	\$3,472.00

\* La Sección 37.5C es la Ordenanza para requisitos adicionales de traslado por desalojo según 37.5(a) (6) (propietario o familiar mudanza), 37.5(a)(10) (demolición o eliminación definitiva del uso de la unidad como vivienda), 37.5(a)(11) (trabajos temporales de mejora de capital) y 37.5(a)(12) (rehabilitación sustancial). Sin embargo, a partir de 1/1/13, el monto del pago de traslado para los desalojos temporales de mejora de capital bajo la Sección 37.5(a)(11) por menos de 20 días está determinado por el Código Civil de California 1947.9 y no por la Sección 37.5C de la Ordenanza.

以業主/親屬身份入住，或拆除/出租單位，且永遠不再作為居住房屋使用或臨時資本設備改善工程或大規模裝修或由進行迫遷的搬遷費。

送達通知的日期	每位房客應得的搬遷費金額	每個單位應得的最多搬遷費金額	外加 每位老年 (60 歲或以上) 或殘障房客或每戶有未成年兒童的家庭應得的額外金額
3/01/12 - 2/28/13	\$5,153.00	\$15,480.00	\$3,436.00
3/01/13 - 2/28/14	\$5,207.00	\$15,821.00	\$3,472.00

\* 請參閱 (加州) 37.5C 節中有關條款 37.5(a)(6) (業主/親屬入住)、第 37.5(a)(10) 節 (拆除/出租單位永遠不再使用) 及第 37.5(a)(11) 節 (臨時資本設備改善工程) 及第 37.5(a)(12) 節 (大規模裝修) 的額外搬遷費要求。[然而從 2013 年 1 月 1 日起，若上述條款所適用的少於 20 天的臨時改善工程 37.5(a)(11) 條款所定，則其應得之金額由加州民事法典 1947.9 條所規定。]

36 Van Ness Avenue #320  
San Francisco, CA 94102-6033

www.sfrb.org

Phone 415.252.4602  
FAX 415.252.4699

**SIXTY DAY NOTICE OF TERMINATION OF TENANCY**

Patrick Cook

All Occupants In Possession

1049 Market Street, Unit 413

San Francisco, California

THIS NOTICE IS GIVEN with respect to those certain premises ("Premises") located at 1049 Market Street, Unit 413, San Francisco, California.

NOTICE IS HEREBY GIVEN that, pursuant to Rent Ordinance Section 37.9(a)(10), Landlord seeks to recover possession in good faith in order to demolish or to otherwise permanently remove the Premises from housing use and has obtained all the necessary permits on or before the date upon which this notice to vacate is given, and does so without ulterior reasons and with honest intent.

YOU ARE HEREBY NOTIFIED that, effective sixty (60) days after service on you of this Notice of Termination of Tenancy, the tenancy by which you hold possession of the Premises will be terminated. At that time, you will be required to vacate and surrender possession of the Premises.

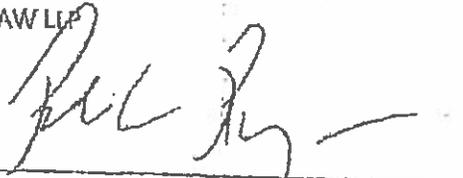
YOU ARE FURTHER NOTIFIED that Landlord shall pay relocation expenses as provided in Rent Ordinance Section 37.9C. Rent Ordinance Section 37.9C provides for additional relocation expenses to Eligible Tenants who are senior or disabled and for households with children. Each Eligible Tenant who is 60 years of age or older or who is disabled within the meaning of Section 12955.3 of the California Government Code, and each household with at least one Eligible Tenant and at least one child under the age of 18

years, shall be entitled to receive an additional payment of \$3,472.00, \$1,713.50 of which shall be paid within fifteen (15) calendar days of Landlord's receipt of written notice from the Eligible Tenant of entitlement to the relocation payment along with supporting evidence, and \$1,713.50 of which shall be paid when the Eligible Tenant vacates the Premises. A copy of Rent Ordinance Section 37.9C and the relocation payment benefits schedule under Rent Ordinance Section 37.9C are provided herewith.

A check in the amount of \$2,603.50 representing one-half (1/2) of the relocation expenses due is enclosed herewith. Landlord will pay the second half of the relocation expenses due when the Premises is vacated.

Dated: September 27, 2013.

MBV LAW LLP

By 

L. Peter Ryan

Telephone: (415) 781-4400

MBV Law LLP

855 Front Street

San Francisco, California 94111

Attorneys for 1049 Market Street, LLC

Advice regarding this notice is available from the San Francisco Residential Rent Stabilization and Arbitration Board at 25 Van Ness Avenue, San Francisco, CA 94102-6033 (415) 252-4602. Please be advised that if this notice is posted in a conspicuous place on the Premises, the check for relocation benefits was sent by U.S. mail to the address of the Premises on the same day as the posting of the notice.

1 **Sec. 37.9C Tenants Rights To Relocation For No-Fault Evictions.**

2 [Added by Proposition H, effective December 22, 2006; annotated section  
3 37.9C(a)(1) to reference California Civil Code Section 1947.9, which went into  
4 effect on January 1, 2013]

5 (a) Definitions.

6 (1) Covered No-Fault Eviction Notice. For purposes of this section 37.9C, a  
7 Covered No-Fault Eviction Notice shall mean a notice to quit based upon Section 37.9(a)(8),  
8 (10), (11), or (12). [However, effective January 1, 2013, the amount of relocation payments for  
9 temporary displacement of a tenant household under Section 37.9(a)(11) for less than 20 days is  
10 governed by California Civil Code Section 1947.9 and not by this Section.]

11 (2) Eligible Tenant. For purposes of this section 37.9C, an Eligible Tenant shall  
12 mean any authorized occupant of a rental unit, regardless of age, who has resided in the unit for  
13 12 or more months.

14 (b) Each Eligible Tenant who receives a Covered No-Fault Eviction Notice, in addition to  
15 all rights under any other provision of law, shall be entitled to receive relocation expenses from  
16 the landlord, in the amounts specified in section 37.9C(e).

17 (c) On or before the date of service of a Covered No-Fault Eviction Notice, the landlord  
18 shall notify all occupant(s) in the unit in writing of the right to receive payment under this section  
19 37.9C and the amount of that relocation and shall provide a copy of section 37.9C. Such  
20 notification shall include a statement describing the additional relocation expenses available for  
21 Eligible Tenants who are senior or disabled and for households with children. The landlord shall  
22 file a copy of this notification with the Rent Board within 10 days after service of the notice,  
23 together with a copy of the notice to vacate and proof of service upon the tenant.

24 (d) A landlord who pays relocation expenses as required by this section in conjunction  
25 with a notice to quit need not pay relocation expenses with any further notices to quit based  
26 upon the same just-cause under Section 37.9(a) for the same unit that are served within 180  
27 days of the notice that included the required relocation payment. The relocation expenses  
28 contained herein are separate from any security or other refundable deposits as defined in  
California Code Section 1950.5. Further, payment or acceptance of relocation expenses shall  
not operate as a waiver of any rights a tenant may have under law.

1 GREGORY J. BROD, CSB 184456  
2 BROD LAW FIRM, P.C.  
3 96 Jessie Street  
4 San Francisco, California 94105  
5 Telephone (415) 397-1130  
6 Facsimile (415) 397-2121

**F I L E D**  
Superior Court of California  
County of San Francisco

JAN - 8 2014

CLERK OF THE COURT  
BY: DENNIS TOYAMA  
Deputy Clerk

7 Attorneys for Plaintiffs  
8 CLARENCE WILSON, JONATHAN  
9 STOKER, TORRANCE ANTONI,  
10 JASON GROHMAN, MARK TSE,  
11 MICHAEL GREENLEES, RONALD  
12 ROSEN, JUSTIN BERTHELSEN,  
13 MICHAEL MASON, STEBAN GUAVARA,  
14 ANDREW GREENLEES

11 SUPERIOR COURT OF CALIFORNIA  
12 FOR THE COUNTY OF SAN FRANCISCO  
13 UNLIMITED CIVIL JURISDICTION  
14

15 CLARENCE WILSON, JONATHAN  
16 STOKER, TORRANCE ANTONI, JASON  
17 GROHMAN, MARK TSE, MICHAEL  
18 GREENLEES, RONALD ROSEN, JUSTIN  
19 BERTHELSEN, MICHAEL MASON,  
20 STEBAN GUAVARA, ANDREW  
21 GREENLEES,

22 Plaintiffs,

23 vs.

24 1049 MARKET STREET, LLC, and DOES 1  
25 TO 100, inclusive  
26

27 Defendants.  
28

Case No C G C - 14 - 536672

COMPLAINT FOR DAMAGES [JURY  
DEMANDED]

1. Breach of Implied Warranty of Habitability;
2. Tenant Harassment [Rent Ordinance § 37.10B];
3. Wrongful Endeavor to Recover Possession of Rental Unit [Rent Ordinance § 37.9];
4. Intentional Infliction of Emotional Distress;
5. Negligent Infliction of Emotional Distress;
6. Breach of Covenant of Good Faith and Fair Dealing;
7. Breach of Covenant of Quiet Enjoyment.

COMPLAINT FOR DAMAGES

- 1

1 Plaintiffs CLARENCE WILSON, JONATHAN STOKER, TORRANCE ANTONI,  
2 JASON GROHMAN, MARK TSE, MICHAEL GREENLEES, RONALD ROSEN, JUSTIN  
3 BERTHELSEN, MICHAEL MASON, STEBAN GUAVARA and ANDREW GREENLEES  
4 complain and allege against Defendants 1049 MARKET STREET, I.L.C, and DOES 1 TO 100,  
5 and each of them, as follows:  
6

7 1. Plaintiff CLARENCE WILSON is an individual, and at all relevant times  
8 mentioned herein, a resident of the City and County of San Francisco.  
9

10 2. Plaintiff JONATHAN STOKER is an individual, and at all relevant times  
11 mentioned herein, a resident of the City and County of San Francisco.  
12

13 3. Plaintiff TORRANCE ANTONI is an individual, and at all relevant times  
14 mentioned herein, a resident of the City and County of San Francisco.  
15

16 4. Plaintiff JASON GROHMAN is an individual, and at all relevant times mentioned  
17 herein, a resident of the City and County of San Francisco.  
18

19 5. Plaintiff MARK TSE is an individual, and at all relevant times mentioned herein,  
20 a resident of the City and County of San Francisco.  
21

22 6. Plaintiff MICHAEL GREENLEES is an individual, and at all relevant times  
23 mentioned herein, a resident of the City and County of San Francisco.  
24

25 7. Plaintiff RONALD ROSEN is an individual, and at all relevant times mentioned  
26 herein, a resident of the City and County of San Francisco.  
27

28 8. Plaintiff JUSTIN BERTHELSEN is an individual, and at all relevant times  
mentioned herein, a resident of the City and County of San Francisco.  
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9. Plaintiff MICHAEL MASON is an individual, and at all relevant times mentioned  
herein, a resident of the City and County of San Francisco.  
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10. Plaintiff STEBAN GUAVARA is an individual, and at all relevant times mentioned herein, a resident of the City and County of San Francisco.

11. Plaintiff ANDREW GREENLEES is an individual, and at all relevant times mentioned herein, a resident of the City and County of San Francisco.

12. Defendant 1049 MARKET STREET, LLC is a business entity, which was at all relevant times mentioned herein, doing business in the City and County of San Francisco.

13. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as DOES 1 to 100, and each of them, and therefore sue these Defendants by such fictitious names. Plaintiffs will amend this complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Defendants are legally responsible in some manner for the occurrences herein alleged, and that Plaintiffs' damages as herein alleged were proximately caused by said Defendants.

14. At all times mentioned herein, each of the Defendants was the agent, servant and employee of each of the remaining Defendants, and was, at all times mentioned herein, acting within the course and scope of their respective authority as agents, servants and employees, and that each Defendant's conduct was authorized, permitted, consented to and ratified by their Co-Defendants.

15. Defendants 1049 MARKET STREET, LLC (hereinafter "1049 LLC") is, and was at all relevant times mentioned herein, a "Landlord", as it is defined by Chapter 37 of the San Francisco Administrative Code, The Residential Rent Stabilization and Arbitration Ordinance (hereinafter "Rent Ordinance"), of the real property located at 1049 Market Street, San Francisco, CA (hereinafter referred to as the "Subject Property").

1           16. Defendant's predecessor(s) had abandoned the Subject Property's use as primarily  
2 a commercial property more than fifteen (15) years ago, which benefitted the owners at that time,  
3 as well as the City of San Francisco, by providing affordable housing. The Subject Property  
4 subsequently was converted to mostly residential use, and became the primary residence of many  
5 San Franciscans.  
6

7           17. Plaintiff CLARENCE "MARCELE" WILSON, was at all relevant times  
8 mentioned herein, a "Tenant" of a residential unit within the Subject Property, as it is defined by  
9 the Rent Ordinance. In or about July of 2011, Plaintiff WILSON moved into 1049 Market  
10 Street, #306, San Francisco, CA (hereinafter the "WILSON Unit"), which became his primary  
11 residence.  
12

13           18. Plaintiff JONATHAN STOKER, was at all relevant times mentioned herein, a  
14 "Tenant" of a residential unit within the Subject Property, as it is defined by the Rent Ordinance.  
15 In or about September of 2011, Plaintiff STOKER moved into 1049 Market Street, #210, San  
16 Francisco, CA (hereinafter the "STOKER Unit"), which became his primary residence.  
17

18           19. Plaintiff TORRANCE "TORI" ANTONI, was at all relevant times mentioned  
19 herein, a "Tenant" of a residential unit within the Subject Property, as it is defined by the Rent  
20 Ordinance. In or about 1998, Plaintiff ANTONI moved into 1049 Market Street, #212, San  
21 Francisco, CA (hereinafter the "ANTONI Unit"), which became his primary residence.  
22

23           20. Plaintiff JASON GROHMAN, was at all relevant times mentioned herein, a  
24 "Tenant" of a residential unit within the Subject Property, as it is defined by the Rent Ordinance.  
25 In or about October of 2007, Plaintiff GROHMAN moved into 1049 Market Street, #505, San  
26 Francisco, CA (hereinafter the "GROHMAN Unit"), which became his primary residence.  
27  
28

1           21. Plaintiff MARK TSE, was at all relevant times mentioned herein, a "Tenant" of a  
2 residential unit within the Subject Property, as it is defined by the Rent Ordinance. In or about  
3 June of 2008, Plaintiff TSE moved into 1049 Market Street, #203, San Francisco, CA  
4 (hereinafter the "TSE Unit"), which became his primary residence.  
5

6           22. Plaintiff MICHAEL GREENLEES, was at all relevant times mentioned herein, a  
7 "Tenant" of a residential unit within the Subject Property, as it is defined by the Rent Ordinance.  
8 In or about May, 2007, Plaintiff GREENLEES moved into 1049 Market Street, #516, San  
9 Francisco, CA (hereinafter the "GREENLEES Unit"), which became his primary residence.  
10

11           23. Plaintiff RONALD ROSEN, was at all relevant times mentioned herein, a  
12 "Tenant" of a residential unit within the Subject Property, as it is defined by the Rent Ordinance.  
13 In or about September of 2000, Plaintiff ROSEN moved into 1049 Market Street, #410, San  
14 Francisco, CA (hereinafter the "ROSEN Unit"), which became his primary residence. Prior to  
15 moving into the ROSEN Unit, RONALD ROSEN had been a resident of a different unit at the  
16 Subject Property since March of 1997.  
17

18           24. Plaintiff JUSTIN BERTHELSEN, was at all relevant times mentioned herein, a  
19 "Tenant" of a residential unit within the Subject Property, as it is defined by the Rent Ordinance.  
20 In or about January 2009, Plaintiff BERTHELSEN moved into 1049 Market Street, #307, San  
21 Francisco, CA (hereinafter the "BERTHELSEN Unit"), which became his primary residence.  
22

23           25. Plaintiff MICHAEL MASON, was at all relevant times mentioned herein, a  
24 "Tenant" of a residential unit within the Subject Property, as it is defined by the Rent Ordinance.  
25 In or about 2006, Plaintiff MASON moved into 1049 Market Street, #510, San Francisco, CA  
26 (hereinafter the "MASON Unit"), which became his primary residence.  
27  
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1           26. Plaintiff STEBAN GUAVARA, was at all relevant times mentioned herein, a  
2 "Tenant" of a residential unit within the Subject Property, as it is defined by the Rent Ordinance.  
3  
4 In or about June of 2011, Plaintiff GUAVARA moved into 1049 Market Street, #209, San  
5 Francisco, CA (hereinafter the "GUAVARA Unit"), which became his primary residence.

6           27. Plaintiff ANDREW GREENLEES, was at all relevant times mentioned herein, a  
7 "Tenant" of a residential unit within the Subject Property, as it is defined by the Rent Ordinance.  
8  
9 In or about October of 2008, Plaintiff GREENLEES moved into 1049 Market Street, #216, San  
10 Francisco, CA (hereinafter the "ANDREW GREENLEES Unit"), which became his primary  
11 residence.

12           28. The WILSON Unit, STOKER Unit, ANTONI Unit, GROHMAN Unit, TSE Unit,  
13 GREENLEES Unit, ROSEN Unit, BERTHELSEN Unit, MASON Unit, GUAVARA Unit and  
14 ANDREW GREENLEES Unit (hereinafter collectively referred to as the Subject Units") are  
15 each considered a "Rental Unit", as it is defined by the Rent Ordinance. Plaintiffs and each of  
16 them, were, at all times mentioned herein, entitled to and afforded all rights under rent and  
17 eviction control, pursuant to the Rent Ordinance.  
18

19           29. Plaintiffs each signed rental agreements for the Subject Units, respectively, with  
20 Defendant, or a predecessor in interest of Defendant.  
21

22           30. Several Plaintiffs suffer from disabilities and serious medical conditions.

23           31. In or about July of 2007, the San Francisco Department of Building Inspection  
24 (hereinafter "DBI") issued a notice of violation to the Subject Property (Violation No.  
25 #200711850, hereinafter referred to as the "2007 Violation"). For more than six (6) years, no  
26 action took place regarding the 2007 Violation whatsoever, as the owners did nothing to respond  
27 to said violation and no action was taken enforce it.  
28

1           32.    In or about April of 2011, the company Twitter announced its plans to move into  
2 the Mid-Market neighborhood, which is where the Subject Property is located. Twitter's move  
3 to the Mid-Market neighborhood was supported by the City and County of San Francisco, whose  
4 support included providing tax incentives in order to keep this employer within San Francisco.  
5 In addition, the City and County of San Francisco's hope and expectation was that the Mid-  
6 Market neighborhood would become a nicer place to live and work.

8           33.    In or about the spring of 2011, Defendants 1049 MARKET STREET, LLC and  
9 DOBS 1 to 10 became the Landlords of the Subject Property and the Subject Units.

11           34.    Defendant 1049 LLC recognized the extraordinary increase in property values  
12 that the Mid-Market area would realize, and began a course of action designed to recover  
13 possession of the Subject Units, as well as many other residential units in the Subject Property.  
14 Defendants, and each of them, intended to rid the Subject Property of its lawful residents, and  
15 thereby greatly increase the value of the Subject Property.

17           35.    In or about July of 2013, Defendant 1049 LLC had a building permit issued for  
18 the Subject Property, claiming that it planned to demolish the walls in floors 1 through 5 of the  
19 Subject Property in order to comply with the 2007 Violation.

21           36.    Plaintiffs are informed and believe that Defendant's permit of July 2013 was a  
22 sham, in that Defendant intended to use the 2007 Violation as an excuse to rid the Subject  
23 Property of its lawful tenants, all of whom were protected by this City's Rent Ordinance, rent  
24 control, and eviction control. Defendant 1049 LLC even attempted to blame this City's DBI,  
25 claiming it was the DBI that was forcing Defendant to evict dozens and dozens of San Francisco  
26 residents.

27 //

1           37. In or about the summer of 2013, Defendant 1049 LLC began course of action  
2 designed to harass the tenants of the Subject Property, deprive them of their rights, and coerce  
3 them to voluntarily abandon their rightful residences. Defendants, and each of them, 1049 LLC's  
4 conduct included but was not limited to, the following:  
5

6           a. Wrongfully advising Plaintiffs that this City and the San Francisco DBI required  
7 all residential tenancies to be vacated;

8           b. Coercing tenants and Plaintiffs to voluntarily move out or face eviction;

9           c. JOHN GALL of 1049 LLC's telling tenants and Plaintiffs that if they fought an  
10 eviction preceding that they would "never rent in this City again".  
11

12           38. Beginning in or about June of 2013, Defendant 1049 LLC allowed the Subject  
13 Property to fall into a state of disrepair, which was intended to force Plaintiffs to voluntarily  
14 abandon their lawful homes, in disregard of Plaintiffs' rights. Conditions at the Subject  
15 Property, which affected the Subject Units and Plaintiffs, included but were not limited to, the  
16 following:  
17

18           a. allowing or creating disrepair of the Subject Property's front door lock and  
19 security to fall into disrepair;

20           b. allowing or creating disrepair of the Subject Property's elevators;

21           c. allowing or creating the existence of bedbugs;

22           d. allowing or creating disrepair of the Subject Property's heating;

23           e. allowing or creating disrepair of the Subject Property's flooring;

24           f. allowing or creating disrepair of the Subject Property's stairways;

25           g. allowing or creating disrepair of the Subject Property's electrical wiring;

26           h. allowing or creating disrepair of the Subject Property's hot water;  
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- 1 i. allowing or creating disrepair of the Subject Property's fire alarms;
- 2 j. failing to respond to Plaintiffs' complaints, including complaints of bedbug
- 3 infestation, heat, hot water, elevators and security.

4  
5 39. In addition to the aforementioned conditions, Defendant allowed the Subject  
6 Property and Subject Units to become generally dilapidated and neglected maintenance of all of  
7 the Subject Units during the relevant time period.

8  
9 40. As a result of the actions and inactions of Defendants, and each of them, as  
10 described above, drug users and other trespassers were able to access the Subject Property and  
11 severely affected the health, safety and habitability of Plaintiffs' respective homes. Conditions  
12 that resulted in Defendants' actions and inactions included but were not limited to:

13 a. a naked man locking himself in the shared restroom on the second floor in the  
14 Fall of 2013;

15 b. the presence of used hypodermic needles in the shared restrooms on the second  
16 floor in the Fall of 2013;

17 c. the presence of blood in the shared restrooms on the second floor in the Fall of  
18 2013;

19 d. the presence of used hypodermic needles in the stairwells of the Subject Property  
20 in the Fall of 2013.

21  
22 41. Despite multiple requests, Defendants, and each of them, failed to address the  
23 health, safety and habitability concerns at the Subject Property, and within the Subject Units, as  
24 described herein.

25 //  
26 //

1           42. Defendant's actions and inactions as described herein were designed to create  
2 fear, anxiety, emotional distress and worry in each of the tenants of the Subject Property, and to  
3 coerce Plaintiffs to abandon their rightful and lawful homes, without regard for Plaintiffs' rights.

4  
5           43. In September of 2013, Defendant posted a memorandum in the Subject Property,  
6 stating "Per these City orders, the building must be entirely vacated." This statement was not  
7 true, and at the time Defendant 1049 LLC made this statement, it knew it was untrue.

8           44. Defendant 1049 LLC's efforts to recover possession of the Subject Units were  
9 based primarily upon money and greed, and Defendants, and each of them, knew or should have  
10 known that there was no reasonable basis to attempt to recover possession of any of the Subject  
11 Units.

12  
13           45. The conduct of Defendants, and each of them, engaged in the following conduct  
14 in bad faith, each instance of which constitutes "Tenant Harassment" as it is defined by Section  
15 37.10B of the Rent Ordinance:

- 16  
17           a. interrupting, terminating or failing to provide housing services;  
18           b. failing to perform repairs as required by law;  
19           c. abusing the landlord's right of access into a rental housing unit, including entering  
20 the Subject Units without notice and in many instances, without Plaintiffs' being present;  
21           d. influencing or attempting to influence a tenant to vacate a rental housing unit  
22 through fraud, intimidation or coercion;  
23           e. interfering with a tenant's right to quiet enjoyment;  
24           f. interfering with a tenant's right to privacy.

25  
26           46. As a direct and proximate result of the actions and inactions of Defendants, and  
27 each of them, as described herein, Plaintiffs have incurred economic damages, including but not  
28

1 limited to illegal rent increases, and will continue to incur economic damages, in an amount to be  
2 proven at trial.

3  
4 47. As a direct and proximate result of the actions and inactions of Defendants, and  
5 each of them, as described herein, Plaintiffs have incurred non economic damages, including but  
6 not limited to stress, anxiety, fright, anguish, nervousness, apprehension, loss of sleep, worry,  
7 anxiety, concern for their future and severe emotional distress, in an amount to be proven at trial.

8  
9 **FIRST CAUSE OF ACTION**  
**Breach of Implied Warranty of Habitability**  
10 **All Defendants**

11 48. Plaintiffs re-allege and incorporate by reference each and every allegation  
12 contained in paragraphs 1 through 47 herein.

13 49. Each of the Plaintiffs' tenancies, and each of the Plaintiffs' lease agreements for  
14 the respective Subject Units, contained an implied warranty of habitability.

15 50. Defendants, and each of them, implicitly promised to maintain the Subject Units  
16 in a habitable state for the entirety of Plaintiffs' respective tenancies.

17 51. Beginning in or about June of 2013, Defendant 1049 LLC allowed the Subject  
18 Property to fall into a state of disrepair, which was intended to force Plaintiffs to voluntarily  
19 abandon their lawful homes, in disregard of Plaintiffs' rights. Conditions at the Subject  
20 Property, which affected the Subject Units and Plaintiffs, included but were not limited to, the  
21 following:  
22

23  
24 a. allowing or creating disrepair of the Subject Property's front door lock and  
25 security to fall into disrepair;

26  
27 b. allowing or creating disrepair of the Subject Property's elevators;

28 c. allowing or creating the existence of bedbugs;

- 1 d. allowing or creating disrepair of the Subject Property's heating;
- 2 e. allowing or creating disrepair of the Subject Property's flooring;
- 3 f. allowing or creating disrepair of the Subject Property's stairways;
- 4 g. allowing or creating disrepair of the Subject Property's electrical wiring;
- 5 h. allowing or creating disrepair of the Subject Property's hot water;
- 6 i. allowing or creating disrepair of the Subject Property's fire alarms;
- 7 j. failing to respond to Plaintiffs' complaints, including complaints of bedbug
- 8 infestation, heat, hot water, elevators, and security.
- 9
- 10

11 52. In addition to the aforementioned conditions, Defendant allowed the Subject  
12 Property and Subject Units to become generally dilapidated, and neglected maintenance of all of  
13 the Subject Units during the relevant time period, such that multiple conditions exist that affect  
14 the habitability of the Subject Units.

15 53. Despite multiple requests, Defendants, and each of them, failed to address the  
16 health, safety and habitability concerns at the Subject Property, and within the Subject Units, as  
17 described herein.

18 54. The aforementioned acts and omissions constitute a breach of the warranty of  
19 habitability owed to Plaintiffs, which Defendant has breached.

20 55. As a direct and proximate result of the actions and inactions of Defendants, and  
21 each of them, as described herein, Plaintiffs have incurred economic damages, and will continue  
22 to incur economic damages, in an amount to be proven at trial.

23 56. As a direct and proximate result of the actions and inactions of Defendants, and  
24 each of them, as described herein, Plaintiffs have incurred noneconomic damages, including but  
25  
26  
27  
28

1 not limited to stress, anxiety, fright, anguish, nervousness, apprehension, loss of sleep, worry,  
2 anxiety, concern for their future and severe emotional distress, in an amount to be proven at trial.  
3

4 **SECOND CAUSE OF ACTION**  
5 **Tenant Harassment [Rent Ordinance § 37.10B]**  
6 **All Defendants**

7 57. Plaintiffs re-allege and incorporate by reference each and every allegation  
8 contained in paragraphs 1 through 56 herein.

9 58. Plaintiffs were, at all relevant times mentioned herein, lawful Tenants of the Unit,  
10 and entitled to all the rights provided under law.

11 59. In or about the summer of 2013, Defendant 1049 LLC began course of action  
12 designed to harass the tenants of the Subject Property, deprive them of their rights, to coerce  
13 them to voluntarily abandon their rightful residencies. Defendants, and each of them, 1049  
14 LLC's conduct included but was not limited to, the following:

15 a. Wrongfully advising Plaintiffs that this City and the San Francisco DBI required  
16 all residential tenancies to be vacated;

17 b. Coercing tenants and Plaintiffs to voluntarily move out or face eviction;

18 c. JOHN GALL of 1049 LLC's telling tenants and Plaintiffs that if they fought an  
19 eviction preceding that they would "never rent in this City again".  
20

21 60. Defendant's actions and inactions as described herein were designed to create  
22 fear, anxiety, emotional distress and worry in each of the tenants of the Subject Property, and to  
23 coerce Plaintiffs to abandon their rightful and lawful homes, without regard for Plaintiffs' rights.  
24

25 61. In September of 2013, Defendant posted a memorandum in the Subject Property,  
26 stating "Per these City orders, the building must be entirely vacated." This statement was not  
27 true, and at the time Defendant 1049 LLC made this statement, it knew it was untrue.  
28

1           62. The conduct of Defendants, and each of them, engaged in the following conduct  
2 in bad faith, each instance of which constitutes "Tenant Harassment" as it is defined by Section  
3 37.10B of the Rent Ordinance:  
4

- 5           a. interrupting, terminating or failing to provide housing services;
- 6           b. failing to perform repairs as required by law;
- 7           c. abusing the landlord's right of access into a rental housing unit;
- 8           d. influencing or attempting to influence a tenant to vacate a rental housing unit  
9 through fraud, intimidation or coercion;
- 10           e. interfering with a tenant's right to quiet enjoyment;
- 11           f. interfering with a tenant's right to privacy.

12           63. As a direct and proximate result of the actions and inactions of Defendants, and  
13 each of them, as described herein, Plaintiffs have incurred, and continue to incur damages,  
14 including economic damages, and noneconomic damages, which include but are not limited to  
15 stress, anxiety, fright, anguish, nervousness, apprehension, loss of sleep, worry, anxiety, concern  
16 for their future and severe emotional distress, in an amount to be proven at trial.  
17

18           64. The conduct of Defendants, as described herein, was done with malice,  
19 oppression, or fraud, so as to justify an award of exemplary damages.  
20

21  
22                                   **THIRD CAUSE OF ACTION**  
23                                   **Wrongful Endeavor to Recover Possession of Rental Unit**  
24                                   **[Rent Ordinance § 37.9];**  
25                                   **All Defendants**

26           65. Plaintiffs re-allege and incorporate by reference each and every allegation  
27 contained in paragraphs 1 through 64 herein.

28           66. Plaintiffs were, at all relevant times mentioned herein, lawful Tenants of the Unit,  
and entitled to all the rights provided under law.

1           67.     Motivated by greed, Defendant 1049 LLC began a course of action designed to  
2 recover possession of the Subject Units, as well as many other residential units in the Subject  
3 Property, as described herein.

4  
5           68.     In or about the summer of 2013, Defendant 1049 LLC began course of action  
6 designed to harass the tenants of the Subject Property, deprive them of their rights, to coerce  
7 them to voluntarily abandon their rightful residencies. Defendants, and each of them, 1049  
8 LLC's conduct included but was not limited to, the following:

9           a.     Wrongfully advising Plaintiffs that this City and the San Francisco DBI required  
10 all residential tenancies to be vacated;

11           b.     Coercing tenants and Plaintiffs to voluntarily move out or face eviction;

12           c.     JOHN GALL of 1049 LLC's telling tenants and Plaintiffs that if they fought an  
13 eviction proceeding that they would "never rent in this City again";

14           d.     allowing or creating disrepair of the Subject Property's front door lock and  
15 security to fall into disrepair;

16           e.     allowing or creating disrepair of the Subject Property's elevators;

17           f.     allowing or creating the existence of bedbugs;

18           g.     allowing or creating disrepair of the Subject Property's heating;

19           h.     allowing or creating disrepair of the Subject Property's flooring;

20           i.     allowing or creating disrepair of the Subject Property's stairways;

21           j.     allowing or creating disrepair of the Subject Property's electrical wiring;

22           k.     allowing or creating disrepair of the Subject Property's hot water;

23           l.     allowing or creating disrepair of the Subject Property's fire alarms;

1 m. failing to respond to Plaintiffs' complaints, including complaints of bedbug  
2 infestation, heat, hot water, elevators, and security.

3 n. interrupting, terminating or failing to provide housing services;

4 o. failing to perform repairs as required by law;

5 p. abusing the landlord's right of access into a rental housing unit;

6 q. influencing or attempting to influence a tenant to vacate a rental housing unit  
7 through fraud, intimidation or coercion.

8 r. interfering with a tenant's right to quiet enjoyment;

9 s. interfering with a tenant's right to privacy.

10 69. Defendant's actions and inactions as described herein, were designed to create  
11 fear, anxiety, emotional distress and worry in each of the tenants of the Subject Property, and to  
12 coerce Plaintiffs to abandon their rightful and lawful homes, without regard for Plaintiffs' rights.

13 70. Defendant 1049 LLC's efforts to recover possession of the Subject Units were  
14 based primarily upon money and greed, and Defendants, and each of them, knew or should have  
15 known that there was no reasonable basis to attempt to recover possession of any of the Subject  
16 Units.

17 71. At the time Defendants engaged in, instructed, or ratified the aforementioned acts  
18 described herein, they knew or should have known that there was no valid basis to attempt to  
19 recover possession of the Subject Units, as set forth by Section 37.9 of the Rent Ordinance.

20 72. Each of the aforementioned acts and omissions described herein are violations of  
21 the Rent Ordinance, a wrongful endeavor to recover possession of the Unit as it is defined by  
22 Section 37.9 of the Rent Ordinance, as well as unlawful, as it is defined by Section 37.10A of the  
23

1 Rent Ordinance. In addition, said conduct collectively constitutes a bad faith intention to  
2 wrongfully recover possession of multiple rental units, in violation of the Rent Ordinance.

3  
4 73. As a direct and proximate result of the actions and inactions of Defendants, and  
5 each of them, as described herein, Plaintiffs have incurred, and continue to incur damages,  
6 including economic damages, and noneconomic damages, which include but are not limited to  
7 stress, anxiety, fright, anguish, nervousness, apprehension, loss of sleep, worry, anxiety, concern  
8 for their future and severe emotional distress, in an amount to be proven at trial.

9  
10 **FOURTH CAUSE OF ACTION**  
11 **Intentional Infliction of Emotional Distress**  
12 **All Defendants**

13 74. Plaintiffs re-allege and incorporate by reference each and every allegation  
14 contained in paragraphs 1 through 73 herein.

15 75. Plaintiffs were, at all relevant times mentioned herein, lawful Tenants of the Unit,  
16 and entitled to all the rights provided under law.

17 76. At the time the actions and inactions described herein were taken, Defendants,  
18 and each of them, knew that their tenants, Plaintiffs, were susceptible to injuries through mental  
19 distress, and Defendants acted intentionally or unreasonably, and with reckless disregard, with  
20 the recognition that their actions were likely and probable to result in Plaintiffs suffering mental  
21 distress.

22 77. The actions and inactions as described herein, were directed at Plaintiffs, were  
23 intended to, and did cause Plaintiffs to suffer injury, including but not limited to severe  
24 emotional distress.

25 78. The conduct of Defendants, as described herein, was outrageous and beyond the  
26 bounds of decency such that no reasonable person could be expected to endure it.  
27  
28

1           79. As a direct and proximate result of the actions and inactions of Defendants, as  
2 described herein, Plaintiffs have suffered non-economic, including but not limited to severe  
3 emotional distress, fright, anguish, nervousness, anxiety, worry, loss of sleep, grief, fear and  
4 apprehension, and damages, in an amount to be proven at trial.

5  
6           80. The conduct of Defendants, as described herein, was done with malice,  
7 oppression, or fraud, so as to justify an award of exemplary damages.

8  
9                                   **FIFTH CAUSE OF ACTION**  
10                                   **Negligent Infliction of Emotional Distress**  
11                                   **All Defendants**

12           81. Plaintiffs re-allege and incorporate by reference each and every allegation  
13 contained in paragraphs 1 through 73 herein.

14           82. Plaintiffs were, at all relevant times mentioned herein, lawful Tenants of the Unit,  
15 and entitled to all the rights provided under law.

16           83. At the time the actions and inactions described herein were taken, Defendants,  
17 and each of them, knew, or should have known, that their tenants, Plaintiffs, were susceptible to  
18 injuries through mental distress, and Defendants acted intentionally or unreasonably, and with  
19 reckless disregard, with the recognition that their actions were likely and probable to result in  
20 Plaintiffs suffering mental distress.

21           84. Defendants, and each of them, knew or should have known that the actions and  
22 inactions as described herein would cause Plaintiffs to suffer severe emotional distress.

23           85. The conduct of Defendants, as described herein, was outrageous and beyond the  
24 bounds of decency such that no reasonable person could be expected to endure it.

25           86. As a direct and proximate result of the actions and inactions of Defendants, as  
26 described herein, Plaintiffs have suffered noneconomic damages, including but not limited to  
27  
28

**ORIGINAL**

SUPERIOR COURT  
SAN FRANCISCO, CALIFORNIA

28th JAN 24 PM 2:50

CLERK OF THE COURT

BY: *M.A. Moran*  
DEPUTY CLERK

**M.A. MORAN**

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SAN FRANCISCO

12 VICTOR ARREOLA,  
13 SHAWN ATKINSON,  
14 JUSTIN BARKER,  
15 MARTY CASTLEBERG,  
16 CHRIS CREVITT,  
17 ROBERT HYDER,  
18 LESLIE SHOWS, and  
19 MELISSA WALKER,  
20 Plaintiffs,

vs.

21 1049 MARKET STREET, LLC, a  
22 California limited liability  
23 Company;  
24 AMY BOGART;  
25 HALEY BOGART;  
26 TERRY L. BOGART;  
27 JOHN GALL;  
28 RICHARD LANE;  
ROBERT MULLEN;  
SFOL, a California corporation,  
doing business as SFOL  
MANAGEMENT COMPANY;  
SHIH HO, INC., a California  
corporation; and  
DORS 1 to 10,  
Defendants.

Case No.: **CGC 14-536968**

(Unlimited Civil Case)

COMPLAINT FOR (1) NEGLIGENCE;  
(2) BREACH OF CONTRACT; (3) BAD  
FAITH WRONGFUL EVICTION UNDER  
SAN FRANCISCO RENT ORDINANCE  
SECTION 37.9; (4) UNLAWFUL  
COLLECTION OF RENT UNDER SAN  
FRANCISCO RENT ORDINANCE  
SECTION 37.11A; (5) FRAUDULENT  
CONCEALMENT; (6) NEGLIGENT  
MISREPRESENTATION; (7) UNFAIR  
BUSINESS PRACTICES; (8)  
INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS; (9)  
NUISANCE; AND (10) VIOLATION OF  
CIVIL CODE SECTION 1940.6

1 Plaintiffs allege:

2 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

3 1. Plaintiff VICTOR ARREOLA was a residential tenant at  
4 1049 Market Street, Unit 401, San Francisco, California from in  
5 or about October 1999 to in or about December 2013. The eighty-  
6 three-unit building at 1049 Market Street, San Francisco,  
7 California, is hereinafter referred to as the "Market Street  
8 Property." At the time that Plaintiff VICTOR ARREOLA vacated  
9 the Market Street Property he was paying \$785 per month, and his  
10 unit had a fair market value of approximately \$1,500.

11 2. Plaintiff SHAWN ATKINSON was a residential tenant at  
12 the Market Street Property, Unit 514, from in or about September  
13 2012 to in or about December 2013. At the time that Plaintiff  
14 SHAWN ATKINSON vacated the Market Street Property he was paying  
15 \$1100 per month, and his unit had a fair market value of  
16 approximately \$1,500.

17 3. Plaintiff JUSTIN BARKER was a residential tenant at  
18 the Market Street Property, Unit 515, from in or about August  
19 2010 to in or about December 2013. At the time that Plaintiff  
20 JUSTIN BARKER vacated the Market Street Property he was paying  
21 \$892 per month, and his unit had a fair market value of  
22 approximately \$1,500.

23 4. Plaintiff MARTY CASTLEBERG was a residential tenant at  
24 the Market Street Property, Unit 405, from in or about May 2008  
25 to in or about December 2013. At the time that Plaintiff MARTY  
26 CASTLEBERG vacated the Market Street Property he was paying \$790  
27 per month, and his unit had a fair market value of approximately  
28 \$1,500.

1 5. Plaintiff CHRIS CREVITT was a residential tenant at  
2 the Market Street Property, Unit 308, from in or about March  
3 2010 to in or about December 2013. At the time that Plaintiff  
4 CHRIS CREVITT vacated the Market Street Property he was paying  
5 \$754 per month, and his unit had a fair market value of  
6 approximately \$1,500.

7 6. Plaintiff ROBERT HYDER was a residential tenant at the  
8 Market Street Property, Unit 412, from in or about November 2012  
9 to in or about December 2013. At the time that Plaintiff ROBERT  
10 HYDER vacated the Market Street Property he was paying \$912 per  
11 month, and his unit had a fair market value of approximately  
12 \$1,800.

13 7. Plaintiff LESLIE SHOWS was a residential tenant at the  
14 Market Street Property in Unit 509, from in or about January  
15 2004 to in or about June 2004, and in Unit 513 from in or about  
16 July 2004 to October 31, 2013. At the time that Plaintiff  
17 LESLIE SHOWS vacated the Market Street Property she was paying  
18 \$850 per month, and her unit had a fair market value of  
19 approximately \$1,500.

20 8. Plaintiff MELISSA WALKER was a residential tenant at  
21 the Market Street Property, Unit 514, from in or about September  
22 2012 to in or about December 2013. At the time that Plaintiff  
23 MELISSA WALKER vacated the Market Street Property she was paying  
24 \$1,100 per month, and her unit had a fair market value of  
25 approximately \$1,300.

26 9. The seven-story Market Street Property was built in  
27 1907. At all times relevant, all of Plaintiffs' tenancies were  
28

1 covered under the San Francisco Rent Ordinance. SF  
2 Administrative Code § 37.2(r).

3 10. Plaintiffs' leases contain attorney fee provisions.

4 11. From in or about August 1994 to in or about December  
5 2012, Defendant SHIH HO, INC., a California corporation, owned  
6 the Market Street Property.

7 12. From in or about August 1994 to in or about December  
8 2012, Defendant TERRY L. BOGART, an individual, owned and  
9 managed the Market Street Property.

10 13. From in or around December 2012 to present, Defendant  
11 1049 MARKET STREET, LLC, a California limited liability company,  
12 owned the Market Street Property.

13 14. Upon information and belief, Defendant JOHN GALL, an  
14 individual, and Defendant AMY BOGART, an individual, at all  
15 times relevant were the partners of Defendant 1049 MARKET  
16 STREET, LLC. From in or around December 2012 to present,  
17 Defendant JOHN GALL and Defendant AMY BOGART owned and managed  
18 the Market Street Property.

19 15. Upon information and belief, Defendant HALEY BOGART,  
20 an individual, managed the Market Street Property from in or  
21 around December 2012 to present.

22 16. From in or about 1999 to in or about 2010, Defendant  
23 RICHARD LANE, an individual, managed the Market Street Property.  
24 On information and belief, Defendant RICHARD LANE had an  
25 ownership interest in the Market Street Property from at least  
26 October 1999 to in or about 2010.

27 17. From in or around 2004 to present, Defendant ROBERT  
28 MULLEN, an individual, has managed the Market Street Property.

1 18. From in or around December 2012 to present, SFOL, a  
2 California corporation, doing business as SFOL MANAGEMENT  
3 COMPANY, has managed the Market Street Property.

4 19. Plaintiffs are ignorant of the true names, involvement  
5 or capacities of Defendants DOES 1 to 5. Plaintiffs are  
6 informed and believe that Doe Defendants 1 to 5 are in some way  
7 responsible for Plaintiffs' damages. Plaintiffs will amend this  
8 complaint when they learn the true names of these Defendant  
9 Does.

10 20. Plaintiffs are ignorant of the true names, involvement  
11 or capacities of Defendants DOES 6 to 10. Plaintiffs are  
12 informed and believe that Doe Defendants 6 to 10 are in some way  
13 responsible for Plaintiffs' damages. Plaintiffs will amend this  
14 complaint when they learn the true names of these Defendant  
15 Does.

16 21. Defendants 1049 MARKET STREET, LLC, a California  
17 limited liability Company; AMY BOGART; HALEY BOGART; TERRY L.  
18 BOGART; JOHN GALL; RICHARD LANE; ROBERT MULLEN; SFOL, a  
19 California corporation, doing business as SFOL MANAGEMENT  
20 COMPANY; SHIH HO, INC., a California corporation; and DOES 1 to  
21 10 are hereinafter collectively referred to as "Defendants".

22 22. Defendants SHIH HO, INC.; TERRY L. BOGART; 1049 MARKET  
23 STREET, LLC; JOHN GALL; AMY BOGART; RICHARD LANE; and DOES 1  
24 through 5 are hereinafter collectively referred to as "Owner  
25 Defendants".

26 23. Defendants TERRY L. BOGART; HALEY BOGART; JOHN GALL;  
27 AMY BOGART; RICHARD LANE; ROBERT MULLEN; SFOL; and DOES 6  
28

1 through 10 are hereinafter collectively referred to as  
2 "Management Defendants".

3       24. At all times relevant herein, each Defendant was the  
4 agent, principal, servant, employee or alter ego of the  
5 remaining Defendants, or acted with their consent, ratification  
6 and authorization, and in doing the acts hereinafter alleged,  
7 each Defendant acted in such capacity with respect to the  
8 remaining Defendants.

9       25. At all times relevant herein, Defendants have  
10 conducted and conduct business in San Francisco County.

11       26. At all times relevant herein, Plaintiffs have resided  
12 in San Francisco County.

13       27. This Court is the proper court because at least one  
14 Defendant now does business in its jurisdictional area,  
15 Defendants injured Plaintiffs in its jurisdictional area,  
16 Plaintiffs were damaged in its jurisdictional area, and the  
17 contracts were breached in its jurisdictional area.

18       28. The amount in controversy is within the jurisdiction  
19 of this Court.

20                               Habitability Issues

21       29. Defendants failed to provide any permanent source of  
22 heat to Plaintiffs' units during their tenancies. For the  
23 entire length of their tenancies, Plaintiffs' units did not have  
24 permanent sources of heat.

25       30. For their entire tenancies, Plaintiffs did not have  
26 carbon monoxide detectors, even though they have been required  
27 since January 2013.

28

1           31. From in or about October 1999 until the time that  
2 Plaintiffs vacated, the building's hot water supply was  
3 inconsistent and the on-demand water heaters were inoperable for  
4 weeks at a time. From in or about September 2013, the building  
5 had woefully inadequate hot water, so that showers were only  
6 lukewarm for approximately two minutes.

7           32. From in or about 2010 to the end of Plaintiffs'  
8 tenancies, the front door of the building did not have a working  
9 lock, which allowed vagrants, street people, and drug abusers to  
10 enter into the building unfettered. The vagrants used the  
11 building's community bathrooms and showers, smoked crack cocaine  
12 in the common areas, slept in the common areas, used drug  
13 needles in the community bathrooms, and stole tenants' personal  
14 property.

15           33. From in or about September 2013 to the end of  
16 Plaintiffs' tenancies, the frequency of the cleaning of the  
17 common areas was woefully reduced, so that the building had  
18 filthy bathrooms, human secretions and pubic hair on the  
19 bathroom floors, and overflowing common area garbage cans.

20           34. From in or about 2010 until the end of Plaintiffs'  
21 tenancies, the security staff was removed.

22           35. From in or about 2010 until the end of Plaintiffs'  
23 tenancies, the security cameras were broken.

24           36. From at least 2010, the locks preventing multiple  
25 floor access were compromised, so that any key could open any  
26 door on any floor.

27           37. Throughout Plaintiffs' tenancies, the elevators were  
28 frequently inoperable.

1           38. From in or around 2012 to 2013, a tenant in Unit 402  
2 created a nuisance by playing loud music, often between midnight  
3 and 7:00 a.m. The nuisance-neighbor often wandered the hallways  
4 high on drugs and left drug paraphernalia in the common  
5 restroom. On one occasion, he overdosed on illicit drugs in the  
6 common restroom. Plaintiffs and/or building tenants informed  
7 Defendants of the nuisance-neighbor's drug use and loud music.  
8 Defendants, however, failed to take any action to abate the  
9 nuisances caused by said neighbor. As a result, Plaintiffs  
10 suffered from loss of enjoyment of their residential units, loss  
11 of use of the common restroom, and mental injury.

12           39. For the last several months of Plaintiffs' tenancies,  
13 routine maintenance was reduced, so that there were holes in the  
14 common area walls, broken bathroom mirrors, and broken doors.

15           40. Despite house rules that specifically limit noise from  
16 10 p.m. to 8 a.m., Plaintiffs have suffered from excessive noise  
17 in the building. For the last three months of Plaintiffs'  
18 tenancies, the building managers stopped walking the hallways to  
19 prevent noise and crime.

20           41. In the three months before Plaintiffs vacated the  
21 Market Street Property, Defendants 1049 MARKET STREET, LLC; AMY  
22 BOGART; JOHN GALL; ROBERT MULLEN; SFOL; and DOES 1 to 10 reduced  
23 services, failed to repair the property, failed to address noise  
24 and security complaints, and refused to properly secure the  
25 building. Despite numerous complaints, Defendants 1049 MARKET  
26 STREET, LLC; AMY BOGART; JOHN GALL; ROBERT MULLEN; SFOL; and  
27 DOES 1 to 10 failed to ameliorate serious noise issues, reduced  
28 the common area cleaning schedule, refused to repair common area

1 facilities, failed to repair the front door lock, and reduced  
2 the frequency of common area trash pickup.

3 Illegal Units

4 42. For the entire length of their tenancies, Plaintiffs'  
5 units did not have certificates of occupancy and were illegal  
6 for residential use.

7 43. At the time they leased the units to Plaintiffs VICTOR  
8 ARREOLA, JUSTIN BARKER, MARTY CASTLEBERG, CHRIS CREVITT, and  
9 LESLIE SHOWS, Defendants TERRY L. BOGART, RICHARD LANE, ROBERT  
10 MULLEN, and SHIH HO, INC. knew that the units did not have  
11 certificates of occupancy and were illegal for residential use.

12 44. Defendants TERRY L. BOGART, RICHARD LANE, ROBERT  
13 MULLEN, and SHIH HO, INC. never disclosed to Plaintiffs VICTOR  
14 ARREOLA, JUSTIN BARKER, MARTY CASTLEBERG, CHRIS CREVITT, and  
15 LESLIE SHOWS that the units did not have certificates of  
16 occupancy and were illegal for residential use.

17 45. At the time they leased the units to Plaintiffs SHAWN  
18 ATKINSON, ROBERT HYDER, and MELISSA WALKER, Defendants TERRY L.  
19 BOGART, ROBERT MULLEN, and SHIH HO, INC. knew that the units did  
20 not have certificates of occupancy and were illegal for  
21 residential use.

22 46. Defendants TERRY L. BOGART, ROBERT MULLEN, and SHIH  
23 HO, INC. never disclosed to Plaintiffs SHAWN ATKINSON, ROBERT  
24 HYDER, and MELISSA WALKER that the units did not have  
25 certificates of occupancy and were illegal for residential use.

26 47. Plaintiffs did not discover that the units did not  
27 have certificates of occupancy and were illegal for residential  
28 use until in or about September 2013.

1 Bad Faith Evictions

2 48. Under San Francisco Rent Ordinance section  
3 37.9(a)(10), a landlord can "seek to recover possession *in good*  
4 *faith* in order to demolish or to otherwise permanently remove  
5 rental unit[s] from housing" after "the landlord has obtained  
6 all the necessary permits", provided the landlord "does so  
7 *without ulterior reasons and with honest intent.*" (emphasis  
8 added).

9 49. On September 13, 2013, Defendant ROBERT MULLEN wrote a  
10 letter to all of the tenants at the Market Street Property  
11 stating that the tenants would need to vacate the building  
12 because the City and County of San Francisco would not allow the  
13 units to be used for residential purposes: "We were not able to  
14 overcome the City of San Francisco's overly restrictive building  
15 code requirements . . . . It has long been our belief that this  
16 was achievable . . . . Per . . . City orders, the building must  
17 . . . be vacated."

18 50. The September 13, 2013 letter was referring to the  
19 City and County of San Francisco requiring natural light to be  
20 in all units, either through a light well or window.

21 51. On or about September 27, 2013, Defendants 1049 MARKET  
22 STREET, LLC; AMY BOGART; HALEY BOGART; JOHN GALL; ROBERT MULLEN;  
23 SFOL; and DOES 1 to 10 served Plaintiffs with demolition  
24 eviction notices, giving them sixty days to vacate. The vacate  
25 date was set for the eve of Thanksgiving.

26 52. Despite the claims of Defendants 1049 MARKET STREET,  
27 LLC; AMY BOGART; JOHN GALL; ROBERT MULLEN; SFOL; and DOES 1 to  
28 10 that the City and County of San Francisco was requiring

1 Plaintiffs to be evicted because of a lack of natural light, the  
2 Department of Building Inspection never required the eviction of  
3 Plaintiffs. In fact, since the Department of Building  
4 Inspection and its public commission were created through a 1994  
5 ballot initiative, it has never required the eviction of any  
6 tenants.

7 53. On October 28, 2013, the City and County of San  
8 Francisco Planning Department provided formal written notice to  
9 Defendant Terry Bogart and Defendant John Gall that their change  
10 of use permit was to be suspended. The letter stated that "both  
11 the Planning Department and DBI have previously made clear to  
12 the property owners [that] there are multiple ways in which . .  
13 . the existing residential-type uses can be maintained and  
14 improved in a fashion consistent with the Planning and Building  
15 Codes." Despite this notice, Defendants continued to pursue the  
16 evictions of Plaintiffs.

17 54. Defendants 1049 MARKET STREET, LLC; AMY BOGART; JOHN  
18 GALL; ROBERT MULLEN; SFOL; and DOES 1 to 10 stated that they  
19 were required to evict tenants because the units did not have  
20 natural light and that installation of a light well was  
21 prohibitively expensive. However, some of Plaintiffs' units had  
22 windows and some did not. Defendants 1049 MARKET STREET, LLC;  
23 AMY BOGART; HALEY BOGART; JOHN GALL; ROBERT MULLEN; SFOL; and  
24 DOES 1 to 10 indiscriminately evicted tenants from units that  
25 had windows and those without windows.

26 55. In fact, Plaintiffs VICTOR ARREOLA, SHAWN ATKINSON,  
27 JUSTIN BARKER, MARTY CASTLEBERG, LESLIE SHOWS, and MELISSA  
28

1 WALKER all had windows in their units, so there would have been  
2 no good faith reason for the eviction of these Plaintiffs.

3 56. On information and belief, Defendants 1049 MARKET  
4 STREET, LLC; AMY BOGART; HALEY BOGART; JOHN GALL; ROBERT MULLEN;  
5 SFOL; and DOES 1 to 10 could have added a light well for nominal  
6 cost for tenants without windows.

7 57. Defendants 1049 MARKET STREET, LLC; AMY BOGART; HALEY  
8 BOGART; JOHN GALL; ROBERT MULLEN; SFOL; and DOES 1 to 10 evicted  
9 Plaintiffs to convert from residential to commercial use to take  
10 the units out from under rent control.

11 58. Before Plaintiffs vacated, Mayor Ed Lee and the  
12 Department of Building Inspection informed Defendants 1049  
13 MARKET STREET, LLC; AMY BOGART; HALEY BOGART; JOHN GALL; ROBERT  
14 MULLEN; SFOL; and DOES 1 to 10 that the City and County of San  
15 Francisco would not enforce the codes requiring natural light in  
16 the units and stated without qualification that the units could  
17 remain residential after minor low-cost upgrades were made to  
18 some of the units.

19 59. Despite this, Defendants 1049 MARKET STREET, LLC; AMY  
20 BOGART; HALEY BOGART; JOHN GALL; ROBERT MULLEN; SFOL; and DOES 1  
21 to 10 did not withdraw the eviction notices.

22 60. Defendants 1049 MARKET STREET, LLC; AMY BOGART; HALEY  
23 BOGART; JOHN GALL; ROBERT MULLEN; SFOL; and DOES 1 to 10 were  
24 required to pull the necessary permits to evict for demolition  
25 under San Francisco Rent Ordinance section 37.9(a)(10).  
26 However, the City and County of San Francisco suspended the  
27 permits and offered to work with Defendants 1049 MARKET STREET,  
28 LLC; AMY BOGART; HALEY BOGART; JOHN GALL; ROBERT MULLEN; SFOL;

1 and DOES 1 to 10 to grandfather-in residential code violations  
2 relating to natural light.

3 61. Defendants 1049 MARKET STREET, LLC; AMY BOGART; HALEY  
4 BOGART; JOHN GALL; ROBERT MULLEN; SFOL; and DOES 1 to 10 again  
5 had an opportunity to withdraw the eviction notices, but failed  
6 to do so.

7 62. Defendants 1049 MARKET STREET, LLC; AMY BOGART; HALEY  
8 BOGART; JOHN GALL; ROBERT MULLEN; SFOL; and DOES 1 to 10 evicted  
9 Plaintiffs in bad faith, with ulterior motives and with  
10 dishonest intent.

11 FIRST CAUSE OF ACTION FOR NEGLIGENCE BY ALL PLAINTIFFS AGAINST  
12 DEFENDANTS 1049 MARKET STREET, LLC; AMY BOGART; HALEY BOGART;  
13 TERRY L. BOGART; JOHN GALL; ROBERT MULLEN; SFOL; SHIH HO, INC.;  
14 AND DOES 1 THROUGH 10

15 63. Plaintiffs re-allege the preceding paragraphs.

16 64. Defendants 1049 MARKET STREET, LLC; AMY BOGART; HALEY  
17 BOGART; TERRY L. BOGART; JOHN GALL; ROBERT MULLEN; SFOL; SHIH  
18 HO, INC.; and DOES 1 THROUGH 10 owed a duty of care as landlords  
19 and managers of residential property.

20 65. The above-mentioned defendants breached that duty by,  
21 among other things, failing to repair the Market Street  
22 Property, failing to address noise and security complaints,  
23 refusing to properly secure the building, making substandard  
24 repairs, and by endeavoring to wrongfully evict Plaintiffs.

25 66. The above-mentioned defendants violated the following  
26 state and local laws in failing and refusing to repair the  
27 Market Street Property, maintain the Market Street Property in a  
28 safe, clean, and habitable condition, and attempting to recover

1 possession of Plaintiffs' rent-controlled units in the Market  
2 Street Property, among others:

- 3 a) Civil Code section 1941.1, defining the minimum  
4 requirements for a habitable building;  
5 b) Health and Safety Code section 17920.3, defining minimum  
6 requirements for habitable building;  
7 c) San Francisco Administrative Code section 37.9, et seq.  
8 and section 37.10B.

9 67. The above-mentioned defendants violated Civil Code  
10 section 1942.4 in collecting rent with an outstanding Notice of  
11 Violation existed concerning the Subject Property.

12 68. These state laws are designed to protect plaintiffs  
13 from the very harm complained about herein. All of these laws  
14 were in effect at all relevant times in this complaint.

15 69. The above-mentioned defendants' violations of these  
16 laws were a substantial factor in causing harm to Plaintiffs.

17 70. Plaintiffs suffered from serious emotional distress,  
18 including anguish, fright, horror, nervousness, grief, anxiety,  
19 worry, shock, humiliation, loss of enjoyment of life, and shame.

20 71. The emotional distress suffered by Plaintiffs was  
21 sufficiently severe that an ordinary person would have been  
22 unable to deal with it.

23 72. As a proximate result of the above-mentioned  
24 defendants' breach of their duty, Plaintiffs have suffered from  
25 a leasehold worth less than rent paid, property loss, mental  
26 injury, bodily and personal injury, medical expenses, cost of  
27 repairs, loss of use and enjoyment of their rental apartment,  
28 and loss of wages.

1 SECOND CAUSE OF ACTION FOR BREACH OF CONTRACT BY ALL PLAINTIFFS  
2 AGAINST ALL OWNER DEFENDANTS

3 73. Plaintiffs re-allege the foregoing paragraphs.

4 74. Plaintiffs each entered into lease agreements with the  
5 Owner Defendants and/or the Owner Defendants' successors to the  
6 previous owners' interest in the lease.

7 75. The Plaintiffs and Owner Defendants agreed to the  
8 terms of each lease agreement.

9 76. Plaintiffs did all of the significant things that the  
10 lease required them to do.

11 77. All conditions required by the contract for  
12 Defendants' performance occurred.

13 78. Implied in Plaintiffs' written residential lease  
14 agreement is an implied warranty of habitability, wherein Owner  
15 Defendants promised to inspect and maintain the Market Street  
16 Property in a clean, safe, and habitable condition.

17 79. Owner Defendants breached the implied warranty of  
18 habitability by failing to inspect and maintain the Market  
19 Street Property in a clean, safe, and habitable condition.

20 80. Plaintiffs and/or other building tenants notified  
21 Owner Defendants and/or their agents of all the repair issues at  
22 the Market Street Property. In addition, Owner Defendants  
23 actually knew or could have known with reasonable diligence  
24 about all of the repair issues at the Market Street Property.

25 81. Owner Defendants ignored all of these repair issues,  
26 failed to repair these issues, or negligently repaired these  
27 issues.

28  
29

1 STEPHEN L. COLLIER, ESQ., State Bar #124887  
2 MATT McFARLAND, ESQ., State Bar #225537  
3 TENDERLOIN HOUSING CLINIC, INC.  
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6 Attorneys for Plaintiffs  
7 Chad Benjamin Potter, Kara Fleisher,  
8 Peter Taylor, Adam Wojewidka,  
9 Juan Escobedo, Melissa Bracero,  
10 Karl Haas, Chris Baker, Chandra Redack,  
11 Darren Brown, Ben Cady, Manuel Rodriguez

**FILED**  
San Francisco County Superior Court  
FEB 14 2014  
CLERK OF THE COURT  
BY: *[Signature]*  
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 CITY AND COUNTY OF SAN FRANCISCO — UNLIMITED CIVIL JURISDICTION

13 CHAD BENJAMIN POTTER, KARA  
14 FLEISHER, PETER TAYLOR, ADAM  
15 WOJEWIDKA, JUAN ESCOBEDO,  
16 MELISSA BRACERO, KARL HAAS,  
17 CHRIS BAKER, CHANDRA REDACK,  
18 DARRHN BROWN, BEN CADY,  
19 MANUEL RODRIGUEZ,

Case No. **CGC-14-537501**

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF  
(LANDLORD-TENANT)

18 Plaintiffs,

19 vs.

20 1049 MARKET STREET LLC, a  
21 California Limited Liability Company, SF  
22 OFFICE LOFTS, INC., a Nevada  
23 Corporation, and DOES 1 through 50,  
24 inclusive,  
25 Defendants.

24 Plaintiffs hereby allege as follows:

- 25 1. Plaintiffs are residential tenants of 1049 Market Street, San Francisco,  
26 California (hereinafter the "subject premises"). Plaintiffs are all residents of San Francisco,  
27 California.  
28

1           2.       Upon information and belief, defendant 1049 Market Street LLC is a California  
2 Limited Liability Company. 1049 Market Street LLC became record owner of the subject  
3 premises on or around December 28, 2012. Upon information and belief, defendant SF Office  
4 Lofts, Inc. is a Nevada Corporation which has forfeited its right to conduct business in  
5 California by failing to comply with California's requirements for out-of-state corporations  
6 doing business in California. Upon information and belief, S.F. Office Lofts, Inc. leased units,  
7 managed and operated the subject premises at all times relevant herein.

8           3.       Plaintiffs are ignorant of the true names and capacities of defendants sued herein  
9 as Does 1 through 50, inclusive, and therefore sue these defendants by such fictitious names  
10 under the provisions of the California Code of Civil Procedure section 474. Plaintiffs will seek  
11 leave to amend this complaint to allege their true names and capacities when ascertained.  
12 Plaintiffs are informed and believe and thereon allege that each of the fictitiously named  
13 defendants is responsible in some manner for the occurrences alleged herein, and that each  
14 plaintiff's damages as herein alleged were proximately caused by such occurrences.

15           4.       At all times mentioned herein, each of the defendants was the agent of the other  
16 defendants and was acting within the course and scope of that agency in undertaking the acts  
17 alleged in this Complaint.

18           5.       At all times relevant herein, defendants consented to, permitted, and encouraged  
19 plaintiffs and all occupants of the subject premises to reside in their units at the subject  
20 premises and occupy them as residential occupancies. Therefore plaintiffs' tenancies were at all  
21 times subject to the San Francisco Residential Rent Stabilization and Arbitration Ordinance,  
22 Chapter 37 of the San Francisco Administrative Code, originally enacted June 13, 1979, as  
23 amended thereafter (hereinafter, referred to as the "Rent Ordinance").

24           6.       Plaintiff Chad Benjamin Potter moved into Unit 101 at the subject premises on  
25 or about July 2, 2010 pursuant to a written rental agreement with defendants' predecessor-in-  
26 interest. The agreement contains a provision permitting the prevailing party in this litigation to  
27 recover reasonable attorney's fees from the losing party. Unit 101 is a loft on the first floor of  
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1 the subject premises, and shares a common bathroom down the hall with the other tenants on  
2 the floor. Plaintiff originally paid \$690.00 in rent per month for Unit 101; subsequently his  
3 rent has been raised to the current rent of \$738.00 per month plus electrical usage.

4 7. Plaintiff Kara Fleisher moved into Unit 201 at the subject premises on or about  
5 September 18, 2004 pursuant to a written rental agreement with defendants' predecessor-in-  
6 interest. The agreement contains a provision permitting the prevailing party in this litigation to  
7 recover reasonable attorney's fees from the losing party. Unit 201 is a loft on the second floor  
8 of the subject premises, and shares a common bathroom down the hall with the other tenants on  
9 the floor. Plaintiff originally paid \$675.00 in rent per month for Unit 201; subsequently her rent  
10 has been raised to the current rent of \$827.00 per month plus electrical usage.

11 8. Plaintiff Peter Taylor moved into Unit 207 at the subject premises on or about  
12 April 11, 2003 pursuant to a written rental agreement with defendants' predecessor in interest.  
13 The agreement contains a provision permitting the prevailing party in this litigation to recover  
14 reasonable attorney's fees from the losing party. Unit 207 is a loft on the second floor of the  
15 subject premises, and shares a common bathroom down the hall with the other tenants on the  
16 floor. Plaintiff originally paid \$565.00 in rent per month for Unit 207; subsequently his rent has  
17 been raised to the current rent of \$682.00 per month plus electrical usage.

18 9. Plaintiff Adam Wojewidka moved into Unit 208 at the subject premises on or  
19 about September 1, 2009 pursuant to a rental agreement with defendants' predecessor-in-  
20 interest. The agreement contains a provision permitting the prevailing party in this litigation to  
21 recover her reasonable attorney's fees from the losing party. Unit 208 is a loft on the second  
22 floor of the subject premises, and shares a common bathroom down the hall with the other  
23 tenants on the floor. Plaintiff originally paid \$690.00 in rent per month for Unit 208;  
24 subsequently his rent has been raised to the current rent of \$770.00 per month plus electrical  
25 usage.

26 10. Plaintiff Juan Escobedo moved in to Unit 301 at the subject premises on or  
27 about October 1, 2009 pursuant to an oral agreement with defendants' predecessor-in-interest.  
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1 Thereafter, plaintiff signed a written a written rental agreement with defendants' predecessor-  
2 in-interest in May 2012. The agreement contains a provision permitting the prevailing party in  
3 this litigation to recover reasonable attorney's fees from the losing party. Unit 301 is a loft on  
4 the third floor of the subject premises, and shares a common bathroom down the hall with the  
5 other tenants on the floor. Plaintiff originally paid \$650.00 in rent per month for Unit 207, plus  
6 electrical usage; subsequently his rent has been raised to the current rent of \$752.00 per month  
7 plus electrical usage.

8 11. Plaintiff Melissa Braccero moved into Unit 302 at the subject premises on or  
9 about December 8, 2011 pursuant to a written rental agreement with defendants' predecessor-  
10 in-interest. The agreement contains a provision permitting the prevailing party in this litigation  
11 to recover reasonable attorney's fees from the losing party. Unit 302 is a loft on the third floor  
12 of the subject premises, and shares a common bathroom down the hall with the other tenants on  
13 the floor. Plaintiff originally paid \$835.00 in rent per month for Unit 302; subsequently her rent  
14 has been raised to the current rent of \$863.00 per month plus electrical usage.

15 12. Plaintiff Karl Haas originally moved into Unit 306 at the subject premises on or  
16 about March 1, 2006 pursuant to a rental agreement with defendants' predecessor-in-interest.  
17 Thereafter, plaintiff moved into Unit 104 at the subject premises on or about June 15, 2011  
18 pursuant to a written rental agreement with defendants' predecessor-in-interest. Plaintiff's  
19 rental agreement for Unit 104 contains a provision permitting the prevailing party in this  
20 litigation to recover reasonable attorney's fees from the losing party. Unit 104 is a loft on the  
21 first floor of the subject premises, and shares a common bathroom down the hall with the other  
22 tenants on the floor. Plaintiff originally paid \$625.00 in rent per month for Unit 306, and  
23 plaintiff originally paid \$825.00 per month for Unit 104. Subsequently, plaintiff's rent for Unit  
24 104 has been raised to the current rent of \$868.00 per month plus electrical usage.

25 13. Plaintiff Chris Baker moved into Unit 310 at the subject premises on or about  
26 May 11, 2002 pursuant to a written rental agreement with defendants' predecessor-in-interest.  
27 The agreement contains a provision permitting the prevailing party in this litigation to recover  
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1 reasonable attorney's fees from the losing party. Unit 310 is a loft on the third floor of the  
2 subject premises, and shares a common bathroom down the hall with the other tenants on the  
3 floor. Plaintiff originally paid \$690.00 in rent per month for Unit 310; plaintiff's rent fluctuated  
4 during the intervening years; and subsequently his rent has been raised to the current rent of  
5 \$693.00 per month plus electrical usage.

6 14. Plaintiff Chandra Redack entered into a rental agreement with defendants'  
7 predecessor-in-interest in April 2004, and moved into Unit 313 at the subject premises on or  
8 about June 1, 2004 pursuant to a written rental agreement with defendants' predecessor-in-  
9 interest. The agreement contains a provision permitting the prevailing party in this litigation to  
10 recover reasonable attorney's fees from the losing party. Unit 313 is a loft on the third floor of  
11 the subject premises, and shares a common bathroom down the hall with the other tenants on  
12 the floor. Plaintiff originally paid \$690.00 in rent per month for Unit 313; subsequently her rent  
13 has been raised to the current rent of \$817.00 per month plus electrical usage.

14 15. Plaintiff Darren Brown moved into Unit 408 at the subject premises on or about  
15 March 5, 1999 pursuant to a written rental agreement with defendants' predecessor-in-interest.  
16 Plaintiff's March 1999 rental agreement contains a provision permitting the prevailing party in  
17 this litigation to recover reasonable attorney's fees from the losing party. Thereafter, plaintiff  
18 retained possession of Unit 408 and entered into a September 1, 2000 written rental agreement  
19 with defendants' predecessor-in-interest. Plaintiff's September 2000 rental agreement also  
20 contains an attorney's fees provision. Unit 408 is a loft on the fourth floor of the subject  
21 premises, and shares a common bathroom down the hall with the other tenants on the floor.  
22 Plaintiff originally paid \$615.00 in rent per month for Unit 408; subsequently his rent has been  
23 raised to the current rent of \$732.00 per month plus electrical usage.

24 16. Plaintiff Ben Cady moved into Unit 409 at the subject premises in or about  
25 September 2006 pursuant to a written rental agreement with defendants' predecessor in  
26 interest. The agreement contains a provision permitting the prevailing party in this litigation to  
27 recover reasonable attorney's fees from the losing party. Unit 409 is a loft on the fourth floor  
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1 of the subject premises, and shares a common bathroom down the hall with the other tenants on  
2 the floor. Plaintiff originally paid \$580.00 rent per month for Unit 409, not including utilities;  
3 subsequently his rent has been raised to the current rent of \$718.00 per month plus electrical  
4 usage.

5 17. Plaintiff Manuel Rodriguez moved into Unit 414 at the subject premises in or  
6 about September 27, 2010 pursuant to a written rental agreement with defendants' predecessor  
7 in interest. The agreement contains a provision permitting the prevailing party in this litigation  
8 to recover reasonable attorney's fees from the losing party. Unit 414 is a loft on the fourth  
9 floor of the subject premises, and shares a common bathroom down the hall with the other  
10 tenants on the floor. Plaintiff originally paid \$825.00 rent per month for Unit 414, with an  
11 additional \$25.00 for electric utilities; subsequently his rent has been raised to the current rent  
12 of \$891.00 per month plus electrical usage.

13 18. Defendants have failed to properly maintain, repair and secure the subject  
14 premises at all times relevant herein. Defendants failed to maintain, repair and secure the  
15 subject premises despite plaintiffs' oral and written requests for repairs. The conduct,  
16 omissions, and substandard conditions described in this complaint are ongoing.

17 FIRST CAUSE OF ACTION

18 BREACH OF THE IMPLIED WARRANTY OF HABITABILITY  
19 (AGAINST DEFENDANT 1049 MARKET STREET LLC)

20 19. Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1  
21 through 18 of this Complaint against defendant 1049 Market Street LLC only, as though fully  
22 set forth herein.

23 20. At all times relevant to this Complaint, numerous defective living conditions  
24 have existed in the subject premises, and many continue to exist. These defective conditions  
25 include, but are not limited to:

- 26 (a) lack of hot water and inadequate water;  
27 (b) lack of heat;

- 1 (c) insecure and inadequate front door and front door lock that is easily
- 2 compromised;
- 3 (d) broken and inoperable elevator, which even when functioning, does not go to all
- 4 floors;
- 5 (e) drug use by trespassers in the common areas and bathrooms, who pass out in the
- 6 bathrooms and leave behind used syringes and blood stains;
- 7 (f) lack of common area cleaning and maintenance, resulting in trash and filth in
- 8 the common areas, and substandard janitorial and cleaning services at times
- 9 when services are provided;
- 10 (g) lack of cleaning and maintenance in all common area hallways, bathrooms and
- 11 stairwells such that the tenants are required to clean and provide sanitary
- 12 conditions;
- 13 (h) failure to provide on-site building manager or otherwise provide on-site
- 14 management services;
- 15 (i) recurring flooding, malfunctioning refrigerator, and infestation of bedbugs in
- 16 Unit 201;
- 17 (j) failure to address tenants complaints in a timely and competent fashion,
- 18 including but not limited to inadequate lighting and malfunctioning refrigerator
- 19 in Unit 408; and
- 20 (k) Unauthorized entry into plaintiffs' Units in violation of California Civil Code §
- 21 1954.

22 21. The defective conditions stated above constitute violations of state and local  
23 housing laws and pose severe health, safety and fire hazards. The defective conditions  
24 materially affect plaintiffs' living conditions. Defendants failed to abate all of these violations  
25 in a timely manner.

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1 22. Defendant had actual and constructive notice of each of the defective conditions  
2 described above. Despite such notice, defendant failed to take the steps necessary to repair said  
3 conditions.

4 23. Plaintiffs did nothing to cause, create or contribute to the existence of the  
5 defective conditions stated above.

6 24. By defendant's breach of the warranty of habitability, defendant breached a duty  
7 imposed on all residential landlords by state and local law. In failing to repair the defective  
8 conditions detailed above, defendant acted unreasonably.

9 25. Defendant knew or should have known that permitting the defective conditions  
10 alleged herein to exist at the premises injured the physical and emotional health and well-being  
11 of plaintiffs, and that it posed a serious threat and danger to their health and safety.

12 26. As a direct and proximate result of defendant's breach, the plaintiffs suffered,  
13 and continue to suffer, pain, anxiety, annoyance, discomfort, inconvenience, distress, fear,  
14 economic loss, loss of use and property damage all to their detriment in amounts to be  
15 determined at trial.

16 27. The conduct of defendant alleged above was deliberate and willful. Defendant  
17 acted, or failed to act, deliberately and in conscious disregard of the rights and safety of the  
18 plaintiffs. By reason thereof, plaintiffs are entitled to punitive damages in an amount to be  
19 determined at trial.

20 SECOND CAUSE OF ACTION

21 (BREACH OF THE COVENANT OF QUIET ENJOYMENT)  
22 (AGAINST DEFENDANT 1049 MARKET STREET LLC)

23 28. Plaintiffs re-allege and incorporate the allegations contained in paragraphs 1  
24 through 27 of this Complaint against defendant 1049 Market Street LLC only, as though fully  
25 set forth herein.

26 29. By the acts and omissions described in this complaint, defendant interfered with,  
27 interrupted, and deprived plaintiffs of the full and beneficial use of the premises and disturbed  
28

1 plaintiffs' peaceful possession of the premises. Due to the defendant's failure to provide a  
2 secure premises, drugged trespassers have entered the building and threatened plaintiffs, and  
3 some plaintiffs have had to escort trespassers out of the building.

4 30. These acts of interference, interruption, deprivation, and disturbance by  
5 defendants amount to a breach of the covenant of quiet enjoyment implied in all rental  
6 agreements, and codified in California Civil Code section 1927.

7 31. As a direct and proximate result thereof, plaintiffs have suffered and continue to  
8 suffer pain, discomfort, annoyance, inconvenience, anxiety, economic loss, loss of use, and  
9 mental anguish, all to their detriment in amounts to be determined at trial.

10  
11 THIRD CAUSE OF ACTION  
12 (NUISANCE)  
13 (AGAINST ALL DEFENDANTS)

14 32. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1  
15 through 31, of this Complaint against all defendants as though fully set forth herein.

16 33. At all times relevant to this complaint, defendants failed to properly maintain,  
17 repair and secure the subject premises with the result that the premises were dangerous and  
18 unsafe. The dangerous and defective conditions maintained by defendants at the subject  
19 premises were injurious to the plaintiffs' health, offensive to their senses, and an obstruction to  
20 their use of the premises so as to constitute a nuisance that deprived plaintiffs of the safe,  
21 healthy, and comfortable use and enjoyment of the premises.

22 34. Defendants were required by law to abate these nuisances, but failed to do so.  
23 These nuisances continue to exist at the premises. As a direct and proximate result thereof,  
24 plaintiffs have suffered and continue to suffer pain, discomfort, annoyance, inconvenience,  
25 anxiety, property damage, economic loss and mental anguish, all to their detriment in an  
26 amount to be determined at trial.

27 35. The conduct of defendants alleged above was deliberate, willful and malicious.  
28 Defendants acted, or failed to act, deliberately and in conscious disregard of the rights and

1 safety of the plaintiffs. By reason thereof, plaintiffs are entitled to punitive damages in an  
2 amount to be determined at trial.

3 36. Pursuant to Civil Code section 3479 and Code of Civil Procedure section 731,  
4 plaintiffs seek a Court order requiring defendants to abate all nuisances on the premises.

5  
6 FOURTH CAUSE OF ACTION  
7 (NEGLIGENCE)  
8 (AGAINST ALL DEFENDANTS)

9 37. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1  
10 through 18, 20-25, 29, 30, 33 and 34 of this Complaint against all defendants as though fully  
11 set forth herein.

12 38. By reason of the landlord-tenant relationship between defendants and plaintiffs,  
13 defendants owed plaintiffs the duty to exercise reasonable care in the ownership, management  
14 and control of their real property. The duty to exercise reasonable care included, but was not  
15 limited to, the following duties: the duty to refrain from interfering with plaintiffs' full use and  
16 quiet enjoyment of the premises; the duty to comply with all applicable state and local laws  
17 governing plaintiffs' rights as tenants; and the duty to maintain the premises in accordance with  
18 state and local housing, health and safety codes.

19 39. By the conduct alleged herein, defendants negligently and carelessly  
20 maintained, operated and managed the subject premises, and violated the standard of care as set  
21 forth above.

22 40. As a direct and proximate result of these breaches of duty by defendants,  
23 plaintiffs suffered and continue to suffer, physical pain, anxiety, discomfort, annoyance,  
24 distress, inconvenience, economic loss, loss of use and mental anguish, all to their detriment  
25 and in an amount to be determined at trial.

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FIFTH CAUSE OF ACTION  
(Unfair Business Practices)  
(AGAINST ALL DEFENDANTS)

41. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 40 of this Complaint, to the extent relevant, as though fully set forth herein.

42. Plaintiffs bring this action under Business & Professions Code Sections 17200 *et seq.* and 17500 *et seq.* as private persons affected by the acts described in this Complaint.

43. At all times relevant herein, defendants were duly authorized to conduct business under the laws of the State of California and of the City and County of San Francisco. In conducting said business, defendants were obligated to comply with the laws of the State of California and the City and County of San Francisco.

44. Plaintiffs allege that it is the regular practice of defendants to ignore and neglect their obligations as landlords, to fail to properly maintain their tenants' rental units and common areas, and to fail to abate substandard and life threatening conditions at their properties, all in violation of the law. By reason of said acts, defendants have engaged in unfair business practices in violation of Business & Professions Code Sections 17200 *et seq.*

45. As a direct and proximate result of said practices, plaintiffs have been and will be damaged. Plaintiffs have suffered and continue to suffer monetary loss as a result of defendants' conduct and omissions.

SIXTH CAUSE OF ACTION  
(VIOLATION OF CIVIL CODE SECTION 1940.6)  
(AGAINST DEFENDANT 1049 MARKET STREET LLC)

46. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 45 of this Complaint, to the extent relevant, as though fully set forth herein.

47. On or about August 2, 2013, defendant 1049 Market Street LLC applied for and obtained a permit to demolish plaintiffs' residential units from the San Francisco Department of Building Inspection.

1 48. Defendant did not give written notice to plaintiffs of the application for the  
2 permit to demolish prior to filing the application, in violation of Civil Code Section  
3 1940.6(a)(2).

4 49. As a direct and proximate cause of defendant's violation of Civil Code Section  
5 1940.6(a)(2), plaintiffs were damaged in amounts to be determined at trial. Pursuant to Civil  
6 Code Section 1940.6(c)(2), plaintiffs are entitled to recover their actual damages, and a civil  
7 penalty of \$2,500 per plaintiff.

8 SEVENTH CAUSE OF ACTION

9 (EXCESSIVE RENT CHARGES)  
10 (AGAINST DEFENDANT 1049 MARKET STREET, LLC)

11 50. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1  
12 through 49 against defendant 1049 Market Street, LLC as though fully set forth herein.

13 51. The defective conditions described above constitute a substantial decrease in  
14 housing services.

15 52. Defendant had actual and constructive notice of these decreases in housing  
16 services, but did not granted plaintiffs a corresponding reduction in rent.

17 53. By failing to reduce plaintiffs' rent to compensate for these decreases in housing  
18 services, defendant charged rents which exceed the limitations set forth in the Rent Ordinance.  
19 Rent Ordinance section 37.11A provides that excessive rent charges in violation of the Rent  
20 Ordinance entitle tenants to initiate a civil proceeding for money damages, costs and attorney's  
21 fees.

22 54. As a direct and proximate result of defendant's violations of the Rent  
23 Ordinance, plaintiffs have paid and continue to pay excessive rents in amount to be proven at  
24 trial.

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EIGHTH CAUSE OF ACTION

(HARASSMENT – VIOLATION OF SAN FRANCISCO RENT  
ORDINANCE §37.10B)  
(AGAINST DEFENDANT 1049 MARKET STREET, LLC)

55. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 54 of this Complaint against defendant 1049 Market Street LLC as though fully set forth herein.

56. From the commencement of its ownership through to the present, defendant has engaged in the conduct described in the paragraph below in bad faith, and in knowing violation and in reckless disregard of San Francisco Rent Ordinance §37.10B.

(1) Interrupted and failed to provide housing services required by plaintiffs' rental agreements and by State and local housing, health and safety laws;

(2) Failed to perform repairs and maintenance required by plaintiffs' rental agreements and by State and local housing, health and safety laws;

(3) Failed to exercise due diligence in completing repairs and maintenance once undertaken;

(4) Abused the landlord's right of access into plaintiff's apartments as that right is provided by law;

(5) Attempted to influence the plaintiffs to vacate their rental units through intimidation and harassing conduct;

(6) Interfered with plaintiffs' right to quiet use and enjoyment of their units;

57. These actions of defendant were in bad faith, and done in knowing violation and in reckless disregard of San Francisco Rent Ordinance §37.10B.

58. As a direct and proximate result of defendant's conduct, plaintiffs have suffered actual and special damages including but not limited to: fear, discomfort, annoyance, inconvenience, economic loss, and mental anguish, all to their detriment in amounts to be determined at trial.

1 59. Pursuant to San Francisco Rent Ordinance §37.10B, plaintiffs are entitled to  
2 three times their actual damages, plus reasonable attorneys fees and costs.

3 60. The aforementioned acts of defendant were willful, wanton, malicious, and  
4 oppressive, and justify the awarding of exemplary and punitive damages in an amount to be  
5 determined by proof at trial.

6 WHEREFORE, PLAINTIFFS PRAY FOR JUDGMENT AS FOLLOWS:

7 1. Under the First Cause of Action:

8 a. General and special damages in an amount to be determined at trial.

9 b. Punitive damages in an amount to be determined at trial.

10 2. Under the Second Cause of Action:

11 a. General and special damages in an amount to be determined at trial.

12 3. Under the Third Cause of Action:

13 a. General and special damages in an amount to be determined at trial.

14 b. Punitive damages in an amount to be determined at trial.

15 c. An order directing defendants to repair all substandard living conditions and  
16 abate all nuisances.

17 4. Under the Fourth Cause of Action:

18 a. General and special damages in an amount to be determined at trial.

19 5. Under the Fifth Cause of Action:

20 a. An injunction prohibiting defendants from engaging in unfair business practices.

21 b. Restitution of all money or property acquired by defendants as a result of the  
22 unfair business practices.

23 6. Under the Sixth Cause of Action:

24 a. Actual damages in an amount to be determined at trial.

25 b. A civil penalty of \$2,500 per plaintiff.

26 c. Reasonable attorney's fees pursuant to Civil Code Section 1940.6(c)(3).

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7. Under the Seventh Cause of Action:

- a. Actual damages in an amount to be determined at trial.
- b. Restitution of all money acquired by defendants as a result of excessive rent changes.
- c. Reasonable attorneys fees.

8. Under the Eighth Cause of Action:

- a. Trebled damages in an amount to be determined at trial.
- b. An injunction prohibiting defendant from harassing plaintiffs pursuant to Rent Ordinance § 37.10B.
- c. Reasonable attorneys fees.
- d. Punitive damages in an amount to be determined at trial.

9. Under All Causes of Action:

- a. Costs of suit.
- b. Reasonable attorney's fees for those plaintiffs that have attorney's fees provisions in their rental agreements.
- c. Any other relief as the Court deems just and proper.

Dated: February 14, 2014

  
\_\_\_\_\_  
Stephen L. Collier  
Attorney for Plaintiffs

1 you very much, and I encourage you to vote yes.

2           KARL HASS: Hi. My name is Karl Haas. I am an  
3 affected tenant. I live in the Market area in a  
4 building that turns out is commercial but has been  
5 rented as residential. There would have been a few more  
6 of us to speak here, but my landlord served us all with  
7 a retaliatory lawsuit as we were walking in the door.  
8 So some of us will not be able to speak today. I  
9 believe it's Zacks & Patterson is the law firm.

10           In any case, I came to San Francisco in 1985  
11 with a bike bag and lock to be a messenger. In the  
12 interim time, I have worked as a mover, as an activist,  
13 as -- well, now I'm a small business owner in the  
14 mid-Market area as well. And if anybody tells you that  
15 we're not losing our basic workers, they are wrong. I  
16 can't hire people because they tell me for any amount of  
17 money they can't afford the time and the commute  
18 expenses to come to San Francisco. And these are people  
19 who don't need to come here. They will get a job in  
20 their local town, and nobody will come.

21           One of the reasons is because -- when I got to  
22 San Francisco, I moved -- spent my first year in a  
23 renovated warehouse youth hostile, and then I moved into  
24 another commercial space, and eventually I raised my  
25 family here. But that's often the -- this kind of

1 alternative housing is often the first stop on the way  
2 to this success that I had. Thank you.

3 SUPERVISOR COHEN: Thank you, Karl.

4 SUPERVISOR KIM: Also, if tenants can state how  
5 long they've lived in these units, that would be great.

6 SUPERVISOR COHEN: Chandra. Next would be  
7 Tommi, Amy, Tory, Darren Brown, and Naomi Ann Cooper.  
8 Thank you.

9 CHANDRA REDACK: Good afternoon. I feel very  
10 fortunate in having the -- have the same job in  
11 San Francisco the past 18 years. I work at Rainbow  
12 Grocery Cooperative, and we're told that we are the best  
13 health food store in the United States. And that's why  
14 I have been fighting for the past 15 months to keep my  
15 rent controlled housing so that I can keep my good job.

16 I have been a resident at 1049 Market Street  
17 for the last ten years. And in our building, there is a  
18 very diverse group of tenants as you can see. Artists  
19 like myself, activists, LGBT folks, people of color,  
20 physically challenged people, young and old; and we do  
21 represent what is most great about San Francisco: The  
22 diversity, the people.

23 So I urge you, the board, to please give the  
24 interim control a favorable vote.

25 When our case -- when our eviction case at 1049

1 first hit in the fall of 2013, the press called it the  
2 largest San Francisco eviction case since the  
3 International Hotel in 1970. In our case, there are  
4 three large buildings and associated storefronts that  
5 are owned by the same group of seven people who have  
6 never been pleasant to deal with, to put it mildly.

7 And, yes, we were served today. Just coming  
8 here to speak with you, we were served notices,  
9 lawsuits. It is like a form of intimidation. So a  
10 number of our people were -- managed to escape the  
11 process server and have not been able to come and speak  
12 with you today. And this is just an example of what has  
13 been going on all along with our landlord who is  
14 basically a cutthroat person.

15 SUPERVISOR COHEN: Thank you for your comments.

16 Tommi.

17 TOMMI AVICOLLI MECCA: Hi. My name is Tommi  
18 Avicolli Mecca. I'm with the Housing Rights Committee.  
19 We are in full support of this legislation. For us,  
20 this legislation is about stopping evictions and  
21 stopping the loss of rent controlled units. I think  
22 that's what this all boils down to. The units that will  
23 be affected by this legislation are usually under rent  
24 control. They're commercial units that have been rented  
25 for years as residential; and, therefore, if they meet

1 subsequently were illegally living in. In March of 2013  
2 shortly after we purchased the building, ownership  
3 received a follow-up notice of violation from a previous  
4 2007 notice of violation stating that people were  
5 illegally living in commercial office units and that we  
6 had 90 days to abate the code violation.

7 On August 2nd, 2013, knowing that legalization  
8 would not be possible due to natural light requirements,  
9 we applied for and were granted a building permit to  
10 abate the code violation. Based upon this permit, on  
11 September 27th, 2013, 60-day notices to vacate were sent  
12 to floors three, four and five.

13 The next week we attended a director's hearing  
14 where DBI granted us 30 more days to complete the  
15 abatement. So with this time being given, on  
16 October 28th, 2013, we sent the additional notices to  
17 vacate to floors one and two.

18 Immediately after these notices were sent,  
19 Corrie Tate requested that DBI suspend our permit  
20 attempting to invalidate our notices, and the permit was  
21 immediately suspended.

22 While the suspension release goes to the board  
23 of appeals in April, the interim zoning control proposed  
24 today are intended to affect the future of our building.  
25 The controls would leave the building's uses in the

1 engineer. Been practicing for 35 years. I specialize  
2 in unreinforced masonry buildings and existing buildings  
3 for seismic retrofit. I've been on the building  
4 commission, the state building commission, president of  
5 the Structural Engineer's Association and president of  
6 Applied Technology Council that wrote the city's --

7 For a previous owner, not this owner, I spent  
8 three years studying and designing the proposed  
9 legalization of these units at 1049. I've also looked  
10 at 1067. And this is all before any lawyers got  
11 involved, and I just couldn't get it to work.

12 To comply with city and state building code  
13 would require light shafts to be cut from the roof all  
14 the way down to the fourth floor resulting in 30 percent  
15 of the floor of these buildings to be removed. That's  
16 like perforating a building like stamps. It would also  
17 have the reverse effect of requiring removal of the  
18 units from the sixth floor because you have to bring  
19 these light shafts down to the fourth and fifth floor.

20 When you factor in the costs to build the  
21 shafts -- and the shafts would trigger seismic upgrade  
22 of the building, which would probably be in the order of  
23 \$100 a square foot, you are very closely approaching  
24 where the cost of the total work to value of the unit is  
25 upside down. It's almost 400 percent.

1 I'll give you another example. The cost to do  
2 this work would probably approach the value of the  
3 building, the total value of the building. This  
4 building is not a candidate for conversion of office or  
5 residential. It poses currently life safety risks for  
6 exiting and habitability. It will become a burden on  
7 police, transit and public services. And if you are  
8 looking for affordable housing, the soft-story of  
9 century dwelling units is a better way to add units.  
10 This building is not a candidate.

11 SUPERVISOR KIM: May I ask a follow-up question  
12 to the chair?

13 Excuse me.

14 SUPERVISOR COHEN: Sure. There is a question  
15 for you. Please come back.

16 SUPERVISOR KIM: Thanks for presenting your  
17 assessment of some of the original life and safety  
18 improvements that DBI had requested the building owner  
19 to make. At the request of the building owner, our  
20 office did hold some meetings -- follow-up meetings to  
21 that because the building owner had maintained that they  
22 could not maintain the units as residential because of  
23 the very issues that you brought up.

24 MR. BUSCOVICH: That's correct.

25 SUPERVISOR KIM: There were some follow-up

1 meetings though. DBI through its discretion decided  
2 that they would make an exception. So if the city is  
3 making an exception that the building owner no longer  
4 has to make these very changes that you just enlisted,  
5 enumerated as being incredibly expensive and very  
6 difficult to do, which we agree with, why would you be  
7 bringing these points up now?

8 MR. BUSCOVICH: Because I don't think the  
9 building department, one, has the authority to grant  
10 this exception; and I have not seen the documentation.  
11 I sat in every one of those meetings, and everyone has  
12 talked about it, but there's never been any  
13 documentation waiving -- not the city building code. It  
14 is the state building code. And habitability standards.  
15 Plus in those meetings you also have fire department,  
16 which I'm not going to tread on this, but the fire  
17 department is a state agency. So until the state fire  
18 marshal says you can do it, you can't do it.

19 SUPERVISOR KIM: I think the Department of  
20 Building Inspection disagrees with you, but thank you  
21 for your response.

22 MR. BUSCOVICH: Thank you.

23 SUPERVISOR COHEN: Thank you.

24 Next speaker, please.

25 I'm sorry, what? Before the speaker continues

1 this area. There was the Grant Building. There was the  
2 Warfield Building and a number of other ones in the  
3 past.

4 The landlord essentially of Market knew the  
5 tenants were living there. Their lease specifically  
6 said, even though some of them had a commercial lease,  
7 that if residential use is allowed -- and it talks about  
8 what will happen if residential use is allowed including  
9 the tenants won't be evicted for using it residentially.  
10 The landlord always knew that the building was occupied  
11 residentially. It is not a fire hazard as explained.  
12 The light and air requirement have been waived by the  
13 Department of Building Inspection, and the building is  
14 fully sprinklered. Has a secondary means of egress like  
15 most commercial buildings. And so it is not a health  
16 and safety hazard except since the landlord did issue  
17 eviction notices, they stopped doing routine  
18 maintenance. So things that should be done like  
19 cleaning the bathroom, sweeping the halls, maintaining  
20 the elevator, maintaining the front door of the building  
21 to be secure, that's not being done. So that is  
22 something the landlords don't want to maintain building  
23 to, not because it is a commercial building but because  
24 these landlords don't want to maintain the building in  
25 the hopes of driving the tenants out.



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BOARD OF APPEALS

JAN 30 2014

APPEAL # \_\_\_\_\_

January 30, 2014

**HAND DELIVERED**

Board of Appeals  
City and County of San Francisco  
1650 Mission Street, Suite 304  
San Francisco, California 94103

Re: *Appeal No. 13-144*  
*Subject Property: 1049-1051 Market Street*

Dear Sir or Madam:

1. **Introduction.**

This office represents the owners (the "Owner") of the real property commonly known as 1049-1051 Market Street, San Francisco, California (the "Property").

Owner obtained a permit on August 2, 2013 to perform certain work on the Property (the "Permit") (Exhibit 1) to comply with a Notice of Violation issued on October 25, 2007 for unpermitted residential use (the "2007 NOV") (Exhibit 2). Following issuance of the Permit, Owner spent in excess of \$120,000 in reliance on the Permit, paying statutorily-required relocation assistance fees to tenants served with Sixty-Day Notices to Quit, as required under Rent Ordinance Section 37.9(a)(10). After Owner expended vast sums of money in reliance on the Permit, the City and County of San Francisco ("San Francisco"), in an arbitrary, capricious, and unprecedented manner, sought to suspend the properly issued Permit on the basis that office space use of the Property "may be considered abandoned" under Planning Code Section 320(k). (See Exhibit 3.) Owner is entitled to reinstatement of

California Colorado Connecticut Delaware District of Columbia  
Florida Nevada New Jersey New York Pennsylvania



Board of Appeals  
January 30, 2014  
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the Permit for numerous reasons: (1) it has Vested Rights in the Permit; (2) San Francisco is estopped from suspending the Permit on this basis; (3) suspension of the Permit amounts to a violation of substantive due process.

2. Facts.

On July 10, 2007, San Francisco opened a file relating to the use of the Property for residential purposes. In August 2007, San Francisco noted that all spaces, approximately 60 plus, were live/work units. A request for possible change of use to live/work occupancy was made in July 2007. On October 25, 2007, San Francisco issued the 2007 NOV against the Property. Specifically, the 2007 NOV required Owner to "REMOVE RESIDENTIAL USE IN THE COMMERCIAL SPACE."

Following the issuance of the 2007 NOV, the Owner worked tirelessly for five years with architects, engineers, other professionals, and San Francisco to permit residential use of the Property. During this process, Owner spent in excess of \$100,000 on professional fees and other services to support a conversion to residential use. San Francisco, however, rejected Owner's efforts to legalize residential use of the Property. On March 13, 2013, San Francisco sent a second Notice of Violation (the "2013 NOV") (Exhibit 4). The 2013 NOV also required Owner to "obtain building permit to legalize or remove residential use in commercial space." By this point, it was clear San Francisco would not allow continued residential use of the Property in absence of a residential permit, and the conversion to residential use during the preceding five years had failed. Owner was then notified that the City



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had initiated abatement proceedings and received a Notice of Director's hearing, a true and correct copy of which is attached as Exhibit 5. Accordingly, Owner sought the Permit to abate the residential use of the Property to abate the conditions identified in both the 2007 NOV and the 2013 NOV and to avoid significant civil liability and a revocation of the occupancy permit for the Property.

Immediately following the issuance of the Permit on August 2, 2013, Owner began the path to compliance with the 2007 NOV and 2013 NOV by abating the residential use of the Property. Rent Ordinance Section 37.9(a)(10) requires a landlord make relocation assistance payments to all residential tenants when it seeks "to recover possession in good faith in order to demolish or to otherwise permanently remove the rental unit from housing use." Owner spent in excess of \$120,000 on relocation expenses required under the Rent Ordinance Section 37.9(a)(10) and Section 37.9C and other costs associated with serving Sixty-Day Notices to Quit.

On October 28, 2013, San Francisco issued a Suspension Request of the Permit (the "Suspension Request"). Suspension of the Permit occurred after Owner spent in excess of \$120,000 in reliance on the Permit. The Suspension Request claims San Francisco just learned the Property was being used for residential purposes for in excess of five years. The Suspension Request claims this raises the issue of whether commercial use was abandoned under Planning Code Section 320(k). San Francisco was on notice of, and knew of these facts for many years prior to issuance of the Permit. San Francisco issued the 2007 NOV on



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October 25, 2007 for unpermitted residential use. *More than five years later*, on March 13, 2013, San Francisco issued the 2013 NOV based on unpermitted residential use. If San Francisco wanted to take the position that commercial use was abandoned based on Section 320(k) it had all the facts allegedly necessary for that position *prior to issuance of the Permit*.

3. Argument.

The doctrine of equitable estoppel/vested rights to resolve land use issues is well developed in California law.

The principle of estoppel . . . prohibits a governmental entity from exercising its regulatory power to prohibit a proposed land use when a developer incurs substantial expense in reasonable and good faith reliance on some governmental act or omission so that it would be highly inequitable to deprive the developer of the right to complete the development as proposed.

*Congregation ETZ Chaim v. City of Los Angeles*, 371 F.3d 1122, 1124-25 (9th Cir. 2004) (quoting *Toigo v. Town of Ross*, 70 Cal. App. 4th 309, 321 (1998)).

Owner obtained vested rights in the Permit after expending \$120,000 in reliance on the Permit. For an owner to obtain vested rights in a permit, the owner must show the following: (1) the owner must perform substantial work and spend substantial funds and/or incur substantial liabilities; (2) the work performed and the expenditures occurred after the



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issuance of the grant or permit and in reliance on the valid grant or permit; and (3) the reliance on the grant or permit must be in good faith. *Auco Community Developers, Inc. v. South Coast Regional Com.*, 17 Cal. 3d 785, 791 (1976); *Aries Dev. Co. v. California Coastal Zone Conservation Com.*, 48 Cal. App. 3d 534, 548 (1975).

No debate exists concerning Owner's expenditure of substantial sums of money in support of the Permit. Owner spent \$120,000 in mandatory tenant relocation payments under San Francisco Rent Ordinance Section 37.9C and on other costs associated with complying with the 2007 NOV, the 2013 NOV and abating the residential use of the Property. Further, no debate exists that Owner obtained the Permit on August 2, 2013 and spent in excess of \$120,000 in reliance on the Permit after August 2, 2013. Finally, Owner's reliance on the Permit was in good faith. Indeed, Owner obtained the Permit to perform the acts *required* by San Francisco's 2007 NOV and 2013 NOV. Relying on San Francisco to tell Owner what to do with respect to legalizing the Property is essential the definition of good faith reliance.

San Francisco is estopped from suspending the Permit based on facts already available to it at the time the Permit issued. San Francisco had all the facts necessary to invoke its position concerning Section 320(k) and the "abandonment" of office use in the Property due to five years of residential use at the time San Francisco issued the Permit. San Francisco issued the 2007 NOV for residential use throughout the Property. More than five years later, San Francisco issued the 2013 NOV for residential use throughout the Property.



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All these facts were available to San Francisco when it issued the Permit. The "new facts" related in the Suspension Request, including "testimony" of "current or former residential tenants," newspaper articles and verbal reports from the Owner add nothing to the 2007 NOV, which plainly refers to residential use throughout the Property. Indeed, San Francisco's letter admits the 2007 NOV put San Francisco on notice of the residential use of the Property. San Francisco cannot be permitted to punish Owner because its left hand does not know what its right hand is doing.

The suspension of the Permit violates Owner's substantive due process rights. "As a substantive limitation on governmental action, the due process clause precludes arbitrary and irrational decisionmaking." *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 1183 (1996). "[A] party asserting a deprivation of substantive due process must first establish a valid property interest within the meaning of the Constitution.' If a cognizable property interest is implicated, a court must then determine whether the government's action was arbitrary or irrational." *Id.* at 1184 (citations omitted). San Francisco issued the Permit. Owner spent over \$120,000 in reliance on the Permit. Owner obtained vested rights in the Permit. And, San Francisco's suspension of the Permit after Owner's expenditure of over \$120,000 is an "abuse of government power that shocks the conscience," or "action that is legally irrational in that it is not sufficiently keyed to any legitimate state interests." *Id.* at 1185. San Francisco instructed Owner to abate residential use of the Property and then, without warning reversed course claiming that residential use of the Property may be



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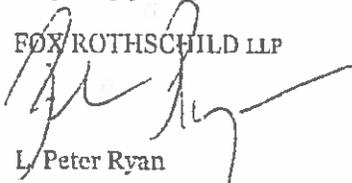
permitted. Under normal circumstances, this type of municipal flip-flopping might be tolerable; here, however, it comes on the heels of a \$120,000 outlay by Owner made in reliance on the San Francisco Building Department and while facing significant threatened civil liability from the Director of the Department of Building Inspection.

4. Conclusion.

San Francisco's arbitrary and unprecedented decision to suspend the Permit cannot stand. Owner spent over \$120,000 in reliance on the properly issued Permit to cure violation notices issued by San Francisco in the manner San Francisco required Owner to cure those violations. Owner has vested rights in the Permit and San Francisco is estopped from suspending it.

Very truly yours,

FOX ROTHSCHILD LLP

  
L. Peter Ryan

LPR:evm  
22622853 v1 01/30/2014  
Enclosures

Letter to Board of Appeals  
Page 2  
February 13, 2014

1.) The Notice of Violation did not, as asserted by Owner, direct the removal of residential use in the commercial space. The Owner has not submitted a building permit application to the Planning Department seeking approval for conversion of office units to live/work units.

The Department of Building Inspection issued a second Notice of Violation dated February 16, 2013. (Appellant Brief, Exhibit 4.) It simply stated that the Owner had failed to comply with the first Notice of Violation and that continued failure to comply would cause abatement proceedings to begin. It did not, as asserted by Owner, direct the Owner to remove the residential use in the commercial space.

On July 24, 2013, the Department of Building Inspection received a permit application from Owner (#201307262890) seeking "to comply with notice of violation #200711850. Demo of office walls on 5th floor through 1st floor. SFAB-017." In answer to the question on the permit form "Does this alteration constitute a change of occupancy?" the Owner responded "No." In response to the question as to present legal use and proposed legal use and number of units in each case, the Owner responded for both "Office/retail/live work" and "6" dwelling units, respectively. (Appellant Brief, Exhibit 1.) The permit did not indicate that it sought to reconvert live/work units to office. The Department of Building Inspection approved the permit on August 2, 2013. It did not refer the permit to the Planning Department for a determination of compliance with zoning requirements.

On October 28, 2013, the Zoning Administrator sent a letter to the Department of Building Inspection advising the Director that the Planning Department had not reviewed or approved the permit but had received evidence that "calls into question the current authorized use" of the building under the Planning Code, specifically, questioning whether the office use is an existing use or was converted to another use and considered abandoned. The Zoning Administrator stated that the Planning Department "at the present time respectfully requests that you suspend the permit so that we can further investigate this matter." The Planning Department

1 I.

2 INTRODUCTION

3 Close to 20 years ago, the owners of 1049 Market Street converted this commercial  
4 building to residential live/work "office lofts" without the benefit of permit. They chose to do  
5 so in large part due to the difficulty of securing commercial tenants in the "blighted" mid-  
6 Market Street corridor. Not surprisingly, artists, writers, performers, and low-income small  
7 business owners moved into this challenging neighborhood and made the building a vibrant  
8 and sharing community where they conduct their craft and look out for and support one  
9 another.

10 After nearly 20 years of drawing income from the low-income residents of the building,  
11 the landlord seeks to evict them to demolish all the live/work units on five floors (over 50  
12 units) so that they can be rented as offices to the City's burgeoning tech industry. The landlord  
13 has already succeeded in driving out roughly half of the tenants through eviction, buyouts and  
14 reducing maintenance and services to the building. Still intent on driving out the remaining  
15 tenants, the landlord now claims that it is "legally mandated" to evict the tenants even though  
16 the Department of City Planning and the Department of Building Inspection have both outlined  
17 a pathway to legalizing these units as artists live/work lofts, and even though the Board of  
18 Supervisors and the Mayor have unanimously imposed interim controls on the conversion of  
19 residential occupancies to commercial uses in the mid-Market Street area. As argued more  
20 fully below, the building permit that the landlord seeks to carry out these mass evictions should  
21 remain suspended or be revoked.

22 II.

23 STATEMENT OF FACTS

24 Appellants Ben Cady, Chandra Redack, Peter Taylor, Brad K. Alder, Chad Benjamin  
25 Potter, Manuel Rodriguez, Ann Cooper, Melissa Bracero, Adam Wojewidka, Chris Baker,  
26 Brendan Barthel, Carina C. Zona, Karl Hass, Juan P. Escobedo, Darren Brown, Bogdan Marcol  
27 and Christopher Figueroa are residential tenants of 1049 Market Street, San Francisco, CA  
28 ("Subject Premises"). They appeal the Release of Suspension Request by Zoning Administrator

1 habitable space on floors 1-5. DBI then issued a Notice of Violation (NOV) to “legalize the  
2 residential live-work occupancy” on these floors. (See Notice of Violation #200711850,  
3 Appellants’ Exh. 3.)

4 The owner continued to rent units to residential tenants despite the Notice of Violation,  
5 including entering into new leases for at least 13 units. Although the owner had over four years  
6 to legalize the live/work use, it did not do so. On May 16, 2012, John Gall and Amy Bogart  
7 appeared before the Building Inspection Commission regarding application of the natural light  
8 requirement for dwellings under the Building Code to their properties. They testified that the  
9 only barrier to legalizing the residential occupancy was that requirement. Mr. Gall and Ms.  
10 Bogart testified as follows:

11 Mr. GALL: “We can do everything else that’s required as far as fire and safety and the  
12 important stuff except for the natural light requirement.” [time stamp 2:08:00-2:08:18]

13 Ms. BOGART: “The building is fire safe, completely sprinklered, seismically up-  
14 graded, proper ventilation and everything. It’s just the natural light that makes it not economic-  
15 ally feasible for us to do it.” [time stamp 2:08:00-2:08:18] [See video of Hearing,  
16 [http://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=14&clip\\_id=15123&meta\\_id=259](http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=14&clip_id=15123&meta_id=259)  
17 949]

18 Given the owner’s failure to legalize the live/work use, DBI initiated abatement  
19 proceedings against the property on February 16, 2013. (Notice of Violation, Appellants’  
20 Exh. 4.) A Director’s Hearing was later noticed for September 27, 2013. (Notice of Director’s  
21 Hearing, Appellants’ Exh. 5.)

22 On August 2, 2013, the owners submitted a permit application and received (over the  
23 counter) a building permit (App. No. 201307262890) which described the work to be done as  
24 follows: “to comply with Notice of Violation #200711850. Demo of office walls on Fifth Fl.  
25 through First Fl. Live/work only on 6<sup>th</sup> Floor.” The application identifies the present use as  
26 “office/retail/live work” and the proposed use as “office/retail/live work.” (Application for  
27 Building Permit No. 201307262890 (“subject permit”), Appellants’ Exh. 6.) This permit is  
28 central to this appeal.

1           The application did not state that the original office use had been converted to  
2 live/work, and that the use was to revert back to office use. The application stated that it was to  
3 comply with Notice of Violation #200711850, which required the owner to legalize the  
4 live/work use. Furthermore, by stating that the present use was identical to the proposed use,  
5 (application paragraphs 7A & 7) the permit application misrepresented the actual use of the  
6 premises and failed to notify DBI or the Planning Department that the owner sought to  
7 reinstate a lapsed office use.

8           The tenants were not notified of the permit application or that the owner was seeking to  
9 demolish their units before the owner applied for the permit, as required by Civil Code §  
10 1940.6. (See Tenant Letters, Exh. 1.) Nor did the owner post notice of the permit application  
11 as required by S.F. Building Code § 106.3.2.4. The tenants were kept in the dark by the owner  
12 during the 15-day period in which the tenants could appeal the issuance of the permit to this  
13 Board (August 2 through 17, 2013), until September 13, when management sent the following  
14 email to the building tenants:

15                       Over the past several months, the current ownership group of 1049  
16 Market St. has spent extraordinary time and money with the hopes  
17 to accommodate a local building code ordinance that is necessary  
18 for accessory residential use at 1049 Market St., It has long been  
19 our belief that this was achievable and we would be able to keep  
20 this unique and affordable community.

21                       Despite these efforts and the support of many high-level city  
22 officials, we were not able to overcome the City of San Francisco's  
23 overly restrictive local building code requirements. The  
24 unfortunate result is that due to a long-standing Notice of Violation  
25 we have been forced by Code Enforcement to get a building permit  
26 to change the current unit configuration entirely.

27                       Per these City orders, the building must be entirely vacated.

28                       (Robert Mullen email dated September 13, 2013, Appellants' Exh.  
7.)

On September 27, 2013, the owner issued 60-Day Notices of Termination of Tenancy  
("Notice") to all the tenants on floors 3-5. The Notices stated that they were issued pursuant to  
San Francisco Rent Ordinance § 37.9(a)(10) "in order to demolish or otherwise permanently  
remove the units from housing use . . . ." The Notices stated that the landlord "has obtained all

1 the necessary permits on or before the date upon which this notice was given," but did not  
2 attach a copy of the permit. (See 60 Day Notice, Appellants' Exh. 8.) The only permit to  
3 demolish or otherwise remove the units from housing use is the subject permit. (Appellants'  
4 Exh. 6.)

5 The Notice also stated that the landlord "shall pay relocation payments pursuant to Rent  
6 Ordinance § 37.9C." That section of the Rent Ordinance requires that the landlord pay  
7 relocation payments to the tenants when a landlord seeks to evict a tenant for certain "no-fault"  
8 reasons (e.g. owner move-in, demolition/removal from housing use, capital improvements, and  
9 substantial rehabilitation). The landlord enclosed the first half of this statutory relocation  
10 payment (\$2,603.50) with the Notice. The Notice further stated that the second half of the  
11 relocation payment will be paid when the premises are vacated. The Notice also states that  
12 advice regarding the Notice could be obtained from the Rent Board.<sup>1</sup>

13 After the tenants were informed of the existence of the permit through the Notices, they  
14 spoke to City officials with the hope of changing what they thought was an overly restrictive  
15 code interpretation and bureaucratic insensitivity to their situation. They were surprised to  
16 learn that the City Departments believed that the premises could be legalized as live/work and  
17 that the owner had not pursued legalization with the City in good faith. DBI was willing to  
18 waive the natural light requirement of the Building Code in the exercise of discretion, as long  
19 as essential health and safety requirements were met. (Email chain between DBI and John Gall,  
20 Exhibit 9; See *Bay Guardian*, 10-10-13, *Beyond Chron*, 2013-10-15, Exhibit 10.) Furthermore,  
21 the permit had been issued over-the-counter without Planning Department review because the  
22 permit failed to state that the owner sought a change of use.

23 On October 28, the landlord issued the same 60-Day Notices of Termination of  
24 Tenancy to all the tenants on floors 1 and 2. The 60-Day Notices expired on November 26 and  
25 December 27 respectively. Since their expiration, the owner has refused to accept rent from  
26 the tenants, and continues to refuse to accept rent.

27 <sup>1</sup> The Rent Board determined in a petition filed by Appellant Rodriguez that his unit is subject  
28 to the Rent Control Ordinance (Appellants' Exh. 21), and the owner admits that all appellants'  
units are covered in its eviction lawsuit. (Exh. 14, p. 9, ¶ 29)

1 Commission for any permit seeking to remove the residential use; 2) The Mayor's Executive  
2 Directive 13-01, issued December 18, 2013 (Appellants' Exh. 16), requires that any permit to  
3 remove housing units undergo Discretionary Review before the Planning Commission; 3)  
4 Planning Code § 320(k) specifically recognizes that office use may be abandoned if not used  
5 continuously for five years prior to a permit to build or reinstate office space, and requires  
6 compliance with Planning Code § 320 prior to re-instituting a lapsed office use; 4) The tenants  
7 were not notified of the permit application or that the owner was seeking to demolish their  
8 units before the owner applied for the permit, as required by Civil Code § 1940.6, nor did the  
9 owner post notice of the permit application as required by S.F. Building Code § 106.3.2.4.

10 III.

11 **THE PERMIT SHOULD REMAIN SUSPENDED UNTIL THE OWNER OBTAINS**  
12 **CONDITIONAL USE AUTHORIZATION AND THE PROJECT UNDERGOES**  
13 **DISCRETIONARY REVIEW**

14 A. **The Interim Controls (Resolution No. 61-15) Requires That The Owner Obtain**  
15 **Conditional Use Authorization.**

16 The Board of Supervisors voted unanimously to enact interim zoning controls for the  
17 Mid-Market area which took effect upon the Mayor's signature on March 12, 2015.  
18 (Resolution 61-15, Appellants' Exh. 15.) The interim zoning controls last for one year until  
19 permanent controls can be enacted. The interim controls state in part:

20 . . . any commercial use that has been converted in whole or in part  
21 to residential use without benefit of a permit shall be deemed  
22 abandoned. Any permit, subject to the posted notice and 15-day  
23 hold requirements above, to re-establish any commercial use shall  
24 not be issued or reinstated, or, if already issued, shall not remain  
25 effective, unless the project sponsor obtains a Conditional Use  
26 authorization under Planning Code Section 303, in addition to all  
27 requirements of the Planning Code applicable to the establishment  
28 of any such use; . . .

(*Id.*, p. 4.)

29 The Subject Premises are located within the area subject to the interim controls. (*Id.* at  
30 p. 3.) Furthermore, the building permit in question is covered by the controls, as it is for a  
31 building with "some commercial use" (*Id.* at p. 3), and the permit is for structural work  
32 (demolition of office walls) above the ground floor in the interior of the building that obtained

1 could then consider the reasons for the reduction in housing units,  
2 with special attention paid to preserving existing rental stock.  
(Appellants' Exh. 16, p. 2.)

3 The permit should never have been approved over the counter because it was obtained  
4 to eliminate over 50 units of housing. The owner never stated in the permit that the work to be  
5 done was to eliminate housing units. Instead, it stated that the work was to "demo office  
6 walls," as if the current use of the building was offices. It further misrepresented the present  
7 use of the building as "office/retail/live work," and that there would be no change in use to the  
8 proposed use of "office/retail/live work." These misrepresentations in the permit application  
9 alone justify revoking the permit. Furthermore, the owner failed to notify the tenants "prior to  
10 applying . . . for a permit to demolish" their units, as required by Civil Code § 1940.6(a)(2).  
11 Nor did the owner post notice of the permit application as required by S.F. Building Code §  
12 106.3.2.4. Had the owner notified the tenants that a permit was being sought, they could have  
13 sought Discretionary Review prior to its issuance.

14 Under the Mayor's Directive, the permit would not be approved over the counter and  
15 would be referred to the Planning Commission for Discretionary Review due to the loss of  
16 rental housing units. Therefore, this Board should not allow the permit to be re-issued without  
17 complying with the Mayor's Directive, and should either revoke the permit or suspend it  
18 pending the project undergoing Discretionary Review.

19 **C. The Pre-Existing Office Use Was Abandoned Under Planning Code § 320(k) And**  
20 **Cannot Be Reinstated Without Complying With Planning Code § 320.**

21 The permit was initially suspended upon request of the Zoning Administrator because  
22 the evidence showed that the owner allowed the office use at the premises to lapse for more  
23 than five years. The Zoning Administrator found that "[e]vidence thus far suggests that nearly  
24 all of the Building was converted to some type of residential use more than five years ago."  
25 (Suspension Request, Appellants' Exh. 11.) The evidence is now undisputed that any prior  
26 office use was converted to residential use more than five years ago. (Appellants' Exhs. 1, 3, 4,  
27 7, 8.)  
28

1 Appellants' rent-controlled homes is obvious. Appellants' rents range between \$643 to \$1150  
2 per month. (Appellants' Exhs. 14, p. 2-7.) They would be thrust into a housing market where  
3 the median rent for a one-bedroom apartment is \$3,460/month, more than three times the rent  
4 they are paying now (Sfgate, 3/9/15, "Depressing SF Median Rent Maps Shows Rents Up All  
5 Over City.") Appellants are low-income artists and writers and attest that they would be forced  
6 to leave the City because they could not afford to rent here, and in many cases would have to  
7 leave their work in San Francisco as well. (See Tenant's Letters, Appellants' Exh. 1.)

8 **E. The Owner's Estoppel and Vested Rights Arguments Are Without Merit.**

9 Appellants anticipate that the owner will argue in opposition to the appeal that its right  
10 to demolish under the permit has vested, that the City is estopped to deny issuance of the  
11 permit, as well as other arguments in an attempt to force the issuance of the demolition permit.  
12 Such arguments were presented in its earlier appeal of the Suspension Request (Appeal No. 13-  
13 144), which the owner voluntarily dismissed, and has therefore waived. Appellants have  
14 attached their Opposition Brief to that appeal as Exhibit 20, and refer the Board to arguments  
15 made there to rebut these claims should they be raised.

16 **IV.**

17 **CONCLUSION**

18 For all the reasons stated above, Appellants respectfully request the Repeal of  
19 Suspension Request be reversed, and that the Permit either be revoked or remain suspended  
20 until the owner obtains Conditional Use Authorization from the Planning Commission for  
21 demolition of Appellants' and the other tenants' rental units.

22 Dated: March 19, 2015

23   
24 \_\_\_\_\_  
25 Stephen L. Collier  
26 Attorney for Appellants

From:  
Karl Haas  
1049 Market St. #104  
San Francisco, CA 94107  
zgoat08@yahoo.com

To:  
Board of Appeals

Date:  
2015-03-14

Re:  
Demolition permit # 2013 07262890

I am concerned that a copy of the demolition permit wasn't posted or given to me, so I was unaware of the appeal window in August and was denied my right to protest the permit.

I request the opportunity to appeal the permit now, to prevent the mass eviction of the building.

I have lived at 1049 Market street for almost eleven years. The building is well built, and has been a great place that suits my needs, and until the current situation it was well maintained and safe. Since then, the landlord has reduced services and maintenance has suffered.

I'm a long term SF resident. I run a retail shop that employs several other low income San Francisco residents.

Losing this very satisfactory living unit would have a negative effect on my life and likely result in me having to close my small business and leave the city I have lived in and loved for over 25 years.

Progress is being made legalizing the building for residential due to the significant efforts being made by the Department of Building Inspections, the Housing Action Committee, and the Tenderloin Housing Clinic, and all three organizations, as well as Supervisor Kim and her staff, deserve my thanks.



Karl Haas

Statement for the Board of Appeals - Feb. 16, 2015

My name is Naomi Ann Cooper. I've been residing at 1049 Market Street in Room 206, since the end of 1998. I'm hoping that the Board of Appeals will rule in favor of the tenants here, helping keep this building residential, instead of converting it to commercial space.

I am sixty-six years old, and I've been in San Francisco for thirty-two years, working as a preschool teacher for four and a half years and as an after-school teacher in the Unified School district for twenty years. Recently, I've had some health problems, probably exacerbated by worrying about my loft, so last August, I retired, hoping to finally finish my novel and substitute teach.

Losing my loft would disrupt my teaching plans, because although substitute assignments are plentiful in the city, there are not as many opportunities in a smaller Bay Area town, which is the only kind of place where I could possibly afford to live. Driving to work is not really an option, since I don't drive on the freeway, and as a substitute, I'd often be called to show up on short notice to schools that are not near BART, so public transportation would probably be unfeasible, as well as expensive.

I cannot afford a studio in San Francisco. The possibility of becoming a roommate is dim, since most people in shared housing are not looking for a sixty-six year old woman to share their place.

With so many roadblocks, I may be forced to leave the Bay Area, which I'd previously considered my permanent home.

I am concerned for the residents here. Some of us are low income, and others are disabled and are even older than I am. There are about thirty of us left, in this eighty unit building, and we really need to stay. We hope that in the future, empty units will be reopened for affordable housing, which is so sorely needed in the Bay Area.

On a larger scale, I am worried about San Francisco, where it is becoming increasingly challenging for working class and middle class people and artists to have a place. Teachers and other public servants often discover it's impossible to live and work here, and this problem downgrades the quality of our schools and other public service agencies. Couples are finding that San Francisco's so expensive, it's not a realistic location to consider for raising children. With its lack of affordable housing, our wonderful city is in danger of losing its diversity.

In the year since there has been an effort to evict us, the tenants have been subjected to an elevator that was broken for a month, which was a

Statement for the Board of Appeals - Feb. 16, 2015 - cont.

particular hardship for me, since I have a bad back, and it was hard to carry my laundry and groceries up the stairs. Also, it has often been difficult to get a hot shower.

The ventilation system that provides air to rooms without windows was not working for a while, so I was deprived of fresh air. I was concerned about carbon monoxide build-up in my room, which was hot and stale.

In spite of so many challenges, I still hope that we tenants can eventually make some agreement with the landlord, and he will come to respect our community of diverse and creative residents.

Thank you for considering this appeal. I hope you will help us keep our lofts.

Ann Cooper  
(aka Naomi Cooper)

March 15, 2015

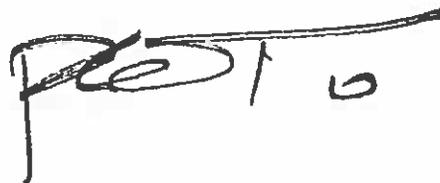
I am Peter Taylor. In April 2015 I will have been a tenant  
At 1049 Market St Loft 207, for 11 years.

Since the permit was issued to the building for Mr. John Gall et alia;  
there has been an increasing list of facility services, maintenance  
and security issues that has resulted in a significant reduction in the  
overall habitability and residential enjoyment of the premises.

I and other residents have continually expressed our concerns to  
management about: the sporadic and inconsistent, if any, operation  
of the elevators; an ongoing situation with the delivery of hot water  
whereby it is necessary to run the open open tap for well over 15  
minutes before the temperature become usable; (this in light of  
current water supply in general in California is approaching a  
critical concern, seems downright immoral); continued  
security issues with all of the entrance/egress doors, whereby  
unwanted persons are accessing our building; toilets and showers  
are often unattended for days at a time; trash room often unavigable  
because of garbage piled everywhere virtually blocking the exit door;  
as well asventilation problems unadressed for weeks.

If I am forced to move, it will be an extreme hardship for me,  
I am a senior citizen with a 35 year work history in this city.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Peter Taylor". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Date: March 15, 2015  
To: Board of Appeals

From: Adam Wojewidka, Tenant of 1049 Market St. Apt 208, San Francisco, CA 94103.

Hello, I'm an artist that goes to the Academy of Art University. I am a Graphic Designer, Web Designer and Photographer and I work from home. I'm working very hard to get a degree and it's nearing completion. The hours required for both work and school are very long and a lot of concentration is needed.

On October 28<sup>th</sup>, 2013, I've received a 60 day notice to be evicted. The notice for the demolition permit # 2013 07262890 was not posted in any communal area, mailed or given to me personally. I had no idea of it's existence and wasn't able to appeal the permit.

I've lived here since 2009. I love this place and the living space is perfectly suited to my work requirements. Unfortunately, though, the building hasn't been kept up to an acceptable standard of living. The showers run cold water for extended periods, and if warm water is available, it can take a long time to become available. The second floor stair door doesn't close properly after asking for it to be fixed and putting a sign on it, allowing people to access it without a key if not manually shut, making it easy for anyone who gets in the front door to come to the second floor. The bathrooms aren't cleaned regularly and when cleaned it's usually not a thorough job. I've seen someone off the streets who wasn't authorized to be in the building several times, and in the recent past, the elevator at times didn't function properly for days at a time.

I am located close to my school and whenever I need to go shoot photographs for one of my jobs, they are usually very close to home and that is very helpful for my pretty hectic schedule. My work also requires pricey equipment which adds up very quickly. With all of that and supporting myself, this place has been an amazing help for me to keep going.

Losing my home at 1049 would force me out of the city I was born in. I've been working as hard as I can to stay. The kind of work I do is plentiful here and moving would absolutely disrupt what I'm working very hard towards, not to mention my well being. This area has been my community for a long time now and I call it home.

I greatly appreciate their help and want to sincerely thank the Department of Building Inspection for going through this. I would also like to thank Supervisor Kim for being very forthcoming and helping us through as well, up to this point and in the future, thanks so much!

I hope this letter makes a small dent for the cause and helps us after being left in the dark so long. A lot of people around here are very nervous but help contribute positively to this neighborhood. Through this experience, I've met a lot of people from this building and hope I can continue to stay in our home with them.

Thank you for your time and support.

Adam Wojewidka  
1049 Market St. Apt 208  
San Francisco, CA 94103



My name is Jonathan Stoker, I have lived at 1049 Market St. for nearly four years now. The last year has been really tough on me and most of my neighbors. We have been denied basic services, and been characterized as vandals, thieves, and crooks when we complained.

The building has been allowed to run down, despite the numerous times we have complained, most of the major issues like the doors not properly latching, elevator keys not working, and the hot water taking so long to warm up (a huge waste of water), remain unaddressed. Cleanliness of the place has dropped off by a third.

We were told to go and that, "Anyone that made (the eviction) difficult" would, "Never be able to rent in the city again". That one remark made me question the ethical and legal ramifications of this whole process and realize that I, like a lot of the tenants, have no hope of remaining in the city if I relinquish my rent controlled apartment. This is my home and I will do whatever I can to keep it.

In early August of 2013, nearly 100 tenants of 1049 Market Street received an email that apologized and claimed that repeated attempts to make the building residential had failed and that the city was to blame.

The tenants were a diverse group, artists, students, disabled persons, retirees, techies, hospitality industry workers and veterans.

We were subjected to indoor heat in excess of 80 degrees for nearly 3 months. When many of us told Bob Mullen of this he quipped, "it's just humid" or some other nonsense. It turns out that the HVAC fan on the roof had been off for months.

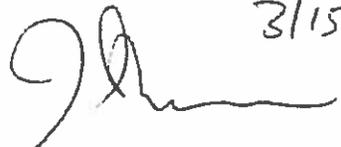
Coincidental? Perhaps. There had never been such a problem with that system before I am told.

I would like to recognize the City Government of San Francisco for the attention they have given our cause and express heartfelt thanks to Supervisors, Kim, Cohen, and Weiner for sponsoring such crucial legislation as the protections that are now in place. Well done!

The diversity of our city depends upon having an inclusive view of the future, not an elitist one. If the city is sold to the highest bidders, who will serve the food or make the art or drive the cabs?

I hope that the landlord will realize how disruptive and destructive this has already been to so many real lives. We are not thieves or criminals, we didn't ask for this, but we have dignity and deep resolve. This is class-warfare or economic discrimination whatever you call it.

I cannot just walk away from my friends, family, job, and the funky urban community that we all are part of here in the city I love the most.

JONATHAN STOKER #210  
3/15/15  


2-14-15

D.B.I., and all concerned.

My name is Tony Antoni.

I have been a tenant of 1049 for 18 years. I was never given proper notice of the permit to demo.

Had I been given proper notice

I along with my neighbors would have taken actions to prevent this as to not lose our homes and eventually be forced to leave the City and People we love.

Your consideration towards the residents of 1049 would be met with much gratitude.

Thank you,

Tony Antoni

Tenant Statement, 3/14/2015

1049 #213

I, Brendan Barthel, remain or try to remain a loyal tenant here at 1049 Market st since February of 2012 and before that a tenant here from 2006-2009.

Since the attempted eviction in the fall of 2013, not much has changed for me. At the time of the initial eviction attempt, I was not informed about the demolition permit. I would have contested it if I was aware of it. I looked for comparable housing within the area, but I personally could not afford to move. The location of my residence (1049 Market) is crucial to the lifestyle I pursue and indeed I have altered my habits (like selling my automobile) to make it more convenient. I use my loft for work, and stop by throughout my day as I skip between the multiple jobs that I maintain as a freelance artist.

As I understand this city is changing and we are all affected, I never felt that there was an honest attempt. The lack of communication, then decline of services and even the basic disregard for common decency while handling all matters really turned my openness to distaste. I remain willing to pay rent, although it has not been accepted and I would truly like the quality of my home to be restored to its prior level of maintenance, say as it were pre-2013. Since the attempted eviction, the cleaning of the common areas especially the restrooms has reached a level below any civil standard. Unhealthy to say the least. I would see security, cleanliness and open communications renewed before I feel good about being a resident here. That being said, that is all I want. To live un-molested by mudslinging attempts to make me leave, or at least be invited to an open conversation about helping me relocate in a civil and affordable manner, should that be my only option.

Sincerely,

1049 Tenant,

Brendan Barthel

A handwritten signature in black ink that reads "Brendan Barthel". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

March 16, 2015

**Bogdan Marcol**

Creative Designer

Electronic Arts

1049 Market St. Apt 215

San Francisco, CA 94103

To whom it may concern,

I am a five year resident of 1049 and have been living in a quiet enjoyment space until about a year ago when the Landlord served us with an unlawful detainer. I'm a working citizen in the Bay Area and enjoy being in San Francisco for all its diversity.

The quality of 1049 has gone down tremendously in the past year and a half — drug addicts breaking in and occupying our showers, and hallways and bathroom being neglected for months without cleaning; some of us have gotten sick because of these unsanitary conditions. I am personally been fed up with these conditions and have had to clean the bathrooms myself.

And more importantly, a notice of a permit was never brought to my attention. And with the current climate of ridiculous rent in the city, I would have no where to go because of the prices and waitlist for an apartment or house. I also may lose my job if I was put on the street.

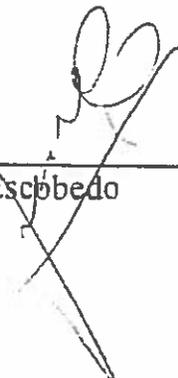
Sincerely,  
Bo Marcol

Juan P. Escobedo  
1049 Market St., Unit 301  
San Francisco, CA 94103

I have been living in this unit on the third floor since early 2009. On September 27, I got an eviction letter from the office. They gave me 60 days to get out of my place. The excuse was for demolition of the building. However, I never was given notice about this since the demolition permit #2013 07262890 wasn't posted or given to me. Consequently, I missed the opportunity to appeal it in August. I request the opportunity to appeal it now, as it is causing evictions in the building.

I have one job and I am a student at City College San Francisco. If I have to move out of this place, I will have to move to another state because I cannot afford to pay the high rents in this city. Moreover, I would have to give up on my career and my job and start my life all over again. It wouldn't be easy for me since I am 47 years old. I love my place and my neighbors. It is affordable, and keeping this place is the only way for me to have a place to live with the basic needs while I am working and studying. In other words, I want and would love to keep my place and call San Francisco home. Even my living conditions have been deteriorating, and having not cleaning and not disinfected bathrooms and shower, sometimes broke elevators, not more vacuum in the common areas.

Also, I want to take the opportunity to thank the DBI, the City, and the Tenderloin Housing Clinic for all your help and support in this difficult time and situation I am going through. I really appreciate your support.



---

Juan P. Escobedo

March 15, 2015

March 15, 2015

Melissa Doris Bracero  
1049 Market Street, Loft 302  
San Francisco, CA 94103

Attention: Board of Appeals  
Regarding: Demolition Permit# 2013 07262890

My name is Melissa Doris Bracero. I have been a resident at 1049 Market Street since December of 2011. I work part-time as a bookkeeper for a travel agency here in San Francisco, as well as design and produce my clothing line out of my loft. Kindly requesting your attention with regard to John Gall's request for demolition permit. As notice was never posted on the building, nor given to me directly, I respectfully request an opportunity to appeal this permit at this time.

Since receiving the eviction notice, normal building maintenance has deteriorated. In spite of this, I believe that preserving my home is imperative. If I were forced to leave it would be life altering. This has become my home and the neighborhood my community. I feel blessed to be a positive part of the revitalization of the Tenderloin neighborhood, and the City of San Francisco. This building is comprised of working class citizens who respect human rights, culture, and art: qualities which draw people from all over the world to San Francisco.

I had opportunity to escort Department of Building Inspection as they surveyed the building. It proved to be a very positive experience, as many of them had never been inside of this building. The Tenderloin Housing Clinic has supported us as well with navigating this path. In addition, Supervisor Jane Kim and her support staff have been very generous with their time.

Your consideration is greatly appreciated.

Sincerely,



Melissa Bracero  
Resident 1049 Market Street

14 MARCH 2015

ATTN: Board of Appeals

I'm Chris Baker, and I have lived in unit 310 at 1049 Market Street since 2002, for thirteen years.

In 2013, I discovered that a demolition permit (#2013 07262890) had been issued for my building. But I only learned of this indirectly, after I received a 60 day eviction notice, because there was NO public posting of the permit.

I'm now faced with having to move and find new employment. I would have to leave the home that has served as the soundstage for my film and animation projects for over a decade. I would have to leave this neighborhood and this city. I do not want to be evicted because I was unable to appeal a permit that I didn't even know existed.

Since this permit was issued, building maintenance and upkeep has declined significantly. An elevator was broken for over a month, hot water is unreliable, cleaning is inconsistent and incomplete. Security issues have gone uncorrected for long stretches

I'm very grateful to the THC and the DBI and the city for the assistance they have provided, and I entreat you to help me stay in my home.

Thank you very much

A handwritten signature in black ink, appearing to read 'Chris Baker', written in a cursive style.

March 15, 2015

I Chandra L. Redack have lived at 1049 Market St. #313, San Francisco, California 94103 for ten years. I moved to said address in June of 2004.

In September of 2013, I was given a 60 day notice to move from the premises signed LLC.

The property at 1049 Market St. has been in steady decline, most notably beginning in September of 2013.

Window washers used to regularly clean the windows of my unit # 313 (the property manager would post a notice of date that the washers were coming). The windows are growing more steadily dirty.

The common bathroom, shower and hall areas used to be cleaned and maintained on a mostly regular basis; those areas are mostly not attended to. No toilet paper, no cleaning, shower nozzles broken and not replaced.

The security of the front and back entrance/ exit doors are routinely insecure even though management has been repeatedly notified of unfamiliar and even dangerous people who appear to have regular access to the "secret code". The manager has been asked to put in a FOB for access. The front door often stays open now and must be manually shut. The back door opens onto a dangerous alley, and parking area peopled with drug addicts and it is rotting and can be broken into more easily.

The two washing machines and three dryers in the building are often out of order and even steal coins at times.

The fire alarm system in the hallway and in my room are non-functional. Alarms do not engage or cannot be heard by me.

No hot water to do dishes, sketchy hot water for showering.

The lock and key systems for the elevator and access from stairwell no longer work, and if replaced or re-keyed landlord does not notify me.

One or more Elevators often are not operational.

A ceiling lighting fixture in my room has never worked although I have repeatedly requested repairs.

If I lose my housing unit my San Francisco job of eighteen years at Rainbow Grocery Coop Inc. will be threatened as the Bay Area will be unaffordable (rent wise ) for me to live in and I will have to leave the Bay Area. For thirty years I have lived and worked in SF helping to build and maintain it; from selling repair parts to the City and to Silicon Valley, to working at the best health food store in the U.S.

Sincerely,

Chandra L. Redack

To: Board of Appeals  
Date: March 15, 2015

My name is Carina C. Zona. I have lived at 1049 Market Street Apartment 316 for over 3 years.

In 2013, I received a 60 Days Notice of Termination of Tenancy in which the owner stated that it has "all the necessary permits" for demolition. No applications were ever posted. No permits were ever posted. I was not notified of right to contest, during any part of the process. Neither were any of my neighbors. Had I known this was happening, I would have fought it vigorously. Our apartments are extremely modest, but fit my needs nicely. I love my little home, and remain committed to staying.

I'm a native of this city, born and raised in San Francisco's western neighborhoods. My memories and ties are vivid throughout this city. Losing this affordable rent-controlled studio apartment would force me to move out of the bay area. In fact, out of state. That would mean not only walking away from deep personal ties but also force me to reinvent the career that I love. My job as a community manager is uniquely tied to my ability to be deeply involved in the communities of SOMA & Mid-Market.

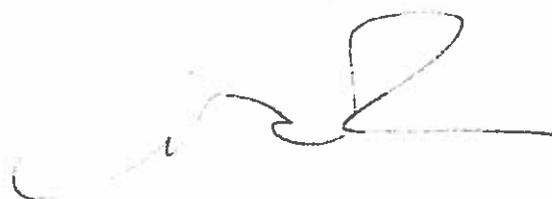
I visited 1049 Market regularly starting in 2009, then took up residence here in November 2011. The place was always very no-frills, but always felt comfortable and was kept clean. Up until the notices of termination, all of our bathrooms & common areas were scrubbed 7 days a week / 365 day a year by a housekeeping staff. In the weeks right before the notices expired, the housekeeper was removed. Cleaning has been severely neglected ever since. Numerous other services have deteriorated since right after these eviction efforts initiated. Security problems that we never had before, chronically malfunctioning elevators, etc.

There are 77 affordable housing units in this building. That's a lot of homes -- and good people -- to lose from a city that is in a housing crisis already.

I'm proud that we all as San Franciscan care deeply about protecting affordable housing. I'm committed to this fight not only because it's important for my own sake but also because defending that principle is too important to walk away from.

I am so grateful to the many city representatives and agencies who've supported our quest to get the due process on this permit that we should have had at the beginning. Please revoke this permit that never should have happened without public input.

Thank you for your consideration.



I moved to # 1049 Market in July 2013  
and 2 months later I got a letter  
"60 days notice" so Why they do that?  
Why they rented to me? ..

Now February 2015 I'm still here 1.5 year  
with no notice about permit, not posted,  
bathrooms not clean.

I can't believe Bob and the owner  
rent me a unit in July 2013 and they  
they give me the 60 days notice, why they  
do that? if they knew what is going on?  
I'm upset, sad and more I spend long time  
looking for a place and 2 months later I  
have to move again?

Alejandra Besela  
\*

#402

Date: March,15,2015

From: Darren Brown, Tennant 1049 Market # 408

Subject: Statement Letter

My name is Darren Brown a Tennant at 1049 market st. #408.

I moved here in 1999 and have been living here for 15 yrs.

I have never been made aware of a demolition permit to demolish the building or seen a sign posted.

Since the eviction notices were delivered maintenance and repairs have diminished.

If I have to vacate my unit there's no place I can move to that is affordable in today's rental market. I do want to leave or relocate from San Francisco.

D. Brown — 3-15-15

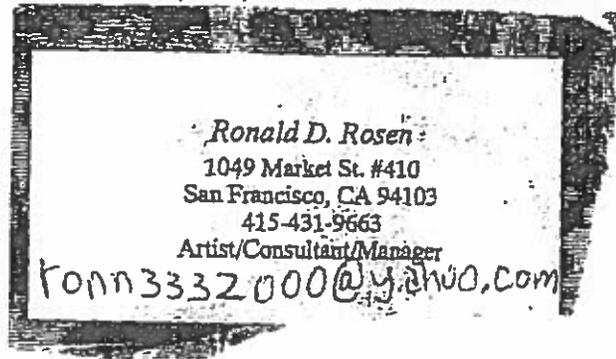
TO D.B.I. / Re: Appeals process

TO Board of Appeals

The permit application was never posted publicly and as a result I was never given ~~the~~ <sup>a</sup> chance to appeal. It is my wish that I appeal now.

Ronald D. Rosen

~~Oct 28 2013~~  
3/15/2015



4th  
Floor  
1049 Mkt.

P.S: The demolition permit # 2013 7226-8980 wasn't posted or given to me, and I was unaware of it from last August, and I ~~resist~~ the opportunity to appeal it now.

I have lived in my apt. since 1997 (14yrs) and I want to stay here into the future.

Thank to DBI for your courtesy and co-operation, as well as to the Tenderloin Housing Clinic. There has also been poor

Ronald D. Rosen

appt management where  
apt security is bad, ~~no~~ hot  
water at times etc.

03/15/15

To: Board of Appeals

My name is Patrick Cook, I am a tenant and the residential manager at 1049 Market Street, I live in apartment 413. I moved in on March 15, 2004, and have called this place home for the past 11 years.

I can say with certainty, that for the duration of my stay, at no time did I ever see a notice of the demolition permit #2013 07262890, nor was one given to me. My landlord, John Gall, explained to me that he fought tooth and nail to keep us in our units, but the battle was lost and there was nothing else we could do. When I offered to galvanize our community and fight to stay in our homes, after consulting with his lawyers, he said, "It's too late for that, the city had won."

Unfortunately, shortly after receiving our eviction notices, what was ordinarily a well maintained building, has diminished over the past year.

I have had a sordid past; I was homeless for eight years before moving into my apartment and becoming a part of this community. Living here has given me the opportunity to overcome many obstacles, get my life together and become a productive member of society. If I was uprooted now, it would be detrimental to my life and my livelihood that I have worked so diligently to sustain. I shudder to think what would be in store for someone like me with my unique circumstances.

I sincerely hope that this situation can be resolved with the end result being that we are able to stay in our homes that we so rightfully deserve.

Sincerely,

Patrick Cook

1049 Market St. #413



From:  
Manuel Rodriguez  
1049 Market St. Apt. 414  
San Francisco, CA 94103

March 15, 2015

To whom it may concern:

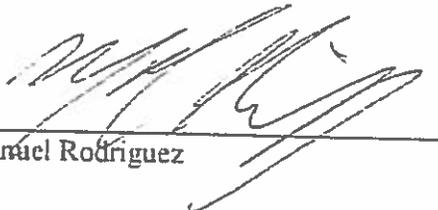
My name is Manuel Rodriguez and I am currently a resident in 1049 Market St. I have lived at 1049 Market St. continuously since August 28, 2010.

My understanding is that a permit #201307262890 issued around August of 2013. I only learned of the issuance of the permit about a month after it was issued. There was never a posting in or around the interior/exterior of the building advising the residents that the permit was applied for or issued.

After the permit was issued the landlord issued a 60-day notice of termination of tenancy based on the issuance of the permit in September 2013. After the termination of tenancy notice issued the landlord has significantly reduced the services available to tenants. The building's elevator has broken down and repairs have been delayed, there have been a number of occasions where the building did not have hot water, the common-area bathrooms are cleaned only occasionally where before were cleaned daily by a multi-staff team and the hallways are never vacuumed. In addition, the front door has broken on several occasions leaving residents vulnerable in this mid-Market location.

Given the affordable rent I currently set for my residence I will suffer significant hardship if the permit's suspension is lifted and I'm forced to seek housing elsewhere. My current rent is \$890 per month for a 400 sq. Foot studio and that is unobtainable in today's rental market. If the permit suspension is lifted I would have to move out of San Francisco and possibly out of the Bay Area.

Regards,

  
Manuel Rodriguez

My name is Brad K. Alder and I have lived at 1049 Market for ten years. I live on the fifth floor and I have windows that face north.

I work at 111 Minna Gallery in downtown San Francisco, a gallery and community space that has been in business for over 22 years (I am the Preparator there). I also host a monthly live drawing event there called Sketch Tuesdays where we invite artists to create their work live for the audience, an event I have organized and hosted since 2006. I am also an accomplished house painter and collage artist. I have a city business license to operate my small house painting company, license # 415463.

I moved to San Francisco in February of 1994. Without a doubt, the loss of our rent controlled affordable housing will mean I will be moving to Dallas Texas to work in my uncle's theater (Theatre3, the oldest theater-in-the-round in America). This would end my career at 111 Minna, Sketch Tuesdays would cease to exist, ending an important platform for local artists. I want to continue serving San Francisco as a loyal worker, making it an even better place to live. Rising rents and greedy landlords have created an exodus of people just like myself, which is one of the reasons we decided to fight this eviction and take a stand to say "NO. You cannot steamroll over regular people in pursuit of more and more money without a fight." I want our building to be an example of this.

Since the City has stepped up for our cause (thank you Jane Kim, Ed Lee, Board of Supervisors!), we feel confident of remaining at 1049, and also to provide assistance to any other San Franciscans who may have to deal with this nightmare. And trust me, there are nightmares when you are not sure if you will have a home to return to, or process servers attempting to physically throw lawsuit papers at your feet AT CITY HALL. People in the press have written about Mid-Market going through "Sensitive Development". Our situation is anything but that, it's ruthless, with their extremely rude and high powered lawyers. Yuck.

Well guess what? We have lawyers too. And with the invaluable help from Steve Collier, Tommi Avicolti Mecca, the Anti Eviction Mapping Project, and many others we will prevail.

Thank you,  
Brad K. Alder

[www.111minnagallery.com](http://www.111minnagallery.com)

[www.sketchtuesdays.com](http://www.sketchtuesdays.com)

Established in 1993 in downtown San Francisco, 111 Minna Gallery is in the business of Art and Leisure. The gallery showcases a unique blend of local and international artists in an elegantly urban and ever-changing 4,000 square foot space. The gallery is open to the public and nightly on a rotating schedule for special events.



**DEPARTMENT OF BUILDING INSPECTION**

NOTICE: 2

NUMBER: 200711850

City and County of San Francisco  
1660 Mission St. San Francisco, CA 94103

DATE: 16-FEB-13

ADDRESS: 1049 MARKET ST

OCCUPANCY/USE: M (MERCANTILE)

BLOCK: 3703 LOT: 067

If checked, this information is based upon site-observation only. Further research may indicate that legal use is different. If so, a revised Notice of Violation will be issued.

OWNER/AGENT: SHIH, HO INC  
MAILING SHIH, HO INC  
ADDRESS % TERRY BOGART  
16351 SKYLAND BLVD  
WOODSIDE CA

PHONE #: --

94062

PERSON CONTACTED @ SITE: SHIH, HO INC

PHONE #: --

**VIOLATION DESCRIPTION:**

	CODE/SECTION#
<input type="checkbox"/> WORK WITHOUT PERMIT	106.1.1
<input type="checkbox"/> ADDITIONAL WORK-PERMIT REQUIRED	106.4.7
<input type="checkbox"/> EXPIRED OR <input type="checkbox"/> CANCELLED PERMIT PA#:	106.4.4
<input type="checkbox"/> UNSAFE BUILDING <input type="checkbox"/> SEE ATTACHMENTS	102.1

You failed to comply with NOV dated 10/25/2007. Therefore this Department has initiated abatement proceedings against this property.

**CORRECTIVE ACTION:**

STOP ALL WORK SFBC 104.2.4

415-558-6008

FILE BUILDING PERMIT WITHIN DAYS

(WITH PLANS) A copy of This Notice Must Accompany the Permit Application

OBTAIN PERMIT WITHIN DAYS AND COMPLETE ALL WORK WITHIN DAYS, INCLUDING FINAL INSPECTION AND SIGNOFF.

CORRECT VIOLATIONS WITHIN DAYS.

NO PERMIT REQUIRED

YOU FAILED TO COMPLY WITH THE NOTICE(S) DATED 25-OCT-07, THEREFORE THIS DEPT. HAS INITIATED ABATEMENT PROCEEDINGS.

● FAILURE TO COMPLY WITH THIS NOTICE WILL CAUSE ABATEMENT PROCEEDINGS TO BEGIN. SEE ATTACHMENT FOR ADDITIONAL WARNINGS.

This case has been referred to our Code Enforcement Division. You will be notified of a time, place and date of a Director's Hearing.

INVESTIGATION FEE OR OTHER FEE WILL APPLY

9x FEE (WORK W/O PERMIT AFTER 9/1/60)  2x FEE (WORK EXCEEDING SCOPE OF PERMIT)

OTHER  REINSPECTION FEE \$  NO PENALTY (WORK W/O PERMIT PRIOR TO 9/1/60)

APPROX. DATE OF WORK W/O PERMIT

VALUE OF WORK PERFORMED W/O PERMITS \$

BY ORDER OF THE DIRECTOR, DEPARTMENT OF BUILDING INSPECTION

CONTACT INSPECTOR: Robert J Power

PHONE # 415-558-6008

DIVISION: BID

DISTRICT: 17

By: (Inspector's Signature) \_\_\_\_\_

Exhibit 4

BOA\_000524

AR\_01\_000524



August 13, 2013

Owner: 1049 MARKET STREET LLC  
1005 MARKET ST #310  
SAN FRANCISCO CA  
94103

Address: 1049 MARKET ST,  
Block: 3703 Lot: 067 Seq: 00  
Tract: Case: BWO  
Hearing Number : 200711850  
Inspector: Simas

## NOTICE OF DIRECTOR'S HEARING

Date and Time of Hearing: September 27, 2013  
At 1660 Mission Street, Room 2001, San Francisco, CA 94103 at 9:30 a.m.

TO OWNER(S), LESSEE(S), TENANT(S) AND OTHER PERSONS OF INTEREST:

In accordance with provisions of the San Francisco Building Code, the described premises were inspected and violation(s) were found to exist. The list of violation(s) have been mailed to the Owner(s) of Record or agent(s) and compliance has not occurred. Therefore, the Director of the Department of Building Inspection has probable cause to believe the building, structure or a portion thereof is an unsafe building or property.

Failure to comply with the decision of the Director may result in the revocation of the Permit of Occupancy and/or Certificate of Occupancy of the subject premises.

The Owner(s) of Record or the duly authorized representative is notified to appear at the Hearing to be held on the date shown above, at which time the Director of the Department of Building Inspection will consider the violation(s) and that the building is unsafe and a public nuisance.

### WARNING

Failure to comply with this request will result in further abatement proceedings. If an Order of Abatement is issued from the Director's Hearing, you will be billed for the entire cost incurred in the code enforcement process, from the posting of the first "Warning of Violation" until the matter is resolved per San Francisco Building Code Sections 102.2, 110 Table 1-G & 110 Table 1-K.

The Owner(s) of Record is instructed to notify the holder(s) of any Mortgage(s) or Deed(s) of Trust secured by this property of these proceedings. Also, the Department of Building Inspection shall be advised of the name(s) of holder(s) of any Mortgage(s) or Deed(s) of Trust on this property.

BY ORDER OF THE DIRECTOR OF DEPARTMENT OF BUILDING INSPECTION

Very truly yours

Tom C. Hui, S.E., C.B.O. Acting Director  
Department of Building Inspection

Code Enforcement Section  
1660 Mission Street - San Francisco, CA 94103  
Office (415) 558-6454 - FAX (415) 558-6226 - [www.sfgov.org/dbi](http://www.sfgov.org/dbi)

Exhibit 5

BOA\_000526

AR\_01\_000526



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## 1049 Market St

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Robert Mullen <rpmj62@gmail.com>

Fri, Sep 13, 2013 at 4:18 PM

To: rentals@sfofficeflfts.com

Bcc: cczona@gmail.com

MEMO: 1049 Market St

Over the past several months, the current ownership group of 1049 Market St. has spent extraordinary time and money with the hopes to accommodate a local building code ordinance that is necessary for accessory residential use at 1049 Market St., It has long been our belief that this was achievable and we would be able to keep this unique and affordable community.

Despite these efforts and the support of many high-level city officials, we were not able to overcome the City of San Francisco's overly restrictive local building code requirements. The unfortunate result is that due to a long-standing Notice of Violation we have been forced by Code Enforcement to get a building permit to change the current unit configuration entirely.

Per these City orders, the building must be entirely vacated.

Management has asked ownership and the City for as much time as possible to allow tenants to look for new places to live and/or work. Therefore, we will only be starting with the fifth floor and proceed in descending order. Although this pending notice has not yet been issued on the 5<sup>th</sup> floor, we are currently working with the 5<sup>th</sup> floor tenants to best accommodate their particular situations.

Eventually each floor will get a notice, but our hope is to allow for a gradual move-out to allow for time to find new living and/or working arrangements. This may

allow for most tenants on the lower floors to have several months before needing to find a new place. Move-out monies per the City of San Francisco ordinance will be provided.

Management will also do it's best to accommodate tenants in other buildings that are nearby, as units become available.

Do not hesitate to contact Bob in the office or email him at [bob@sfofficeLOfts.com](mailto:bob@sfofficeLOfts.com). He is available to answer any questions, comments and/or concerns.

Regards,

1049 Market St LLC

# Exhibit 8

BOA\_000533

AR\_01\_000533

**SIXTY DAY NOTICE**  **NOTICE OF TENANCY**

Benjamin Cady

All Occupants In Possession

1049 Market Street, Unit 409

San Francisco, California

THIS NOTICE IS GIVEN with respect to those certain premises ("Premises") located at 1049 Market Street, Unit 409, San Francisco, California.

NOTICE IS HEREBY GIVEN that, pursuant to Rent Ordinance Section 37.9(a)(10), Landlord seeks to recover possession in good faith in order to demolish or to otherwise permanently remove the Premises from housing use and has obtained all the necessary permits on or before the date upon which this notice to vacate is given, and does so without ulterior reasons and with honest intent.

YOU ARE HEREBY NOTIFIED that, effective sixty (60) days after service on you of this Notice of Termination of Tenancy, the tenancy by which you hold possession of the Premises will be terminated. At that time, you will be required to vacate and surrender possession of the Premises.

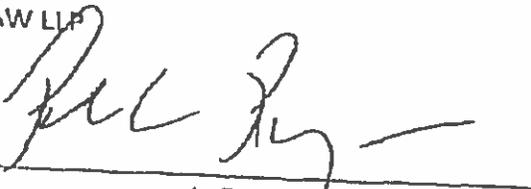
YOU ARE FURTHER NOTIFIED that Landlord shall pay relocation expenses as provided in Rent Ordinance Section 37.9C. Rent Ordinance Section 37.9C provides for additional relocation expenses to Eligible Tenants who are senior or disabled and for households with children. Each Eligible Tenant who is 60 years of age or older or who is disabled within the meaning of Section 12955.3 of the California Government Code, and each household with at least one Eligible Tenant and at least one child under the age of 18

years, shall be entitled to receive an additional payment of \$3,472.00, \$1,713.50 of which shall be paid within fifteen (15) calendar days of Landlord's receipt of written notice from the Eligible Tenant of entitlement to the relocation payment along with supporting evidence, and \$1,713.50 of which shall be paid when the Eligible Tenant vacates the Premises. A copy of Rent Ordinance Section 37.9C and the relocation payment benefits schedule under Rent Ordinance Section 37.9C are provided herewith.

A check in the amount of \$2,603.50 representing one-half (1/2) of the relocation expenses due is enclosed herewith. Landlord will pay the second half of the relocation expenses due when the Premises is vacated.

Dated: September 27, 2013.

MBV LAW LLP

By 

L. Peter Ryan

Telephone: (415) 781-4400

MBV Law LLP

855 Front Street

San Francisco, California 94111

Attorneys for 1049 Market Street, LLC

Advice regarding this notice is available from the San Francisco Residential Rent Stabilization and Arbitration Board at 25 Van Ness Avenue, San Francisco, CA 94102-6033 (415) 252-4602. Please be advised that if this notice is posted in a conspicuous place on the Premises, the check for relocation benefits was sent by U.S. mail to the address of the Premises on the same day as the posting of the notice.

NOTE: This is not an official record of the laws or regulations of the City and County of San Francisco since it reflects changes to the Rent Ordinance made by published court decisions and state legislation, which the official record may not reflect.

1 **Sec. 37.9C Tenants Rights To Relocation For No-Fault Evictions.**  
2 [Added by Proposition 11, effective December 22, 2008; unamended section  
3 37.9C(n)(1) in reference California Civil Code Section 1947.9, which went into  
4 effect on January 1, 2013]

5 (a) Definitions.

6 (1) Covered No-Fault Eviction Notice. For purposes of this section 37.9C, a  
7 Covered No-Fault Eviction Notice shall mean a notice to quit based upon Section 37.9(a)(8),  
8 (10), (11), or (12) [However, effective January 1, 2013, the amount of relocation payments for  
9 temporary displacement of a tenant household under Section 37.9(a)(11) for less than 20 days is  
10 governed by California Civil Code Section 1947.9 and not by this Section.]

11 (2) Eligible Tenant. For purposes of this section 37.9C, an Eligible Tenant shall  
12 mean any authorized occupant of a rental unit, regardless of age, who has resided in the unit for  
13 12 or more months.

14 (b) Each Eligible Tenant who receives a Covered No-Fault Eviction Notice, in addition to  
15 all rights under any other provision of law, shall be entitled to receive relocation expenses from  
16 the landlord, in the amounts specified in section 37.9C(e).

17 (c) On or before the date of service of a Covered No-Fault Eviction Notice, the landlord  
18 shall notify all occupant(s) in the unit in writing of the right to receive payment under this section  
19 37.9C and the amount of that relocation and shall provide a copy of section 37.9C. Such  
20 notification shall include a statement describing the additional relocation expenses available for  
21 Eligible Tenants who are senior or disabled and for households with children. The landlord shall  
22 file a copy of this notification with the Rent Board within 10 days after service of the notice,  
23 together with a copy of the notice to vacate and proof of service upon the tenant.

24 (d) A landlord who pays relocation expenses as required by this section in conjunction  
25 with a notice to quit need not pay relocation expenses with any further notices to quit based  
26 upon the same just cause under Section 37.9(a) for the same unit that are served within 180  
27 days of the notice that included the required relocation payment. The relocation expenses  
28 contained herein are separate from any security or other refundable deposits as defined in  
California Code Section 1950.5. Further, payment or acceptance of relocation expenses shall  
not operate as a waiver of any rights a tenant may have under law

1 (e) Relocation expenses shall be:

2 (1) Each Eligible Tenant receiving a Covered No-Fault Eviction Notice shall  
3 receive \$4,500, \$2,250 of which shall be paid at the time of the service of the notice to quit, and  
4 \$2,250 of which shall be paid when the unit is vacated. In no case, however, shall the landlord  
5 be obligated under this section 37.9C(e)(1) to provide more than \$13,500 in relocation expenses  
6 to all Eligible Tenants in the same unit.

7 (2) In addition, each Eligible Tenant who is 60 years of age or older or who is  
8 disabled within the meaning of Section 12955.3 of the California Government Code, and each  
9 household with at least one Eligible Tenant and at least one child under the age of 18 years,  
10 shall be entitled to receive an additional payment of \$3,000.00, \$1,500.00 of which shall be paid  
11 within fifteen (15) calendar days of the landlord's receipt of written notice from the Eligible  
12 Tenant of entitlement to the relocation payment along with supporting evidence, and \$1,500 of  
13 which shall be paid when the Eligible Tenant vacates the unit. Within 30 days after notification to  
14 the landlord of a claim of entitlement to additional relocation expenses because of disability, age,  
15 or having children in the household, the landlord shall give written notice to the Rent Board of the  
16 claim for additional relocation assistance and whether or not the landlord disputes the claim.

17 (3) Commencing March 1, 2007, these relocation expenses, including the  
18 maximum relocation expenses per unit, shall increase annually, rounded to the nearest dollar, at  
19 the rate of increase in the "rent of primary residence" expenditure category of the Consumer  
20 Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose Region for  
21 the preceding calendar year, as that data is made available by the United States Department of  
22 Labor and published by the Board.

23 (f) The provisions of this Ordinance shall apply to all notices to quit served on or after  
24 August 10, 2006.

City and County of San Francisco



Residential Rent Stabilization and Arbitration Board

**Relocation Payments for Evictions based on Owner/Relative Move-in OR Demolition/Permanent Removal of Unit from Housing Use OR Temporary Capital Improvement Work OR Substantial Rehabilitation\***

Date of Service of Notice of Termination of Tenancy ("Eviction Notice")	Relocation Amount Due Per Tenant	Maximum Relocation Amount Due Per Unit	PLUS Additional Amount Due for Each Elderly (80 years or older) or Disabled Tenant or Household with Minor Child(ren)
3/01/12 - 2/28/13	\$5,153.00	\$15,460.00	\$3,436.00
3/01/13 - 2/28/14	\$5,207.00	\$15,621.00	\$3,472.00

\*See Ordinance Section 37.9C for additional relocation requirements for evictions under 37.9(a)(9) (owner/relative move-in), 37.9(a)(10) (demolition/permanent removal from housing use), 37.9(a)(11) (temporary eviction for capital improvement work) and 37.9(a)(12) (substantial rehabilitation). However, effective 1/1/13, the amount of relocation payments for temporary capital improvement evictions under 37.9(a)(11) for less than 20 days is governed by California Civil Code Section 1947.3 and not by Rent Ordinance Section 37.9C.

**Pagos de traslado por desalojo debidos a mudanza del propietario/paciente O por demolición/eliminación definitiva del uso de la unidad como vivienda O trabajos temporales de mejora de capital O rehabilitación substancial\***

Fecha del servicio de entrega del aviso de desalojo	Monto de traslado correspondiente por inquilino	Monto de traslado máximo correspondiente por unidad	ADICIONAL Monto adicional correspondiente por cada persona mayor de edad (80 años o mas) o inquilino discapacitado o familia con niños menores
3/01/12 - 2/28/13	\$5,153.00	\$15,460.00	\$3,436.00
3/01/13 - 2/28/14	\$5,207.00	\$15,621.00	\$3,472.00

\*Ver la Sección 37.9C de la Ordenanza para requisitos adicionales de traslado por desalojo según 37.9(a) (9) (mudanza de dueñopaciente), 37.9(a)(10) (demolición/eliminación definitiva del uso de la unidad como vivienda), 37.9(a)(11) (trabajos temporales de mejora de capital) y 37.9(a)(12) "rehabilitación substancial". Sin embargo, efectivo 1/1/13, la cantidad del pago de traslado para los desalojos temporales de mejora de capital bajo la Sección 37.9(a)(11) por menos de 20 días está gobernada por la Sección del Código Civil de California 1947.3 y no por la Sección 37.9C de la Ordenanza.

以業主/親屬身份入住、或拆除/永久停止再使用單位、具小修不拆或為居住用途使用臨時資本設備改善工程或大型裝修作為主進行迫遷的搬遷費。

送達迫遷通知的日期	每位房客應得的搬運費金額	每個單位應得的最高搬運費金額	外加 (每位老年 (60歲或以上) 或殘障房客或每戶有未成年兒童的房客應得的額外金額)
3/01/12 - 2/28/13	\$5,153.00	\$15,460.00	\$3,436.00
3/01/13 - 2/28/14	\$5,207.00	\$15,621.00	\$3,472.00

\*請參閱《房租條例》第37.9C條中關於租金調整的規定。業主/親屬搬遷、具小修不拆或為居住用途使用臨時資本設備改善工程或大型裝修作為主進行迫遷的搬遷費。有效日期：2013年1月1日。詳情請參閱《房租條例》第37.9(a)(9)至37.9(a)(12)條。然而，自2013年1月1日起，對於少於20天的臨時資本設備改善工程下的搬遷費，將由加州民法典第1947.3條規定，而非由《房租條例》第37.9C條規定。

570 Relocation Payments-37.9C 3/1/13

25 Van Ness Avenue #320  
San Francisco, CA 94102-6033

www.sfr.ca.gov

Phone 415 252-4602  
FAX 415 252-4699

1927

Bank of America

1049 MARKET STREET LLC  
1049 MARKET STREET  
SAN FRANCISCO, CA 94103

11 35-1210

9/27/13

\$ 2603.50

DOLLARS

Benjamin Cady

two thousand six hundred three dollars 50/100

MEMO Relocation # 409

*[Signature]*  
AUTHORIZED SIGNATURE

⑈001927⑈ ⑆121000358⑆ 164100284374⑈

1049 MARKET STREET LLC

1927

Benjamin Cady

RA 409

1049 MARKET STREET LLC

1927

**Buckley, Jeff (MYR)**

---

**From:** Tom, Ronald  
**Sent:** Tuesday, November 26, 2013 2:33 PM  
**To:** Hui, Tom; John Gall  
**Cc:** Strawn, William; Sweeney, Edward; Lowrey, Daniel; Jayin, Carolyn; O'Riordan, Patrick; Kim, Jane; Ma, Jeffrey; Buckley, Jeff; Zhan, James  
**Subject:** RE: 1049 Market and 1067 Market

John:

Jeff and I will be attending the pre-application meeting that has been rescheduled to next Friday, 12/6/13, at 10 AM.

For your projects, we will apply the 2010 San Francisco/California Electrical and Plumbing codes. Sprinkler/life-safety features of the buildings will follow the 2010 San Francisco/California Building and Fire codes (SFFD to confirm).

However, the project may use the Live/Work Quarters Code Ruling No. BC-502-1, dated October 11, 1988. The current version of the Energy Code will not be applicable. Other elements of the Live/Work Quarters covering occupancy classification, exits, handicapped access cooking, sanitary facilities, heating, sound transmission, security, ceiling heights, light and ventilation requirements are contained in the bulletin.

Regards,

Ron

Ron Tom  
Chief Building Inspector  
Architect

415/558-6013  
[ronald.tom@sfgov.org](mailto:ronald.tom@sfgov.org)

San Francisco Department of Building Inspection  
1660 Mission Street, 2nd Floor  
San Francisco, CA 94103

---

**From:** Hui, Tom  
**Sent:** Thursday, November 21, 2013 1:43 PM  
**To:** John Gall  
**Cc:** Strawn, William; Sweeney, Edward; Lowrey, Daniel; Jayin, Carolyn; O'Riordan, Patrick; Kim, Jane; Ma, Jeffrey; Tom, Ronald; Buckley, Jeff; Zhan, James  
**Subject:** Re: 1049 Market and 1067 Market

Hi John,

We greatly appreciate that you are requesting a formal pre-application. We will have my deputy director to handle this case with my Jeff Ma and Ron Tom. Please, set up the time with Ed including Fire, Mechanical, Electrical divisions.

Bye  
Tom Hui

Sent from my iPhone

On Nov 21, 2013, at 1:36 PM, "John Gall" <[john.gall@live.com](mailto:john.gall@live.com)> wrote:

Bill,

I have the go-ahead to get a Pre-App meeting regarding AB-005 for 1049 Market St and also from the 1067 Market St ownership groups. As you may be aware, notices to vacate are still active at 1049 for several tenants, and the sooner we can get the code determination and the planning approval for our current "accessory use" set up, the closer we may be to a resolution.

Although this issue has moved slowly due to unusual circumstances, I want to thank you, Tom and all others for being available and willing to work with me. Navigating this issue brings lots of challenges. Jane Kim and various other City officials have also been helpful in moving this along.

We would like to have one meeting to discuss both buildings at everyone's earliest convenience.

I will drop off hard copies and the fees at DBI later today.

Look forward to hearing from you.

Regards,

John Gall

---

From: [william.strawn@sfgov.org](mailto:william.strawn@sfgov.org)  
To: [john.gall@live.com](mailto:john.gall@live.com)  
CC: [tom.hui@sfgov.org](mailto:tom.hui@sfgov.org); [edward.sweeney@sfgov.org](mailto:edward.sweeney@sfgov.org); [daniel.lowrey@sfgov.org](mailto:daniel.lowrey@sfgov.org);  
[william.strawn@sfgov.org](mailto:william.strawn@sfgov.org); [carolyn.jayin@sfgov.org](mailto:carolyn.jayin@sfgov.org); [patrick.oriordan@sfgov.org](mailto:patrick.oriordan@sfgov.org)  
Subject: Follow Up following the limited inspections of 1049 Market and 1067 Market on Oct. 17  
Date: Fri, 1 Nov 2013 18:42:08 +0000

November 1, 2013

John Gall, Ownership Group, 1049 Market Street  
Via E-mail: [john.gall@live.com](mailto:john.gall@live.com)

Mr. Gall:

Thank you for your telephone call yesterday and for your request for details or notes of the October 17, 2013 limited access inspections of 1049 Market Street and 1067 Market Street.

As you know, neither you nor your ownership partners attended the October 17th limited inspection. Participating that day were DBI's Chief Plumbing Inspector, Chief Electrical Inspector, Jeffrey Ma from our Plan Review staff, the Deputy Director for Inspection Services,

the Deputy Director for Permit Services, myself, and representatives from the San Francisco Fire Department.

While I will attach the notes each of the above provided me following the inspection visit, which do make clear ongoing questions about a number of life-safety code compliance matters, and which raised additional questions in the inspectors' minds about conditions in most of the residential units, as well as about the building's mechanical systems – none of which could be inspected or accessed on October 17th – my overall opinion is that your ownership group could manage in economically feasible ways the corrections of these buildings' life-safety systems and meet code compliance requirements to retain the existing accessory residential uses.

I again urge you and your partners to make a formal pre-application meeting request; bring your architect and/or design professional; and meet formally with Building, Planning, Fire and respective professional staffs so that we could map out precisely, and in writing, the application of AB-005 and other specific steps you would need to take in order to meet code requirements to legalize the accessory residential use.

As you know, Planning requested on Monday, October 28th, and we suspended, the building permit issued to you on August 2, 2013. Per the letter from Acting Zoning Administrator Corey Teague, "...we are requesting suspension of the permit in order to obtain and analyze permits, plans, and relevant occupancy information related to the existing use of the building..."

This action, along with the returning to staff of the Order of Abatement advisement issued on October 1st, provides additional time for your ownership group to meet formally with the City's reviewing agencies and to mutually agree upon steps you would take to achieve code compliance in the buildings' life-safety systems and thus be enabled to retain your existing accessory residential occupancy.

Thank you for your attention and consideration. We look forward to hearing from you on this important matter at your earliest convenience.

Sincerely,  
Tom Hui, S.E., C.B.O, and Director



# SAN FRANCISCO PLANNING DEPARTMENT

## Suspension Request

October 28, 2013

Mr. Tom Hui, CBO  
Director, Department of Building Inspection  
1660 Mission Street  
San Francisco, CA 94103

Building Application No.:	201307262890
Property Address:	1049-1051 Market Street
Block and Lot	3703 / 067
Zoning District:	C-3-G / 90-X
Staff Contact:	Dario Jones, Acting Chief of Enforcement - (415) 558-6477 <a href="mailto:dario.jones@sfgov.org">dario.jones@sfgov.org</a>

BOARD OF APPEALS

NOV 08 2013

APPEAL # 13-144

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

Dear Director Hui,

This letter is to request that the Department of Building Inspection (DBI) suspend Building Permit Application Number 201307262890 ("Permit") for the building located at 1049-1051 Market Street ("Building"). The Permit was sought in order to demolish office walls on the first through fifth floors of the Building and was approved and issued by DBI on August 2, 2013.

The Planning Department did not review or approve the Permit, and is now aware of evidence that calls into question the current authorized use of the Building under the Planning Code. This, in turn, may affect the review and approval process for the office use proposed under the Permit. Accordingly, we are requesting suspension of the Permit in order to obtain and analyze permits, plans, and relevant occupancy information related to the existing and proposed uses of the Building.

Evidence thus far suggests that nearly all of the Building was converted to some type of residential use more than five years ago. This evidence includes (1) materials associated with DBI Complaint Number 200711850, which substantiated allegations of conversion to some type of residential occupancy, (2) testimony received at the Building Inspection Commission hearing on October 16, 2013 by individuals who represented themselves as current or previous residential tenants of the Building, (3) articles in the San Francisco Chronicle and San Francisco Examiner during the week of October 8, 2013, and (4) verbal reports by the property owners themselves during a meeting with DBI and Planning Department Staff on October 13, 2013.

The application for the Permit identifies office space as the existing use at the subject property. If that use (considered "preexisting office space" under Planning Code §320(k)) was converted to another use more than five years ago, it may be considered abandoned. A resumption of that use on the first through fifth floors of the Building may then be subject to Planning Commission authorization under the City's Office Development Annual Limit Program (Planning Code §320 et. seq; also known as

[www.sfplanning.org](http://www.sfplanning.org)

BOA\_000552

AR\_01\_000552

Tom Hui, Director - DBI  
Suspension Request  
1049-1051 Market Street  
October 28, 2013

BOARD OF APPEALS

NOV 08 2013

APPEAL # 13-144

Proposition M), payment of associated development impact fees, and other applicable requirements of the Planning Code.

This issue is particularly relevant because the owners of the subject property also control the property at 1067-1071 Market Street (Parcel Number 3703/063). Very similarly, that property also appears to (1) have historically been used as office space, and (2) have more recently been converted to a residential-type use. A similar Planning Code analysis may be required to return 1067-1071 Market Street to an office use.

As staff from both the Planning Department and DBI have previously made clear to the property owners, there are multiple ways in which both properties – and the existing residential-type uses - can be maintained and improved in a fashion consistent with the Planning and Building Codes. The Planning Department remains prepared to collaborate with the property owners but at the present time respectfully requests that you suspend the Permit so that we can further investigate this matter.

**APPEAL:** Any aggrieved person may appeal this letter to the Board of Appeals within fifteen (15) days after the date of the issuance of this letter. For further information, please contact the Board of Appeals in person at 1650 Mission Street, Room 304, or call 575-6880.

Sincerely,



Corey A. Teague  
Acting Zoning Administrator

cc: Mr. John Gall - 1005 Market St #310, San Francisco CA 94103 (property owner)  
Mr. Terry Bogart - 16351 Skyline Blvd, Woodside CA 94062 (property owner)  
Mr. Daniel Lowrey, DBI  
Mr. Patrick O'Riordan, DBI  
Mr. Joe Duffy, DBI  
Mr. Bernie Curran, DBI  
Mr. Tom Venizelos, DBI  
Ms. Yin Pei, DBI  
Mr. Ben Man, DBI  
Mr. Daniel Sider, Planning Department  
Mr. Mark Luellen, Planning Department  
Mr. Dario Jones, Planning Department

# **Exhibit 12**

BOA\_000554

AR\_01\_000554



# SAN FRANCISCO PLANNING DEPARTMENT

## Release of Suspension Request

February 2, 2015

Mr. Tom Hui, S.E., CBO  
Director  
Department of Building Inspection  
1660 Mission Street  
San Francisco, CA 94103

Building Application No.: 201307262890  
Property Address: 1049-1051 Market Street  
Block and Lot 3703 / 067  
Zoning District: C-3-G / 90-X  
Staff Contact: Corey Teague, Assistant Zoning Administrator  
(415) 575-9081 or [corey.teague@sfgov.org](mailto:corey.teague@sfgov.org)

Dear Director Hui,

This letter is to request that the Department of Building Inspection (DBI) release suspension of Building Permit Application Number 201307262890 ("Permit") for the property at 1049-1051 Market Street.

On October 28, 2013, Corey A. Teague (Acting Zoning Administrator) submitted a Request for Suspension for the Permit because it was not reviewed by the Planning Department, and there was a question as to whether the work proposed in the Permit triggered additional requirements and/or procedures under the Planning Code.

That Request for Suspension was appealed to the Board of Appeals by John Gall on November 13, 2013. Planning Department staff met with John Gall and others representing the subject property in January 2014. The result of the meeting was a shared understanding that the property owner(s) would request a letter of determination from the Zoning Administrator regarding the possibility of converting some or all of the unpermitted habitable space referenced in DBI Notice of Violation No. 200711850 into dwelling units that are integrated with the working space of artists, artisans and other craftspersons, pursuant to Planning Code Section 204.4(b). Subsequent to that meeting, the appeal of the Request for Suspension was withdrawn on February 19, 2014.

Despite the outcome of the January 2014 meeting the Planning Department received no communication from the permit holder or property owner(s) until December 2014. At that time, counsel for the property owner(s) requested that the Department either seek reinstatement or revocation of the Permit. The Department understood it to be implicit in this request that the permit holder and property owner(s) no longer intended to move forward with a conversion of

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

Reception  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

[www.sfplanning.org](http://www.sfplanning.org)

BOA\_000555

AR\_01\_000555

Tom Hui, Director of Building Inspection  
Release of Suspension Request  
1049-51 Market Street  
February 2, 2015

the preexisting office space to dwelling units that are integrated with the working space of artists, artisans and other craftspersons, as had been previously discussed.

As such, it is my determination that the current legal use of the portion of the building subject to the Permit is the last legal use, which was office space here. Absent an abandonment of use recognized by the Planning Code, when a legal use of a property is changed without the benefit of a permit, the legal use remains the last legal use if that use is permitted as of right. While the principle of abandonment may apply in some circumstances to change this presumption, there is no provision for abandonment in the Code for a principally permitted use. The Planning Code provides for abandonment of nonconforming uses (Section 183) and conditional uses (Section 178). Here, the preexisting office space was legally established, and office is permitted as of right in the C-3-G Zoning District. Office is neither a nonconforming use nor a conditional use on the subject property. As such, the construction of walls and other facilities for the purpose of residential use in the subject building did not constitute abandonment under the Planning Code of the preexisting legal office space. Because the office space was not abandoned, the subject permit does not constitute a change of use or reestablishment of the office use, nor any associated Planning Code provisions that would apply to such activity.

As noted in the Request for Suspension, staff from both the Planning Department and DBI maintain that there are multiple ways in which residential uses at this Property and another property controlled by the owners of the subject property, 1067-1071 Market Street, may be maintained and improved in a manner consistent with the Planning and Building Codes. The Planning Department remains prepared to work with the property owners toward such a solution.

Therefore, the Planning Department is requesting that the Department of Building Inspection reinstate the Permit.

**APPEAL:** Any aggrieved person may appeal this letter to the Board of Appeals within fifteen (15) days after the date of the issuance of this letter. For further information, please contact the Board of Appeals in person at 1650 Mission Street, Room 304, or call 575-6880.

Sincerely,



Scott F. Sanchez  
Zoning Administrator

CC: Mr. John Gall - 1005 Market St #310, San Francisco CA 94103 (property owner)  
Mr. Terry Bogart - 16351 Skyline Blvd, Woodside CA 94062 (property owner)  
Mr. Daniel Lowrey, DBI  
Mr. Patrick O'Riordan, DBI  
Mr. Ron Tom  
Mr. Ed Sweeny  
Mr. Joe Duffy, DBI  
Mr. Bernie Curran, DBI

**From:** Sider, Dan  
**To:** Veneracion, April (BOS); Buckley, Jeff (MYR)  
**Subject:** 1049 Market  
**Date:** Tuesday, February 18, 2014 4:09:00 PM

---

From an email we received earlier today from our City attorney:

*I just received a call from Peter Fox, representing the property owner in this appeal before the Board of Appeal. He indicated that the owner is withdrawing the appeal and will be hand-delivering a completed form to that effect to the Board of Appeal this afternoon.*

*He said that he believed that the property owner would be contacting Planning to discuss how to legally convert existing units to resolve the enforcement action from DBI.*

We haven't yet received final confirmation from the Board that the withdrawal has been made, but presumably it is forthcoming. I'll forward it to you as soon as we receive it.

**Daniel A. Sider, AICP**  
**Senior Advisor for Special Projects**

Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
**Direct:** 415-558-6597 **Fax:** 415-558-6409  
**Email:** [dan.sider@sfgov.org](mailto:dan.sider@sfgov.org)  
**Web:** [www.sfplanning.org](http://www.sfplanning.org)

ZACKS & FREEDMAN, P.C.  
235 MONTGOMERY STREET, SUITE 400  
SAN FRANCISCO, CALIFORNIA 94104

1 Andrew M. Zacks (SBN 147794)  
2 Mark B. Chernev (SBN 264946)  
3 ZACKS & FREEDMAN, P.C.  
4 235 Montgomery Street, Suite 400  
5 San Francisco, CA 94104  
6 Tel: (415) 956-8100  
7 Fax: (415) 288-9755

8 Attorneys for Plaintiff  
9 1049 Market Street, LLC

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco  
FEB 06 2015

CLERK OF THE COURT  
BY: Mary Ann Moran  
Deputy Clerk

10 SUPERIOR COURT - STATE OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

12 1049 Market Street, LLC, a California Limited  
13 Liability Company,

14 Plaintiffs,

15 vs.

16 CHAD POTTER, KARL HAAS, ANN  
17 NAOMI COOPER, PETER TAYLOR,  
18 ADAM WOJEWIDKA, BRENDAN  
19 BARTHEL, CHRISTOPHER FIGUEROA,  
20 BOGDAN MARCOL, JUAN ESCOBEDO,  
21 MELISSA BRACERO, CHRIS BAKER,  
22 CHANDRA REDACK, CARINA ZONA,  
23 ALEJANDRA BESSELER, DARREN  
24 BROWN, BENJAMIN CADY, SCOTT  
25 BROWN, PATRICK COOK, MANUEL  
26 RODRIGUEZ, BRAD ALDER, CHADWICK  
27 PUTNEY, and DOES 1 to 25,

28 Defendants.

Case Number: CGC = 15 - 543999

COMPLAINT FOR DAMAGES BASED  
ON QUANTUM MERUIT; EJECTMENT

Jury Trial Demanded

1049 Market Street, LLC, ("Plaintiff") by and through their attorneys, Zacks &  
Freedman, file this Complaint against Chad Potter, Karl Haas, Ann Naomi Cooper, Peter  
Taylor, Adam Wojewidka, Brendan Barthel, Christopher Figueroa, Bogdan Marcol, Juan

COMPLAINT FOR DAMAGES BASED ON UNJUST ENRICHMENT, EJECTMENT

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Escobedo, Melissa Bracero, Chris Baker, Chandra Redack, Carina Zona, Alejandra Bessler, Darren Brown, Benjamin Cady, Scott Brown, Patrick Cook, Manuel Rodriguez, Brad Alder, Chadwick Putney, and Does 1-25, (collectively "Defendants"). Upon information and belief, Plaintiffs allege as follows:

1. Plaintiff is a California limited liability company with its principle place of business in San Francisco, California. Plaintiff is the owner of the real property commonly know as, and situated at, 1049 Market Street, San Francisco, California ("Property"). The Property is located within San Francisco County and Judicial District.

2. Within the Premises are individual units being used as commercial and residential spaces (individually and commonly know as Unit 101, Unit 104, Unit 206, Unit 207, Unit 208, Unit 213, Unit 214, Unit 215, Unit 301, Unit 302, Unit, 310, Unit 313, Unit 316, Unit 402, Unit 408, Unit 409, Unit 411, Unit 413, Unit 414, Unit 502, and Unit 511 ("Subject Units").

3. Defendant Chad Potter currently occupies Unit 101, located within the Premises, pursuant to a commercial office lease with Plaintiff, beginning on or about July 11, 2010. The current rent for Defendant Chad Potter's occupancy of Unit 101 pursuant to that commercial office lease is \$738 per month. A true and copy of that lease is attached as Exhibit

1.

4. Defendant Karl Haas currently occupies Unit 104, located within the Premises, pursuant to a commercial office lease with Plaintiff, beginning on or about June 15, 2011. The current rent for Defendant Karl Haas's occupancy of Unit 104 pursuant to that commercial office lease is \$868 per month. A true and correct copy of that lease is attached as Exhibit 2

1           5. Defendant Ann Naomi Cooper currently occupies Unit 206, located within the  
2 Premises, pursuant to a commercial office lease with Plaintiff's predecessor in interest,  
3 beginning on or about July 1, 2000. The current rent for Defendant Ann Naomi Cooper's  
4 occupancy of Unit 206 pursuant to that commercial office lease is \$643 per month. A true and  
5 correct copy of that lease is attached as Exhibit 3.

6  
7           6. Defendant Peter Taylor currently occupies Unit 207, located within the  
8 Premises, pursuant to a commercial office lease with Plaintiff's predecessor in interest,  
9 beginning on or about April 11, 2003. The current rent for Defendant Peter Taylor's  
10 occupancy of Unit 207 pursuant to that commercial office lease is \$682 per month. A  
11 true and correct copy of that lease is attached as Exhibit 4.

12  
13           7. Defendant Adam Wojewwidka currently occupies Unit 208, located within the  
14 Premises, pursuant to a commercial office lease with Plaintiff's predecessor in interest,  
15 beginning on or about September 1, 2009. The current rent for Defendant Adam  
16 Wojewwidka's occupancy of Unit 208 pursuant to that commercial office lease is \$762 per  
17 month. A true and correct copy of that lease is attached as Exhibit 5.

18  
19           8. Defendant Brendan Barthel currently occupies Unit 213, located within the  
20 Premises, pursuant to a commercial office lease with Plaintiff, beginning on or about January  
21 15, 2012. The current rent for Defendant Brendan Barthel's occupancy of Unit 213 pursuant to  
22 that commercial office lease is \$957 per month. A true and correct copy of that lease is  
23 attached as Exhibit 6.

24  
25           9. Defendant Christopher Figueroa currently occupies Unit 214, located within the  
26 Premises, pursuant to a commercial office lease with Plaintiff, beginning on or about March 1,  
27 2012. The current rent for Defendant Christopher Figueroa's occupancy of Unit 214 pursuant  
28

1 to that commercial office lease is \$957 per month. A true and correct copy of that lease is  
2 attached as Exhibit 7.

3 10. Defendant Bogdan Marcol currently occupies Unit 215, located within the  
4 Premises, pursuant to a commercial office lease with Plaintiff's predecessor in interest,  
5 beginning on or about September 22, 2009. The current rent for Defendant Bogdan Marcol's  
6 occupancy of Unit 215 pursuant to that commercial office lease is \$862 per month. A true and  
7 correct copy of that lease is attached as Exhibit 8.

9 11. Defendant Juan Escobedo currently occupies Unit 301, located within the  
10 Premises, pursuant to a commercial office lease entered into between Plaintiff's predecessor in  
11 interest, beginning on or about May 1, 2012. The current rent for Defendant Juan Escobedo's  
12 occupancy of Unit 301 pursuant to that commercial office lease is \$752 per month. A true and  
13 correct copy of that lease is attached as Exhibit 9.

15 12. Defendant Melissa Bracero currently occupies Unit 302, located within the  
16 Premises, pursuant to a commercial office lease with Plaintiff's predecessor in interest,  
17 beginning on or about December 15, 2011. The current rent for Defendant Melissa Bracero's  
18 occupancy of Unit 302 pursuant to that commercial office lease is \$863 per month. A true and  
19 correct copy of that lease is attached as Exhibit 10.

21 13. Defendant Chris Baker currently occupies Unit 310, located within the  
22 Premises, pursuant to a commercial office lease with Plaintiff's predecessor in interest,  
23 beginning on or about May 11, 2002. The current rent for Defendant Chris Baker's occupancy  
24 of Unit 310 pursuant to that commercial office lease is \$725 per month. A true and correct  
25 copy of that lease is attached as Exhibit 11.  
26  
27  
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1           14. Defendant Chandra Redack currently occupies Unit 313, located within the  
2 Premises, pursuant to a commercial office lease with Plaintiff's predecessor in interest,  
3 beginning on or about June 1, 2004. The current rent for Defendant Chandra Redack's  
4 occupancy of Unit 313 pursuant to that commercial office lease is \$817 per month. A true and  
5 correct copy of that lease is attached as Exhibit 12.  
6

7           15. Defendant Carina Zona currently occupies Unit 316, located within the  
8 Premises, pursuant to a commercial office lease with Plaintiff's predecessor in interest,  
9 beginning on or about November 15, 2011. The current rent for Defendant Carina Zona's  
10 occupancy of Unit 316 pursuant to that commercial office lease is \$982 per month. A true and  
11 correct copy of that lease is attached as Exhibit 13.  
12

13           16. Defendant Alejandra Bessler currently occupies Unit 402, located within the  
14 Premises, pursuant to a commercial office lease with Plaintiff, beginning on or about July 1,  
15 2013. The current rent for Defendant Alejandra Bessler's occupancy of Unit 402 pursuant to  
16 that commercial office lease is \$1150 per month. A true and correct copy of that lease is  
17 attached as Exhibit 14.  
18

19           17. Defendant Darren Brown currently occupies Unit 408, located within the  
20 Premises, pursuant to a commercial office lease with Plaintiff's predecessor in interest,  
21 beginning on or about September 1, 2000. The current rent for Defendant Darren Brown's  
22 occupancy of Unit 408 pursuant to that commercial office lease is \$732 per month. A true and  
23 correct copy of that lease is attached as Exhibit 15.  
24

25           18. Defendant Benjamin Cady currently occupies Unit 409, located within the  
26 Premises, pursuant to a commercial office lease with Plaintiff's predecessor in interest,  
27 beginning on or about September 1, 2006. The current rent for Defendant Benjamin Cady's  
28

1 occupancy of Unit 409 pursuant to that commercial office lease is \$718 per month. A true and  
2 correct copy of that lease is attached as Exhibit 16.

3 19. Defendant Scott Brown currently occupies Unit 411, located within the  
4 Premises, pursuant to a commercial office lease with Plaintiff's predecessor in interest,  
5 beginning on or about April 1, 2003. The current rent for Defendant Scott Brown's occupancy  
6 of Unit 411 pursuant to that commercial office lease is \$707 per month. A true and correct  
7 copy of that lease is attached as Exhibit 17.

9 20. Defendant Patrick Cook currently occupies Unit 413, located within the  
10 Premises, pursuant to a commercial office lease with Plaintiff's predecessor in interest,  
11 beginning on or about March 15, 2004. The current rent for Defendant Patrick Cook's  
12 occupancy of Unit 413 pursuant to that commercial office lease is \$862 per month. A true and  
13 correct copy of that lease is attached as Exhibit 18.

15 21. Defendant Manuel Rodriguez currently occupies Unit 414, located within the  
16 Premises, pursuant to a commercial office lease with Plaintiff's predecessor in interest,  
17 beginning on or about August 28, 2010. The current rent for Defendant Manuel Rodriguez's  
18 occupancy of Unit 414 pursuant to that commercial office lease is \$891 per month. A true and  
19 correct copy of that lease is attached as Exhibit 19.

21 22. Defendant Brad Alder currently occupies Unit 502, located within the Premises,  
22 pursuant to a commercial office lease with Plaintiff's predecessor in interest, beginning on or  
23 about March 1, 2009. The current rent for Defendant Brad Alder's occupancy of Unit 502  
24 pursuant to that commercial office lease is \$808 per month. A true and correct copy of that  
25 lease is attached as Exhibit 20.  
26  
27  
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1           23. Defendant Chadwick Putney currently occupies Unit 511, located within the  
2 Premises, pursuant to a commercial office lease with Plaintiff, beginning on or about April 1,  
3 2012. The current rent for Defendant Chadwick Putney's occupancy of Unit 511 pursuant to  
4 that commercial office lease is \$830 per month. A true and correct copy of that lease is  
5 attached as Exhibit 21.

6  
7           24. Plaintiffs do not know the true names of Defendants DOES 1 through 25, and  
8 therefore sues them by those fictitious names. Plaintiff is informed and believes, and on the  
9 basis of that information and belief alleges, that each of those Defendants was in some manner  
10 legally responsible for the events and happenings alleged in this complaint and for Plaintiff's  
11 injuries and damages. The names, capacities and relationships of DOES 1 through 25 will be  
12 alleged by amendment to this complaint when they are known.

13  
14           25. On or about August 2, 2013, the City of San Francisco Department of Building  
15 and Inspection issued Permit Number 201307262890 ("Permit") permitting and authorizing  
16 Plaintiff to recover possession in good faith in order to demolish or to otherwise permanently  
17 remove the Premises from housing use. This Permit related to floors 1, 2, 3, 4, and 5 of the  
18 Premises, all of which collectively contain the Subject Units described in Paragraph 2 of this  
19 Complaint, and individually occupied by each Defendant as set forth in Paragraphs 3 through  
20 24 of this Complaint.

21  
22           26. Consistent with the authorization and authority set forth in the Permit, on  
23 September 27, 2013, Plaintiff caused Defendants Juan Escobedo, Melissa Bracero, Chris  
24 Baker, Chandra Redack, Carina Zona, Alejandra Bessler, Darren Brown, Benjamin Cady,  
25 Scott Brown, Patrick Cook, Manuel Rodriguez, Brad Alder, and Chadwick Putney to be served  
26 with a Sixty Day Notice of Termination of Tenancy under Rent Ordinance 37.9(a)(10). A true  
27  
28

1 and correct copy of each of those respective Notices are attached collectively as Exhibits 22  
2 through 34. In each certified mail envelope addressed to each individually named Defendant  
3 referenced in this paragraph, was a check for \$2,630.50 made out to each respective  
4 individually named Defendant representing the first half of each of their relocation payments.  
5 The facts stated in each individual Notice sent to each individual Defendant named in this  
6 paragraph are true and correct. Accordingly, the tenancy has been terminated for each one of  
7 the individually named Defendants named in this paragraph, as each Notice expired on  
8 November 26, 2013, and each Defendant named in this paragraph failed to vacate their  
9 respective Unit within the time period set forth in the Notice, and remains in occupancy of their  
10 respective unit. Some or all of these named Defendants accepted their respective relocation  
11 payments and are estopped from claiming any right to possession for their respective Subject  
12 Unit at the Property.  
13

14  
15 27. Consistent with the authorization and authority set forth in the Permit, on  
16 October 28, 2013, Plaintiff caused Defendants Chad Potter, Karl Haas, Ann Naomi Cooper,  
17 Peter Taylor, Adam Wojewwidka, Brendan Barthel, Christopher Figueroa, and Bogdan Marcol  
18 to be served with a Sixty Day Notice of Termination of Tenancy under Rent Ordinance  
19 37.9(a)(10). A true and correct copy of each of those respective Notices are attached  
20 collectively as Exhibits 35 through 42. In each certified mail envelope addressed to each  
21 individually named Defendant referenced in this paragraph, was a check for \$2,630.50 made  
22 out to each respective individually named Defendant representing the first half of each of their  
23 relocation payments. The facts stated in each individual Notice sent to each individual  
24 Defendant named in this paragraph are true and correct. Accordingly, the tenancy has been  
25 terminated for each one of the individually named Defendants named in this paragraph, as each  
26  
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1 Notice expired on December 27, 2013, and each Defendant named in this paragraph failed to  
2 vacate their respective Unit within the time period set forth in the Notice, and remains in  
3 occupancy of their respective unit. Some or all of these named Defendants accepted their  
4 respective relocation payments and are estopped from claiming any right to possession for their  
5 respective Subject Unit at the Property.  
6

7 28. Plaintiff is seeking, in good faith, without ulterior motives, and with honest  
8 intent, possession of each Subject Unit in order to demolish or to otherwise permanently  
9 remove each Subject Unit from housing use and had obtained all the necessary permits on or  
10 before the date upon which each respective notice to vacate was given to each respective  
11 Defendant occupying each respective Subject Unit pursuant to 37.9(a)(10) of the San Francisco  
12 Administrative Code, Chapter 37, as amended to date (the entire Chapter 37 is referred to  
13 herein as "Rent Ordinance").  
14

15 29. Each Subject Unit is subject to the Rent Ordinance, and Plaintiff has complied  
16 with all valid and applicable provisions of the Rent Ordinance.  
17

18 30. On or about October 28, 2013, the City of San Francisco Planning Department  
19 requested that the San Francisco Department of Building and Inspection suspended the Permit  
20 permitting and authorizing Plaintiff to recover possession in good faith in order to demolish or  
21 to otherwise permanently remove the Premises from housing use. That request was granted,  
22 and as of the filing of this Complaint, the Permit remains suspended, and decision regarding  
23 Owner's appeal of that suspension remains undecided.  
24

25 31. Pursuant to California and local law, Plaintiff is precluded from accepting rent  
26 from any Defendant subsequent to the expiration of each of their respective Notices, as doing  
27 so would otherwise invalidate each Notice in which the Owner has accepted rent for.  
28



1 forth in Paragraphs 26 and 27 of this Complaint, up to and including the time of the filing of  
2 this Complaint.

3 39. As a result, Defendants have been unjustly enriched by receipt and enjoyment of  
4 housing services without payment and for which payment was expected and requested, the  
5 value of such enrichment is equal to the unpaid rent as set forth herein.  
6

## 7 SECOND CAUSE OF ACTION

### 8 (Ejectment)

9 40. Plaintiffs incorporate by reference Paragraphs 1 through 39 of this Complaint.

10 41. On September 27, 2013, Plaintiff caused Defendants Juan Escobedo, Melissa  
11 Bracero, Chris Baker, Chandra Redack, Carina Zona, Alejandra Bessler, Darren Brown,  
12 Benjamin Cady, Scott Brown, Patrick Cook, Manuel Rodriguez, Brad Alder, and Chadwick  
13 Putney to be served, by certified and first class mail, with a Sixty Day Notice of Termination of  
14 Tenancy under Rent Ordinance 37.9(a)(10). The facts stated in each individual Notice sent to  
15 each individual Defendant named in this paragraph are true and correct. Accordingly, the  
16 tenancy has been terminated for each one of the individually named Defendants named in this  
17 paragraph, as each Notice expired on November 26, 2013, and each Defendant named in this  
18 paragraph failed to vacate their respective Subject Unit within the time period set forth in the  
19 Notice, and remains in occupancy of their respective Subject Unit.  
20  
21

22 42. On October 28, 2013, Plaintiff caused Defendants Chad Potter, Karl Haas, Ann  
23 Naomi Cooper, Peter Taylor, Adam Wojewidka, Brendan Barthel, Christopher Figueroa, and  
24 Bogdan Marcol to be served, by certified mail and first class mail, with a Sixty Day Notice of  
25 Termination of Tenancy under Rent Ordinance 37.9(a)(10). The facts stated in each individual  
26 Notice sent to each individual Defendant named in this paragraph are true and correct.  
27  
28

1 Accordingly, the tenancy has been terminated for each one of the individually named  
2 Defendants named in this paragraph, as each Notice expired on December 27, 2013, and each  
3 Defendant named in this paragraph failed to vacate their respective Subject Unit within the  
4 time period set forth in the Notice, and remains in occupancy of their respective Subject Unit.

5  
6 43. Each Defendant has refused to vacate their respective Subject Unit after the  
7 expiration of their individual Sixty Day Notice of Termination of Tenancy. True and correct  
8 copies of the Sixty Day Notices of Termination of Tenancy are attached as Exhibits 22 through  
9 42.

10  
11 44. Each Defendant continues in possession of the Property, and their individual  
12 respective unit, without Plaintiff's consent. Therefore, each Defendant's tenancy has been  
13 terminated, and Plaintiff is entitled to possession of each Defendant's respective Subject Unit.

14  
15 45. Defendants' tenancy is subject to the San Francisco Residential Rent  
16 Stabilization and Arbitration Ordinance. As Defendants have failed to vacate the Property, and  
17 each of their individual respective Subject Units, as alleged above, Plaintiff has just cause to  
18 recover possession of each Defendant's respective Subject Unit, and the Property, under  
19 §37.9(a)(10).

20 WHEREFORE, Plaintiff demands judgment against Defendants for the following:

21 On Plaintiff's First Cause of Action - Quantum Meruit:

- 22  
23 1. For compensatory damages against each Defendant according to proof;  
24 2. For interest at the rate of 10% percent per anum.

25 On Plaintiff's Second Cause of Action - Ejectment:

- 26 1. For judgment against each Defendant for possession of their respective Subject  
27 Unit;  
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2. For damages against each Defendant for the value of use of their respective Subject Unit for the time their wrongful occupation began;
3. For the reasonable cost of repair or restoration of the property to its original condition according to proof;
4. For the costs associated with recovering possession.

Collectively on Plaintiff's First and Second Cause of Action:

1. For costs of suit incurred in this action;
2. For other and further relief as this Court may deem just and proper.

Dated: February 6, 2015

ZACKS & FREEDMAN, P.C.

  
\_\_\_\_\_  
Andrew M. Zacks  
Mark B. Chernev  
Attorneys for Plaintiff

AMENDED IN COMMITTEE

3/2/15

FILE NO. 150087

RESOLUTION NO. 61-15

1 [Interim Zoning Controls - Building Permits for Commercial Uses in an Area Bounded by  
2 Market, 2nd, Brannan, and Division Streets, and South Van Ness Avenue]

3 Resolution imposing interim zoning controls to require that for a 12-month period in  
4 the area bounded by Market Street from Van Ness Avenue east to 5th Street on the  
5 north side and east to 2nd Street on the south side, 2nd Street south to Brannan Street,  
6 Brannan Street west to Division Street, and South Van Ness Avenue north to Market  
7 Street certain building permits for any building with some commercial use shall require  
8 the posting of a notice and a 15-day delay in starting the work and the re-establishment  
9 of a commercial use that has been converted to residential use shall require Planning  
10 Commission approval through either an authorization under Planning Code, Section  
11 320, et seq., or a conditional use authorization; and making environmental findings and  
12 a determination of consistency with the eight priority policies of Planning Code,  
13 Section 101.1.

14  
15 WHEREAS, Planning Code, Section 306.7 provides for the imposition of interim zoning  
16 controls to accomplish several objectives, including preservation of areas of mixed residential  
17 and commercial uses and preservation of the City's rental housing stock; and

18 WHEREAS, Planning Code, Section 320 provides that the creation of 25,000 square  
19 feet or more of additional office space shall be subject to the office cap and other  
20 requirements of Section 320, et seq. ("Proposition M"); and

21 WHEREAS, for the purpose of office development authorizations "preexisting office  
22 space" is defined as "office space used primarily and continuously for office use and not  
23 accessory to any use other than office use for five years prior to Planning Commission  
24  
25

1 approval of an office development project which office use was fully legal under the terms of  
2 San Francisco law"; and

3 WHEREAS, There is evidence that preexisting office space has been converted  
4 without benefit of a permit to residential use in multiple buildings in the area of San Francisco  
5 bounded by Market Street from Van Ness Avenue east to 5th Street on the north side and to  
6 2nd Street on the south side, 2nd Street south to Brannan Street, Brannan Street west to  
7 Division Street, and South Van Ness north to Market; and

8 WHEREAS, The Board of Supervisors wants to control the removal of any existing  
9 residential uses in commercial spaces and review the status of the original legal uses until  
10 such time as the Planning Department can propose permanent legislation; and

11 WHEREAS, The Board is aware that during the economic downturn, renting  
12 commercial space for unpermitted residential use was an attractive economic option for many  
13 property owners, but the economic situation has changed rapidly and office use in the Area is  
14 in demand; and

15 WHEREAS, The unpermitted residential spaces have become an important source of  
16 housing for residents of the City, and preserving the City's housing stock, particularly its  
17 relatively affordable housing stock in a climate of scarce housing resources and relative lack  
18 of affordability, is of paramount concern; and

19 WHEREAS, On December 18, 2013, in Executive Directive 13-01, Mayor Ed Lee  
20 requested City Departments to make recommendations to, among other things, preserve and  
21 promote rental housing and to hold public hearings when a loss of housing is proposed; and

22 WHEREAS, The City strictly controls the change of legal uses through the Planning  
23 and Building Codes, but a change of use in a building that contains unpermitted uses does not  
24 afford the public and decision makers the same level of notice and opportunity to consider the  
25

1 impact of such a change in use when surrounding circumstances may have substantially  
2 changed; and

3 WHEREAS, This Resolution imposes a new 12-month period for these amended  
4 interim controls, which were enacted by Resolution No. 428-13 and expired on December 13,  
5 2014; and

6 WHEREAS, This Board has considered the impact on the public health, safety, peace,  
7 and general welfare if the proposed interim controls are not imposed; and

8 WHEREAS, This Board has determined that the public interest will best be served by  
9 imposition of these interim controls at this time in order to ensure that the legislative scheme  
10 which may ultimately be adopted is not undermined during the planning and legislative  
11 process for permanent controls; and

12 WHEREAS, The Planning Department has determined that the actions contemplated in  
13 this Resolution are in compliance with the California Environmental Quality Act (California  
14 Public Resources Code, Sections 21000, et seq.); said determination is on file with the Clerk  
15 of the Board of Supervisors in File No. 150087 and is incorporated herein by reference; now,  
16 therefore, be it

17 RESOLVED, That pursuant to Planning Code, Section 306.7, the Board of Supervisors  
18 by this Resolution hereby requires that during the pendency of these interim controls certain  
19 building permits for any buildings with some commercial use in the area of San Francisco  
20 bounded by Market Street from Van Ness Avenue east to 5th Street on the north side and to  
21 2nd Street on the south side, 2nd Street south to Brannan Street, Brannan Street west to  
22 Division Street, and South Van Ness Avenue north to Market Street shall require a notice to  
23 be posted the day of permit issuance in a conspicuous location on the ground floor of the  
24 building for the work specified below; and, be it  
25

1 FURTHER RESOLVED, That if a posted notice is required it shall meet the  
2 requirements of the Planning and Building Departments and at a minimum shall state in plain  
3 language and in multiple languages the following information: "The building permit described  
4 below has been issued by the City and County of San Francisco. If you or someone you know  
5 lives in this building and may be displaced by this work, please call the following number prior  
6 to the expected construction start date on \_\_\_\_\_;" and, be it

7 FURTHER RESOLVED, That if a posted notice is required, work under the issued  
8 permit may not start until the expiration of 15 days from permit issuance and posting of the  
9 notice; and, be it

10 FURTHER RESOLVED, That the building permits that are subject to the posted notice  
11 and 15-day hold requirements are for: Structural or architectural work above the ground floor  
12 in the interior of any building with some commercial use that obtained its first certificate of  
13 occupancy prior to 1979, is valued at \$15,000 or more, and requires the submittal of floor  
14 plans; and, be it

15 FURTHER RESOLVED, That the following building permits are exempt from the  
16 posted notice and 15-day hold requirements: Permits to address a life/safety issue, and  
17 permits for weather protection, accessibility upgrades, and dry rot repair; and, be it

18 FURTHER RESOLVED, That during the pendency of these interim controls in the  
19 geographic area covered by these controls, any commercial use that has been converted in  
20 whole or in part to residential use without benefit of a permit shall be deemed abandoned. Any  
21 permit, subject to the posted notice and 15-day hold requirements above, to re-establish any  
22 commercial use shall not be issued or reinstated, or, if already issued, shall not remain  
23 effective, unless the project sponsor obtains a Conditional Use authorization under Planning  
24 Code Section 303, in addition to all requirements of the Planning Code applicable to the  
25 establishment of any such use; and, be it

1 FURTHER RESOLVED, That these interim controls shall remain in effect for twelve  
2 (12) months unless further extended or until the adoption of permanent legislation, whichever  
3 shall first occur; and, be it

4 FURTHER RESOLVED, That these interim controls are not in conflict with and hence  
5 are consistent with the eight priority policies of Planning Code, Section 101.1.  
6

7 APPROVED AS TO FORM:  
8 DENNIS J. HERRERA, City Attorney

9 By:   
10 SUSAN CLEVELAND-KNOWLES  
Deputy City Attorney

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City and County of San Francisco  
Tails  
Resolution

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

File Number: 150087

Date Passed: March 03, 2015

Resolution imposing interim zoning controls to require that for a 12-month period, in the area bounded by Market Street from Van Ness Avenue east to 5th Street on the north side, and east to 2nd Street on the south side, 2nd Street south to Brannan Street, Brannan Street west to Division Street, and South Van Ness Avenue north to Market Street, certain building permits for any building with some commercial use shall require the posting of a notice and a 15-day delay in starting the work, and the re-establishment of a commercial use that has been converted to residential use shall require Planning Commission approval through either an authorization under Planning Code, Section 320, et seq., or a conditional use authorization; and making environmental findings and a determination of consistency with the eight priority policies of Planning Code, Section 101.1.

February 23, 2015 Land Use and Economic Development Committee - AMENDED

February 23, 2015 Land Use and Economic Development Committee - CONTINUED AS AMENDED

March 02, 2015 Land Use and Transportation Committee - AMENDED

March 02, 2015 Land Use and Transportation Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

March 03, 2015 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 150087

I hereby certify that the foregoing  
Resolution was ADOPTED on 3/3/2015 by  
the Board of Supervisors of the City and  
County of San Francisco.

Peggy Nevin  
for Angela Galvillo  
Clerk of the Board

[Signature]  
Mayor

3/12/15  
Date Approved

# **Exhibit 16**

BOA\_000582

AR\_01\_000582



**Executive Directive 13-01**  
**Housing Production & Preservation of Rental Stock**  
*December 18, 2013*

Through this Executive Directive, I hereby direct all municipal departments that have the legal authority over the permitting or mapping of new or existing housing to prioritize in their administrative work plans the construction and development of all net new housing, including permanently affordable housing.

The directive should be understood to prioritize 100% permanently affordable developments and moderate-income residential developments based on the proportion of permanently affordable units produced onsite or offsite through the city's inclusionary housing program as set forth in Section 415 of the San Francisco Planning Code. The Departments shall follow existing requirements in establishing such priorities.

I also request that Department Heads form a Working Group, with three primary tasks:

- (1) making recommendations to the Mayor for City policies and administrative actions that could be implemented to preserve and promote rental housing in San Francisco;
- (2) implementing a process to have the Planning Commission consider Discretionary Review hearings when a loss of housing is proposed; and
- (3) serving as an advisory body to municipal departments with permitting authority and as a clearinghouse for code compliance checks for buildings that are being withdrawn from the rental market under Residential Rent Stabilization and Arbitration Ordinance sections 37.9(a)(8), 37.9(a)(9), 37.9(a)(10) and 37.9(a)(13), or a Notice of Intent to Withdraw units from the residential market under Section 37.9(a).

The membership of the Working Group shall be:

- Director, Department of Building Inspection
- Director, Planning Department
- Chief, Fire Department
- Director, Rent Board
- Director, Mayor's Office of Housing

As needed:

- Representative from the Department of Public Works
- Representative from the Office of Community Investment & Infrastructure
- Representative from the San Francisco Public Utilities Commission
- Representative from City Attorney's Office
- Representative of Property Owner Organization
- Representative of Tenant Organization
- Representative of a Non-Profit Housing Organization
- Representative of Other Housing Organization

Task (1): Recommendations to the Mayor

I task department heads to prioritize any administrative policies that lead to direct building of more affordable housing or that provide the proper market incentives to foster private development of rental units, including infill housing or small-scale residential with affordable units. Equally important is the preservation of the existing stock. As such, I request that the Department Heads listed above convene and gather any feedback, materials, or research they need to make recommendations to me about potential legislative or citywide strategies to preserve rental units in San Francisco. These recommendations can be forwarded on a rolling basis as ideas arise, and do not need to be formally adopted by the working group.

Task (2): Discretionary Review for Loss of Housing Units

Any DBI permit form for a building larger than two units must include a box about whether said permit will result in the removal or loss of a rental housing unit, the removal or loss of a unit that is currently being used for housing, or results in the displacement of any tenant from their home. If this box is checked "yes," the permit would not be approved over the counter but would instead be referred to the Planning Commission for a hearing under existing Discretionary Review regulations. DBI staff would request all relevant information from the applicant, so it can be forwarded to Planning staff. The Planning Commission could then consider the reasons for the reduction in housing units, with special attention paid to preserving existing rental stock. . This section would not apply to any already approved development agreements and/or current or future planned HOPE SF developments.

Task (3): Planning and Building Approvals & Notification

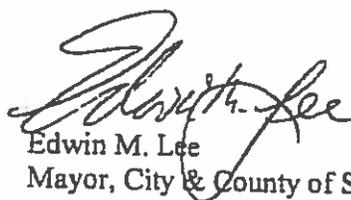
When a building owner files with the Rent Board a Notice of Termination of Tenancy under Rent Ordinance Sections 37.9(a)(8), 37.9(a)(9), 37.9(a)(10) and 37.9(a)(13), or a Notice of Intent to Withdraw units from the residential market under Section 37.9A, the Rent Board shall refer the notice to the Planning Department and to the Department of Building Inspection so that each agency can perform a site visit and research to verify that there are no Code violations, including life-safety and fire code violations. Any violations shall require compliance with all applicable Code requirements and identify any conflicts with Planning Department or DBI policies regarding preservation of affordable housing. Conflicts with city policies shall be forwarded to the Working Group to determine if that the establishment of new discretionary determinations would preserve or enhance the supply of affordable housing.

The Planning Department shall additionally notify the building owner in writing of any future restrictions or prohibitions on demolition, conversion, or mergers of units due to no-fault evictions performed under the above mentioned Rent Ordinance code sections. The building owner filing the notice of intent to withdraw units shall pay time and materials for all inspections, staff work and public hearings as described above as permitted under existing laws.

-----

Department Heads may designate staff members to serve in their place. All relevant Department Directors should provide a plan to me by February 1st on how their departments plan to operationalize this directive, including recommending any specific administrative changes that are discussed under Task (1) above.

This Executive Directive will take effect immediately and will remain in place until rescinded by future written communication. This Executive Directive cannot override any relevant code sections including those governing no-fault evictions and does not invalidate any legal rights of property owners or tenants, or impair any existing contracts.

A handwritten signature in black ink, appearing to read "Edwin M. Lee". The signature is fluid and cursive, with the first name "Edwin" being the most prominent part.

Edwin M. Lee  
Mayor, City & County of San Francisco

# Exhibit 20

BOA\_000603

AR\_01\_000603

1 STEPHEN L. COLLIER, ESQ., State Bar No. 124887  
2 Tenderloin Housing Clinic, Inc.  
3 126 Hyde Street, 2<sup>nd</sup> Floor  
4 San Francisco, CA 94102  
5 Telephone: (415) 771-9850  
6 Facsimile: (415) 771-1287  
7 E-mail: [steve@thclinic.org](mailto:steve@thclinic.org)

8 Attorney for Tenants residing at 1049 Market

BOARD OF APPEALS  
FEB 13 2014  
APPEAL # \_\_\_\_\_

9 BOARD OF APPEALS  
10 CITY AND COUNTY OF SAN FRANCISCO

11 JOHN GALL, ) Appeal No. 13-144  
12 )  
13 vs. ) **TENANTS BRIEF IN OPPOSITION**  
14 ) **TO APPEAL**  
15 ZONING ADMINISTRATOR. ) Date: February 19, 2014  
16 ) Time 5:00 pm  
17 )

18 I.

19 STATEMENT OF FACTS

20 1049 Market Street LLC is the owner of the property located at 1049-51 Market Street,  
21 San Francisco, CA ("subject premises"). The LLC is owned and operated by John Gall, Terry  
22 Bogart, Haley Bogart and Amy Bogart.

23 The subject premises were originally built as an office building with a ground floor  
24 retail storefront. Since before 2007, the premises (other than the storefront) have been rented  
25 out for residential use to tenants as their home as "live-work" lofts. Management advertised  
26 these spaces as residences on Craigslist. Although the tenants' leases are titled "Commercial  
27 Office Lease," the leases state that "the owner may allow residential use of the space and will  
28 not initiate an eviction action for that reason alone, [and] said residential use does not create a  
residential occupancy of this unit." (See sample Lease, Tenants Submissions, Exhibit I.)

1 Management allowed residential occupancy and knew that the units were used primarily as  
2 living spaces.

3 On October 25, 2007, in response to a complaint, the Department of Building  
4 Inspection (DBI) inspected the premises and determined that although the owner had a permit  
5 for six live/work units on the 6<sup>th</sup> floor of the building, the other units had been converted to  
6 habitable space on floors 1-5. DBI then issued a Notice of Violation (NOV) to "legalize the  
7 residential live-work occupancy" on the other floors. (See Notice of Violation #200711850,  
8 Tenants Submissions, Exhibit 2.)

9 The owner continued to rent units to residential tenants despite the Notice of Violation,  
10 including entering into new leases for the units. Although the owner had over four years to  
11 legalize the live/work use, it did not do so. On May 16, 2012, John Gall and Amy Bogart  
12 appeared before the Building Inspection Commission regarding application of the natural light  
13 requirement of the Building Code to their properties, and testified that the only barrier to  
14 legalizing the residential occupancy was that requirement. Mr. Gall and Ms. Bogart testified as  
15 follows:

16 Mr. GALL: "We can do everything else that's required as far as fire and safety and the  
17 important stuff except for the natural light requirement." [time stamp 2:08:00-2:08:18]

18 Ms. BOGART: "The building is fire safe, completely sprinklered, seismically up-  
19 graded, proper ventilation and everything. It's just the natural light that makes it not economic-  
20 ally feasible for us to do it." [time stamp 2:08:00-2:08:18] [See video of Hearing,  
21 [http://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=14&clip\\_id=15123&meta\\_id=259](http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=14&clip_id=15123&meta_id=259949)  
22 949]

23 Given the owner's failure to legalize the live/work use, DBI initiated abatement  
24 proceedings against the property on February 16, 2013.<sup>1</sup> (See Notice of Violation, Tenants  
25

26  
27 <sup>1</sup> The Owner's Brief incorrectly states that DBI issued a new NOV on February 16, 2013.  
28 Although the notice that the matter was referred to abatement proceedings was called a "Notice  
of Violation," it has the same complaint number and is not a new Notice of Violation.

1 Submissions. Exhibit 3) A Director's Hearing was later noticed for September 27, 2013. (See  
2 Notice of Director's Hearing. Owner's Exhibit 5.)

3  
4 On August 2, 2013, the owners submitted a permit application and received (over the  
5 counter) a building permit which described the work to be done as follows: "to comply with  
6 Notice of Violation #200711850. Demo of office walls on Fifth Fl. through First Fl. Live/work  
7 only on 6<sup>th</sup> Floor." The application identifies the present use as "office/retail/live work" and the  
8 proposed use as "office/retail/live work." (See Application for Building Permit, Owner's  
9 Exhibit 1.)

10 The application did not state that the original office use had been converted to  
11 live/work, and that the use was to revert back to office use. The application stated that it was to  
12 comply with Notice of Violation #200711850, which required the owner to legalize the  
13 live/work use. Furthermore, by stating that the present use was identical to the proposed use,  
14 (application paragraphs 7A & 7) the permit application misrepresented the actual use of the  
15 premises and failed to notify DBI or the Planning Department that the owner sought to  
16 reinstate a lapsed office use.

17 The tenants were not notified of the permit application or that the owner was seeking to  
18 demolish their units before the owner applied for the permit, as is required by Civil Code §  
19 1940.6. (See Tenant Letters, Tenants Submissions, Exhibit 4.) Nor did the owner comply with  
20 the posting requirement for such a permit application contained in S.F. Building Code §  
21 106.3.2.4. The tenants were kept in the dark by the owner during the 15-day period in which  
22 the tenants could appeal the issuance of the permit to the Board of Appeals (August 2 through  
23 17). They were not informed until September 13, when management sent the following email  
24 to the building tenants:

25 Over the past several months, the current ownership group of  
26 1049 Market St. has spent extraordinary time and money with the  
27 hopes to accommodate a local building code ordinance that is  
28 necessary for accessory residential use at 1049 Market St.. It has  
long been our belief that this was achievable and we would be  
able to keep this unique and affordable community.

1 Despite these efforts and the support of many high-level city  
2 officials, we were not able to overcome the City of San  
3 Francisco's overly restrictive local building code requirements.  
4 The unfortunate result is that due to a long-standing Notice of  
5 Violation we have been forced by Code Enforcement to get a  
6 building permit to change the current unit configuration entirely.

7 Per these City orders, the building must be entirely vacated.

8 (Robert Mullen email dated September 13, 2013. Tenants  
9 Submissions. Exhibit 5.)

10 On September 27, 2013, the owner issued 60-Day Notices of Termination of Tenancy  
11 ("Notice") to the residential tenants. Although the tenants' leases claim that the premises were  
12 not subject to the San Francisco Rent Ordinance, the Notices stated that they were issued  
13 pursuant to Rent Ordinance § 37.9(a)(10) "in order to demolish or otherwise permanently  
14 remove the units from housing use . . . ." The Notices stated that the landlord "has obtained all  
15 the necessary permits on or before the date upon which this notice was given." but did not  
16 attach a copy of the permit. (See 60 Day Notice, Tenants Submissions, Exhibit 6.)

17 The Notice also stated that the landlord "shall pay relocation payments pursuant to Rent  
18 Ordinance § 37.9C." That section of the Rent Ordinance requires that the landlord pay  
19 relocation payments to the tenants when a landlord seeks to evict a tenant for certain "no-fault"  
20 reasons (owner move-in, demolition removal from housing use, capital improvements, and  
21 substantial rehabilitation). The landlord enclosed the first half of this statutory relocation  
22 payment (\$2,603.50) with the Notice. The Notice further stated that the second half of the  
23 relocation payment will be paid when the premises are vacated. Nowhere in the Notice does it  
24 state that the relocation payment was paid in reliance on the building permit or that the tenants'  
25 eviction was required by the building permit.

26 After the tenants were informed of the existence of the permit through the eviction  
27 notices, they spoke to City officials with the hope of changing what they thought was an overly  
28 restrictive code interpretation and bureaucratic insensitivity to their situation. They were  
surprised to learn that the City Departments believed that the premises could be legalized as  
live/work and that the owner had not pursued legalization with the City in good faith. DBI was  
willing to waive the natural light requirement of the Building Code in the exercise of

1 discretion, as long as essential health and safety requirements were met. (See *Bay Guardian*,  
2 10-10-13. Tenants Submissions. Exhibit 7; *Beyond Chron*, 2013-10-15, Tenants Submissions.  
3 Exhibit 8.) Furthermore, the permit had been issued over-the-counter without Planning  
4 Department review because the permit failed to state that the owner sought a change of use.

5 On October 28, the Zoning Administrator requested that the permit be suspended after  
6 learning after issuance of the permit that the stated existing use of the property as office space  
7 was possibly abandoned. (See Suspension Request. October 28, 2013. Owner's Exhibit 3.) The  
8 permit was then suspended. No work has commenced pursuant to the permit and most of the  
9 tenants have remained in their units and have not vacated. However, the owner refuses to  
10 withdraw the eviction Notices and has not requested that the tenants return the relocation  
11 payments made.

12 **A. The Tenants and Their Counsel**

13 **1. Tenants**

14 30 tenants have engaged Stephen Collier at the Tenderloin Housing Clinic to represent  
15 their interests in this matter. The 1049 Market Street Tenants Association also submits a letter  
16 in opposition to the appeal which is attached to the Tenant's Submissions as Exhibit 9.

17 As the letters submitted by the tenants attached as Exhibit 4 indicate, they are long-term  
18 tenants who occupy the premises as their residence. They are low income and cannot afford to  
19 pay market rents in San Francisco should they be evicted. Many are artists who need to remain  
20 in the premises to be able to remain in San Francisco.

21 **II.**

22 **THE SUSPENSION OF THE PERMIT SHOULD BE UPHELD**

23 **A. The Relevant Law**

24 **1. Equitable Estoppel**

25 The four required elements of equitable estoppel are: (1) the party to be estopped must  
26 be apprised of the facts: (2) he must intend that his conduct be acted upon, or must so act that  
27  
28

1 the party asserting the estoppel had a right to believe it was so intended; (3) the other party  
2 must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.  
3 *Feduniak v. Cal. Coastal Comm.* (2007) 148 Cal.App.4th 1346, 1359. Where even one of the  
4 requisite elements for estoppel is missing, it does not apply. *Id.* at 1360.

5 Where, as here, a litigant is asserting estoppel against the government, Appellant must  
6 establish the same elements required to show an estoppel against a private party, and also show  
7 that "the injustice which would result from a failure to uphold an estoppel is of sufficient  
8 dimension to justify any effect upon public interest or policy which would result from the  
9 raising of an estoppel." *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-497. Estoppel  
10 "must not be applied if doing so would effectively nullify a strong rule of policy, adopted for  
11 the benefit of the public..." *Id.* at 493 (internal quotations omitted). "[E]stoppel will not be  
12 invoked against a government agency where it would defeat the effective operation of a policy  
13 adopted to protect the public." *Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813, 822.

14 A public entity may not be estopped from enforcing the law. *Pettitt v. City of Fresno*  
15 (1973) 34 Cal.App.3d 813, 820; *Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720; *Chaplis*  
16 *v. County of Monterey* (1979) 97 Cal.App.3d 249, 258-259; *People ex rel. Dept. Pub. Wks. v.*  
17 *Ryan Outdoor Advertising, Inc.* (1974) 39 Cal.App.3d 804, 812-813. Only in extraordinary  
18 cases, where the injustice is great and the precedent set by the estoppel is narrow, will the  
19 government be estopped from enforcing the law. *Smith v. County of Santa Barbara* (1992) 7  
20 Cal.App.4th 770, 772, 775.

21 In the area of permits and zoning laws, courts have engaged in the balance between the  
22 avoidance of manifest injustice to the individual and the preservation of the public interest, and  
23 have consistently concluded that the public and community interest in preserving the  
24 community patterns established by zoning laws outweighs the injustice that may be incurred by  
25 the individual in relying upon an invalid permit to build issued in violation of zoning laws.  
26 *Pettitt, supra*, 34 Cal.App.3d at 820.

1           2.     Vested Right

2           There is no meaningful distinction between an estoppel claim and a vested right claim  
3 where land use is at issue. *Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 321; *Arco*  
4 *Community Developers, Inc. v. South Coast Regional Com.*, (1976) 17 Cal.3d 785, 793; *Raley*  
5 *v. California Tahoe Regional Planning Agency* (1977) 68 Cal.App.3d 965, 975, 985. The  
6 developer's right to complete a project as proposed does not vest until a valid building permit,  
7 or its functional equivalent, has been issued and the developer has performed substantial work  
8 and incurred substantial liabilities in good faith reliance on the permit. *Toigo, supra*, 70  
9 Cal.App.4th at 322; *Arco Community Developers, Inc., supra*, 17 Cal.3d at 791; *Raley, supra*,  
10 68 Cal.App.3d at 975.

11        **B.     Estoppel Cannot Be Used to Avoid The Requirement to Comply With Prop. M.**

12           The permit was suspended upon request of the Zoning Administrator because the  
13 evidence showed that the owner allowed the office use at the premises to lapse for more than  
14 five years. As found by the Zoning Administrator:

15  
16                   Evidence thus far suggests that nearly all of the Building was  
17 converted to some type of residential use more than five years  
18 ago. This evidence includes (1) materials associated with DBI  
19 Complaint Number 200711850, which substantiated allegations  
20 of conversion to some type of residential occupancy, (2)  
21 testimony received at the Building Inspection Commission  
22 hearing on October 16, 2013 by individuals who represented  
23 themselves as current or previous residential tenants of the  
24 Building, (3) articles in the San Francisco Chronicle and San  
25 Francisco Examiner during the week of October 8, 2013, and (4)  
26 verbal reports by the property owners themselves during a  
27 meeting with DBI and Planning Department Staff on October 13,  
28 2013.

(Suspension Request, Owner's Exhibit 3.)

24           If the previous office use (considered "preexisting office space" under Planning Code §  
25 320(k)) was converted to another use for more than five years, then it loses its status as  
26 "preexisting office space" and therefore is considered abandoned. A resumption of that use on  
27 the first through fifth floors of the Building would be subject to Planning Commission  
28

1 authorization under the City's Office Development Annual Limit Program (Planning Code  
2 §320 *et. seq.*; also known as Proposition M), payment of associated development impact fees,  
3 and other applicable requirements of the Planning Code.

4 To permit the owner to demolish the residential units and restore the office use would  
5 circumvent the requirements of Planning Code § 320, and permit the owner to circumvent  
6 Prop. M's office development controls. Applying estoppel here would prevent the City from  
7 enforcing Prop. M. It would override the strong public interest and policy behind Prop. M's  
8 office development controls.

9 Furthermore, restoring the permit would potentially result in the eviction of 84 residents  
10 and the loss of affordable housing at a time when the City faces a housing affordability crisis.  
11 (See Mayor's State of The City Address, Tenants Submission, Exhibit 10: Relevant Portions of  
12 the Board of Supervisor's Budget Analyst Report on Tenant Displacement, Tenants  
13 Submission, Exhibit 11: "S.F. Eviction Surge." *San Francisco Examiner*, November 5, 2013.  
14 Tenants Submission, Exhibit 12.) The conversion of housing to office use is contrary to City  
15 policy, Planning Code § 101.1(b)(2) & (3), and should be rejected.

16 **C. The Owner Has Not Acted in Good Faith**

17 **1. The Owner Allowed Residential Use of the Premises and Therefore Was**  
18 **Not Ignorant of the True Facts.**

19 In order for estoppel to be applied, Appellant must be ignorant of the true state of facts.  
20 *Feduniak, supra*, 148 Cal.App.4th at 1359. Here, Appellant was well aware that the office use  
21 had lapsed. Therefore requiring Appellant to live with the consequences of a lapsed office use  
22 – compliance with Prop. M – imposes no unfairness on Appellant for which estoppel should  
23 apply.

24 **2. The City Did Not Require the Owner to Remove the Residential Use**

25 Appellant provides no evidence that the City said it cannot legalize the residential use  
26 and must remove it. To the contrary, the 2007 NOV ordered Appellant to legalize the use, not  
27 to remove it. To the extent that the basis for the City's order was the illegal conversion to  
28

1 residential use, Appellant was aware of these facts and therefore did not detrimentally rely on  
2 the City's NOV.

3  
4 **3. The Owner Misrepresented the Present Use on the Permit Application**

5 The permit application identifies the present use as "office/retail/live work," and that  
6 the live/work use was limited to six units on the 6<sup>th</sup> floor. This is a misrepresentation of the  
7 present use. The application only sought to do work on floors 1-5, and there was live/work use  
8 on these floors as well as the 6<sup>th</sup> floor. There was no office use in the building when the permit  
9 was applied for.

10 This misrepresentation was critical because the failure to identify the proper residential  
11 use meant that the application failed to indicate that the Owner sought to change the use from  
12 residential (live/work) back to office use. The lack of a stated intent to change use, as required  
13 by paragraphs 7 and 7A of the application, resulted in the Planning Department not reviewing  
14 the application. Therefore the misrepresentation as to the present use resulted in the need for a  
15 suspension after the true facts were uncovered.

16 The failure to note the change of use on the application resulted in the permit being  
17 invalidly issued without following the proper office space permitting requirements in Planning  
18 Code § 320, *et seq.* A developer who relies on an invalid permit issued in violation of a city  
19 zoning ordinance had no vested rights and cannot rely upon estoppel, regardless of the amount  
20 of money expended in reliance on the permit. *Stokes v Board of Permit Appeals* (1997) 52  
21 Cal.App.4<sup>th</sup> 1348, 1357 [misrepresentation on permit application that abandoned bathhouse  
22 was presently used as a health club defeated vested rights and estoppel claims even when  
23 owner expended \$400,000 in reliance on the permit]; *Pettitt, supra*, 34 Cal.App.3d at 821;  
24 *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222  
25 [developer spent in excess of \$600,000 in developing property pursuant to invalid permits]. "It  
26 is, of course, a wholly different situation when the permit is invalid from the beginning because  
27 issued in violation of the zoning law for the area." *Pettitt, supra*, 34 Cal.App.3d at 824.

28 Appellant's argument in response essentially states that DBI should have known that  
the owner misstated the present use in the application and should have denied the permit. As

1 noted above, neither estoppel or vested rights principles force the City to uncover misrepresent-  
2 ations on permit applications, and the suspension must be upheld.

3  
4 **4. The Owner Did Not Notify the Tenants of the Permit Application**

5 Appellant further acted in bad faith by failing to comply with the requirements for  
6 notifying its residential tenants of the proposed demolition of their units. Civil Code § 1940.6  
7 and San Francisco Building Code § 106.3.2.4 both require that the tenants be notified in  
8 writing before a permit to demolish units is sought. Civil Code § 1940.6(a)(2) requires written  
9 notice to each tenant, and Building Code § 106.3.2.4 requires that the building be posted with  
10 notice that a permit application was filed, including the nature of the work to be performed.<sup>2</sup>  
11 Had the Owner notified its tenants of its intention to demolish their units, they certainly would  
12 have contacted City officials and or appealed the permit issuance well before the owner served  
13 eviction notices and expended any sums on relocation payments. The tenants' prompt response  
14 to the threat of demolition after learning of the permit, and the City's prompt action to forestall  
15 it, would have prevented any further expenditure by the Owner.

16 **D. Appellant Did Not Incur Costs in Reliance on the Permit**

17 No right to develop vests until all final discretionary permits have been authorized and  
18 significant "hard costs" have been expended in reliance on those permits - that is, until  
19 substantial construction has occurred in reliance on a building permit. *Hermosa Beach Stop Oil*  
20 *Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 552. The developer's right to  
21 complete a project as proposed does not vest until a valid building permit, or its functional  
22 equivalent, has been issued *and the developer has performed substantial work and incurred*  
23 *substantial liabilities in good faith reliance on the permit. Id.; Toigo v. Town of Ross, supra*, 70  
24 Cal.App.4th at 321, *Arco Community Developers, Inc., supra*, 17 Cal.3d at 791. Expenditures  
25 for engineers, consultants and lawyers in connection with obtaining approvals, and other work

26 <sup>2</sup> Appellant may argue that the posting requirement of Building Code § 106.3.2.4 only applies  
27 to apartment houses. But Building Code § 302.1 requires that the occupancy classification be  
28 based upon the purpose of the occupancy, and if that purpose changes (e.g. from office to  
residential), then the changed occupancy must comply with all the requirements for that  
classification.

1 undertaken pursuant to governmental approvals preparatory to construction of buildings are not  
2 hard costs and cannot form the basis of a vested right. *Hermosa Beach Stop Oil Coalition*,  
3 *supra*, 86 Cal.App.4th at 553.

4 Here. Appellant has performed no work pursuant to the permit. Appellant's sole basis  
5 for its detrimental reliance argument is that it paid statutory relocation payments to its tenants  
6 in order to evict them under the Rent Ordinance. These payments are not "hard costs." i.e.  
7 actual construction. Appellant's payments to relocate its tenants were in preparation for  
8 construction pursuant to the permit. in order to clear out the units so that work may commence.  
9 The requirement to pay relocation payments under Rent Ordinance § 37.9C is independent of  
10 the issuance of the permit. It is a separate requirement to evict the tenants. It was not work  
11 done pursuant to the issuance of the permit. The decision to evict the tenants and pay relocation  
12 payments was not required by the permit and therefore is not a basis for claiming reliance for  
13 purposes of a vested rights or estoppel.

14 **E. Extraordinary Circumstances Do Not Exist That Require Estoppel To Be Applied.**

15 As noted above, estoppel shall only be applied against the government in extraordinary  
16 circumstances. No such circumstances are present here and Appellant has presented no  
17 compelling evidence of any. Furthermore, the permit has only been suspended, not revoked. As  
18 the permit may still issue, there is no reason to apply estoppel in this instance.

19 **F. The Permit Holder Must Obtain Planning Commission Approval to Reinstitute**  
20 **Office Use**

21 Appellant is attempting to convert a non-permitted live/work use back to an office use.  
22 Planning Code § 320 *et seq.* requires that Appellant get approval for an office development  
23 before converting back to office use. In order to be exempt from the office development  
24 requirements in the Planning Code, the building must have been "preexisting office space."  
25 "used primarily and continuously for office use and not accessory to any other than office use  
26 for five years prior to" approval as an office development project. Planning Code § 320(k). As  
27 this building has been used as residential housing for more than five years, converting it back  
28 to office use would bring it within the purview of Planning Code § 320 as an office

1 development. Such a development would require Project Authorization from the Planning  
2 Commission. Planning Code § 322. Appellant should not be permitted to conduct an end-  
3 around the office development restrictions in the City Planning Code through this permit.  
4

5 III.

6 CONCLUSION

7 For all the reasons stated above, the Tenants respectfully request the suspension of the  
8 permit be upheld.  
9

10 Dated: February 12, 2014



11 \_\_\_\_\_  
12 Stephen L. Collier  
13 Attorney for Tenants  
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AFFIDAVIT OF SERVICE

I declare that: I am employed in the City and County of San Francisco, California. I am over the age of eighteen years, and am not a party to the action entitled below. My business address is 126 Hyde Street, 2<sup>nd</sup> Floor, San Francisco, California. 94102.

On February 13, 2014, I served the attached document(s):

**TENANTS BRIEF IN OPPOSITION TO APPEAL**

**TENANTS SUBMISSIONS IN OPPOSITION TO APPEAL**

Case No. 13-144

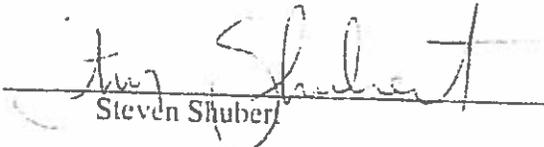
**BY MESSENGER SERVICE:** I served the documents by placing them in an envelope or package addressed to the persons at the address(es) listed below and providing them to a professional messenger service for service.

ADDRESSEE(S):

L. Peter Ryan, Esq.  
Fox Rothschild LLP  
855 Front Street  
San Francisco, CA 94111

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: February 13, 2014

  
Steven Shuber

AFFIDAVIT OF SERVICE

1 oath.

2  
3 FINDINGS OF FACT

4 1. The property is a six-story building located at 1049 Market Street in San  
5 Francisco's Mid-Market District. The landlord has owned the building since approximately 2010.  
6 The landlord also owns the properties located at 1005 Market Street and 1067 Market Street, and  
7 the three properties are collectively known as San Francisco Office Lofts ("SFOL"). The tenant  
8 testified that the subject building consists of numerous individual rental units, some of which are  
9 residentially occupied.

10 2. The Rent Board previously determined that a unit on the sixth floor of the subject  
11 building was exempt from the Ordinance. Specifically, in the Decision on Remand Pursuant to  
12 Appeal in Case No. T140257/Appeal No. AL140134, issued on October 23, 2014, it was  
13 determined that unit #605 in the subject building is exempt from the Rent Ordinance pursuant to  
14 Rules and Regulations Section 1.17(g) as a newly constructed live/work unit for which a  
15 certificate of occupancy was issued after June 13, 1979. The tenant's appeal of the Remand  
16 Decision in Appeal No. AT140188 was denied by the Board on November 25, 2014. On  
17 December 17, 2014 the tenant filed a petition for writ of administrative mandamus in Superior  
18 Court Case No. 514118, and a hearing on the writ has not been set. Administrative notice is  
19 taken of that Remand Decision.

20 3. The subject rental unit is on the fourth floor, and there is no evidence that any  
21 portion of the fourth floor has been lawfully converted to live/work units.

22 4. The subject tenancy commenced on August 28, 2010 pursuant to a written rental  
23 agreement. (Tenant Exhibit 2) The initial monthly rent was \$825.00. The tenant credibly testified  
24 that he has resided in the subject unit on a full-time basis since late August 2010.

25 5. The tenant testified that subject unit #414 consists of a large room with a sink and  
26 small refrigerator, and a sleeping loft above. The tenant testified that he uses the common area  
27 bathroom shared by other residential tenants on the fourth floor.

28 6. The August 2010 rental agreement for the subject unit is entitled "San Francisco

1 Office Lofts - 1049 Market St. Units 121-608 Commercial Office Lease." Paragraph 18 of the  
2 agreement states:

3 "Lessee agrees that this rental space is not subject to the San Francisco  
4 Rent Stabilization and Arbitration Ordinance and agrees to resolve  
5 disputes based on the laws and judicial rulings that apply to commercial  
6 tenants in San Francisco. Lessee agrees that this rental space is to be  
7 used for commercial purposes only. Although the owner may allow  
8 residential use of the space and will not initiate an eviction action for that  
9 reason alone, said residential use does not create a residential  
10 occupancy of this unit."

11 Paragraph 20 of the agreement provides that the tenant may establish a residential telephone line  
12 at the property. Paragraph 21 of the agreement states, in part, that "all parties to this lease agree  
13 that this lease is a commercial lease." The provision further states that notwithstanding the fact  
14 that the lease is commercial in nature, the landlord agrees to follow California Civil Code 1954  
15 pertaining to a landlord's right to enter a residential dwelling unit.

16 7. The tenant credibly testified that shortly before the tenancy commenced, he found  
17 a posting in the residential rental section on Craigslist that the subject unit was available for rent.  
18 The tenant testified that the Craigslist posting included the website for San Francisco Office Lofts,  
19 and he also viewed the SFOL website before he first contacted building manager Bob Mullen to  
20 view the unit. The tenant credibly testified that the building was marketed on the San Francisco  
21 Office Lofts website as a mixed-use building with small offices and live/work units in August 2010.  
22 The tenant submitted archived screen shots from the 2010 website for San Francisco Office  
23 Lofts, which show descriptions and amenities for live/work units at the property. (Tenant Exhibit  
24 11) The tenant credibly testified that he specified he wanted to rent a residential unit when he first  
25 contacted the building manager about renting a unit in the building, and the tenant further credibly  
26 testified that the landlord has never disputed his ongoing residential use of the unit.

27 8. The tenant submitted evidence showing the following rent history for the subject  
28 unit.

(a) Effective September 1, 2011, the rent was increased by 1.21%, from \$825.00 to  
\$835.00.

1 September 27, 2013. *Savett v. Davis*, 29 (1994) 29 Cal. App.4thSupp. 13,  
2 16. That Notice was sent in response to the City of San Francisco's  
3 permitting Respondent to recover Possession in good faith in order to  
demolish or otherwise permanently remove the premises from housing  
use.

4 Although Respondent does not directly attribute the delays associated  
5 with enforcing the terms contained within the Notice of Termination to  
6 Tenant, Tenant has enjoyed the use of housing services for well over a  
7 year, during which time Respondent has been precluded from accepting  
8 rent, let alone raising it. The issue of Tenant's enjoyment of the office  
9 space pursuant to the lease and Respondent's inability to collect rent is  
10 subject to a pending matter in Superior Court, namely a complaint  
11 whereby Respondent is seeking a judicial determination permitting the  
12 acceptance of rent for the commercial use of the premises on equitable  
13 grounds and based on unjust enrichment for the period up to Tenant's  
14 eventual surrender of possession. That lawsuit includes named Tenant,  
15 as well as an additional twenty other tenants, who also have enjoyed the  
16 use of their individual office space pursuant to a lease, and Respondent's  
17 legal inability to accept rent. A courtesy copy of the complaint in that  
18 action is included.

19 Because Tenant has neither paid rent in well over a year, nor received a  
20 rent increase in well over a year, the determination of proper rent while no  
21 rent is being paid is procedurally moot. Respondent has acted with  
22 diligence to seek a judicial determination regarding the equitable authority  
23 to receive a quantum meruit recovery pending the eventual surrender of  
24 Tenant's possession, and what that equitable amount should be. In the  
25 interim, however, any determination of proper 'rent' when no rent is being  
26 collected or demanded is otherwise unnecessary and improper."

27 (Landlord 2/17/15 Hearing)

28 14. The tenant argued that although the landlord has not accepted any rent since late  
November 2013, the Rent Board has jurisdiction to determine the lawful rent during the three-year  
period preceding the filing of the petition.

#### CONCLUSIONS OF LAW

1. The term "rental unit" means a residential dwelling unit, regardless of zoning or  
legal status, in the City and County of San Francisco and all housing services, privileges,  
furnishings (including parking facilities supplied in connection with the use or occupancy of such  
unit), which is made available by agreement for residential occupancy by a tenant in  
consideration of the payment of rent. [Ordinance Section 37.2(r); Rules and Regulations Section  
1.17] Based on all of the evidence, the tenant's rental unit is subject to the jurisdiction of the Rent

1 Board. This determination is supported by the credible testimony of the tenant that the property  
2 manager consented to residential use of the subject unit at the commencement of the tenancy,  
3 and the lack of any evidence to the contrary.

4  
5 2. A landlord may increase a tenant's base rent annually, in an amount published by  
6 the Rent Board on March 1 of each year, as set forth below. [Ordinance Section 37.3(a)(1)]

Effective Period	Amount of Increase
3/1/11 to 2/29/12	0.5%
3/1/12 to 2/28/13	1.9%
3/1/13 to 2/28/14	1.9%
3/1/14 to 2/28/15	1.0%
3/1/15 to 2/29/16	1.9%

7  
8  
9  
10  
11 3. A landlord who refrains from imposing an annual rent increase, or any portion  
12 thereof, may accumulate said increase and impose that amount on or after the tenant's  
13 subsequent rent increase anniversary date. This banked amount may only be given at the time of  
14 an annual increase. Only those increases that could have been imposed on, or subsequent to,  
15 April 1, 1982, may be accumulated. [Rules and Regulations Section 4.12(a)]

16 4. Any rent increase imposed after April 1, 1982 which exceeds the allowable limits  
17 renders the entire rent increase null and void, unless the amount requested equals no more  
18 than the sum of the allowable annual and banked rent increases. [Ordinance Section 37.3(b)(5);  
19 Rules and Regulations Section 4.10(b)]

20 5. The September 1, 2011 rent increase of 1.21% from \$825.00 to \$835.00 is null  
21 and void because it exceeded the 0.5% annual increase available at that time. [Ordinance  
22 Section 37.3(b)(5) and Rules and Regulations Section 4.10(b)] Therefore, beginning September  
23 1, 2011, the lawful base rent for the unit remained \$825.00.

24 6. The September 1, 2012 rent increase of 2.4% from \$835.00 to \$855.00 is null  
25 and void because it exceeded the 1.9% annual increase available at that time. [Ordinance  
26 Section 37.3(b)(5) and Rules and Regulations Section 4.10(b)] Therefore, beginning September  
27 1, 2012, the lawful base rent for the unit remained \$825.00.



February 03, 2015

**FILE**

John Gall & Terry Bogart, Permit Holders  
c/o Andrew Zacks, Attorney for Permit Holders  
235 Montgomery Street #400  
San Francisco, CA 94104

**Appeal No.: 15-022**  
**Appeal Title: Cady et al. vs. ZA**  
**Subject Property: 1049-1051 Market Street**  
**Permit Type: Request for Release of Suspension**  
**Permit No.: RE: BPA NO. 2013/07/26/2890**

Dear John Gall & Terry Bogart:

This is to notify you that an appeal has been filed with this office protesting the **ISSUANCE** of the above referenced **Request for Release of Suspension**. Pursuant to Article I, §8 of the San Francisco Business & Tax Regulations Code, the subject **Request for Release of Suspension** is hereby **SUSPENDED**. Accordingly, the subject permit shall remain suspended until the Board decides this matter and releases a notice of decision and order.

We are enclosing a copy of the **Preliminary Statement of Appeal** for your information.

The hearing regarding this matter has been scheduled for **April 08, 2015, at 5:00 p.m., City Hall, Room 416**, One Dr. Carlton B. Goodlett Place.

If you have any further questions, you may call this office at (415) 575-6880.

Sincerely,

BOARD STAFF

cc: ZA Scott Sanchez

Ben Cady et al., Appellants  
c/o Stephen Collier, Attorney for Appellant  
126 Hyde Street, 2nd Floor  
San Francisco, CA 94102

**From:** [Andrew Zacks](#)  
**To:** [Sider, Dan](#); [Sanchez, Scott \(CPC\)](#)  
**Cc:** [John Gall \(John@sfofficeoflts.com\)](mailto:John.Gall@sfofficeoflts.com)  
**Subject:** 1049 Market Street  
**Date:** Tuesday, December 16, 2014 10:20:50 AM

---

Dear Dan:

This confirms my request to you last week that the Planning Department take action related to the suspended permit for the above matter. I asked that the suspension be lifted, or alternatively, that the Department deny the permit to allow my client to seek administrative remedies and, if necessary, judicial relief. You suggested that the property owners and representatives of the City should meet to attempt to find a negotiated resolution of the matter. In that regard, you are speaking to relevant City Officials, including a colleague from the Mayor's Office, to find an appropriate date in early January for such a meeting. The property owner will participate in a meeting in January in an effort to resolve the matter without further delay and expense. Please notify me as soon as you have a confirmed date for the meeting.

Very truly yours,

Andrew Zacks

This email may contain confidential and privileged material for the sole use of its intended recipient. Any review or distribution by others is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

Andrew Zacks  
Zacks & Freedman, A Professional Corporation  
Real Estate Law Practice  
Tel: 415-956-8100  
Fax: 415-288-9755  
[www.ZULPC.com](http://www.ZULPC.com)

Address: 210 - 0 TAYLOR ST, SAN FRANCISCO, CA

Status: Closed

Closed: 11/9/2014

Further Information: [View](#)

Related Records:

2012.1513T	Plan Code Amendment- LEG (PCA)	12/11/2012	Closed	<a href="#">Planning Info Center</a>	<a href="#">View</a>
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**Planning App. No.:** 9633PRV

**Planner:** [Planning Information Center](#) Tel: 415-558-6377

**Record Type:** Project Review Meetings (PRV)

**Opened:** 5/16/2011

**Name:** 1049 Market Street (3703/067); Project Review Meeting to change use from commercial offices to commercial offices with residential

**Description:** 1049 Market Street (3703/067); Project Review Meeting to change use from commercial offices to commercial offices with residential accessory. Historical Planner may be required.

**Address:** 1049 - 0 MARKET ST, SAN FRANCISCO, CA 94103

**Status:** Closed

**Closed:** 5/16/2011

**Further Information:** [View](#)

**Related Records:**

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**Planning App. No.:** 2010.1014T

**Planner:** [Planning Information Center](#) Tel: 415-558-6377

**Record Type:** Plan Code Amendment-LEG (PCA)

**Opened:** 11/14/2010

**Name:** Mid-Market Redelopment Plan

**Description:** Mid-Market Revvelopment Plan. Proposed Redevelopment Plan in an area generally bound by Market, Fifth, Mission and Tenth Streets. T-Case description: Potential Special Use District R- Case: Redevelopment Plan Review and Adoption

**Address:** 210 - 0 TAYLOR ST, SAN FRANCISCO, CA

**Status:** Closed

**Closed:** 12/11/2012

**Further Information:** [View](#)

**Related Records:**

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**Planning App. No.:** 2010.1014R

**Planner:** [Planning Information Center](#) Tel: 415-558-6377

**Record Type:** General Plan Referral (GPR)

**Opened:** 11/14/2010

**Name:** Mid-Market Redelopment Plan

**Description:** Mid-Market Revvelopment Plan. Proposed Redevelopment Plan in an area generally bound by Market, Fifth, Mission and Tenth Streets. T-Case description: Potential Special Use District R- Case: Redevelopment Plan Review and Adoption

Address: 210 - 0 TAYLOR ST, SAN FRANCISCO, CA  
Status: Closed  
Closed: 12/11/2012  
Further Information: [View](#)  
Related Records:

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**Planning App. No.:** 2010.1014E\_3  
**Planner:** [Planning Information Center Tel: 415-558-6377](#)  
**Record Type:** Environmental (ENV)  
**Opened:** 11/9/2010  
**Name:** Mid-Market Redelopment Plan  
**Description:** Mid-Market Revelopment Plan. Proposed Redevelopment Plan in an area generally bound by Market, Fifth, Mission and Tenth Streets. T-Case description: Potential Special Use District R- Case: Redevelopment Plan Review and Adoption  
**Address:** 210 - 0 TAYLOR ST, SAN FRANCISCO, CA  
**Status:** Closed  
**Closed:** 5/14/2012  
**Further Information:** [View](#)  
Related Records:

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**Planning App. No.:** 2010.1014E  
**Planner:** [Planning Information Center Tel: 415-558-6377](#)  
**Record Type:** Environmental (ENV)  
**Opened:** 11/8/2010  
**Name:** Mid-Market Redelopment Plan  
**Description:** Mid-Market Revelopment Plan. Proposed Redevelopment Plan in an area generally bound by Market, Fifth, Mission and Tenth Streets. T-Case description: Potential Special Use District R- Case: Redevelopment Plan Review and Adoption  
**Address:** 210 - 0 TAYLOR ST, SAN FRANCISCO, CA  
**Status:** Closed  
**Closed:** 5/14/2012  
**Further Information:** [View](#)  
Related Records:

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**Planning App. No.:** 1985.533  
**Planner:** [Planning Information Center Tel: 415-558-6377](#)  
**Record Type:** Project Profile (PRJ)  
**Opened:** 12/31/1984  
**Name:** CCSF, Market, Stevenson  
**Description:** Change Height & Bulk districts, proposed 90' height limit generally allowed with selected CUs for additional height for below market-rate housing.  
**Address:** 45 - 0 MASON ST, SAN FRANCISCO, CA 94102  
**Status:** Closed  
**Closed:**

**From:** Pacheco, Victor  
**To:** Sider, Dan  
**Cc:** Sanchez, Scott; Teague, Corey  
**Subject:** RE: 1049 Market  
**Date:** Wednesday, February 19, 2014 9:53:31 AM

---

Hi Dan:

We just got final confirmation from Peter Ryan, Mr. Gall's attorney; we will be issuing the notice of withdrawal soon.

*Victor F. Pacheco, Legal Assistant  
Board of Appeals, C & C of S.F., Dept. 37  
Tel: 415-575-6880  
Fax: 415-575-6885*

**From:** Sider, Dan  
**Sent:** Wednesday, February 19, 2014 8:56 AM  
**To:** Pacheco, Victor  
**Cc:** Sanchez, Scott; Teague, Corey  
**Subject:** 1049 Market

Hi Victor

I'm told that the sponsor has indicated this case will be withdrawn. I haven't seen any email to that effect from your shop so I wanted to write to see if you were aware of anything. Thanks!  
dan

**Daniel A. Sider, AICP**  
**Senior Advisor for Special Projects**

Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
**Direct:** 415-558-6697 **Fax:** 415-558-6409  
**Email:** [dan.sider@sfgov.org](mailto:dan.sider@sfgov.org)  
**Web:** [www.sfplanning.org](http://www.sfplanning.org)

**From:** [Duffy, Joseph](#)  
**To:** [Sanchez, Scott](#)  
**Subject:** RE: Item #6 @ 1049 Market Street - WITHDRAWN  
**Date:** Wednesday, February 19, 2014 10:04:12 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

---

Thanks Scott

**From:** Sanchez, Scott  
**Sent:** Wednesday, February 19, 2014 10:01 AM  
**To:** Duffy, Joseph  
**Subject:** FW: Item #6 @ 1049 Market Street - WITHDRAWN

I think that you received this, but just in case...

Cheers,  
**Scott F. Sanchez**  
**Zoning Administrator**

Planning Department | City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
Direct: 415-558-6350 | Fax: 415-558-6409  
Email: [scott.sanchez@sfgov.org](mailto:scott.sanchez@sfgov.org)  
Web: [www.sfplanning.org](http://www.sfplanning.org)

Planning Information Center (PIC): 415.558.6377 or [pic@sfgov.org](mailto:pic@sfgov.org)  
Planning Information Map (PIM): <http://propertymap.sfplanning.org>



**From:** Goldstein, Cynthia  
**Sent:** Wednesday, February 19, 2014 9:52 AM  
**Subject:** Item #6 @ 1049 Market Street - WITHDRAWN

Commissioners,

I just received a withdrawal of Appeal No. 13-144, Item #6 on tonight's agenda regarding a Suspension Request at 1049 Market Street. This item will not be heard this evening.

Cynthia

---

Cynthia G. Goldstein  
Executive Director  
San Francisco Board of Appeals  
1650 Mission Street, Suite 304  
San Francisco, CA 94103  
Phone: 415-575-6881

**From:** [Strawn, William](#)  
**To:** [Sider, Dan](#)  
**Subject:** Re: Good luck with today's Planning meeting on 1049/1067 Market  
**Date:** Thursday, December 12, 2013 1:23:39 PM

---

Well THAT is wonderful news....  
Bill

William  
Sent from my iPad

On Dec 12, 2013, at 12:52 PM, "Sider, Dan" <[dan.sider@sfgov.org](mailto:dan.sider@sfgov.org)> wrote:

It went surprisingly well. More details to follow...

**Daniel A. Sider, AICP**  
**Senior Advisor for Special Projects**

Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103  
**Direct:** 415-558-6697 **Fax:** 415-558-6409  
**Email:** [dan.sider@sfgov.org](mailto:dan.sider@sfgov.org)  
**Web:** [www.sfolanning.org](http://www.sfolanning.org)

**From:** Strawn, William  
**Sent:** Thursday, December 12, 2013 10:16 AM  
**To:** Sider, Dan; Tom, Ronald; Sweeney, Edward  
**Cc:** Hui, Tom  
**Subject:** Good luck with today's Planning meeting on 1049/1067 Market

Please send summary of results, if any achieved today, okay?  
Thanks.  
Bill

William Strawn  
Manager, Legislative & Public Affairs  
Department of Building Inspection  
1660 Mission Street, Suite 600  
San Francisco, CA 94103-2414  
Mobile: 415/850-9816  
Tel. 415/558-6250  
Fax: 415/558-6225

Subject: Follow Up following the limited inspections of 1049  
Market and 1067 Market on Oct. 17  
Date: Fri, 1 Nov 2013 18:42:08 +0000

November 1, 2013

John Gall, Ownership Group, 1049 Market Street  
Via E-mail: [john.gall@live.com](mailto:john.gall@live.com)

Mr. Gall:

Thank you for your telephone call yesterday and for your request for details or notes of the October 17, 2013 limited access inspections of 1049 Market Street and 1067 Market Street.

As you know, neither you nor your ownership partners attended the October 17th limited inspection. Participating that day were DBI's Chief Plumbing Inspector, Chief Electrical Inspector, Jeffrey Ma from our Plan Review staff, the Deputy Director for Inspection Services, the Deputy Director for Permit Services, myself, and representatives from the San Francisco Fire Department.

While I will attach the notes each of the above provided me following the inspection visit, which do make clear ongoing questions about a number of life-safety code compliance matters, and which raised additional questions in the inspectors' minds about conditions in most of the residential units, as well as about the building's mechanical systems – none of which could be inspected or accessed on October 17th – my overall opinion is that your ownership group could manage in economically feasible ways the corrections of these buildings' life-safety systems and meet code compliance requirements to retain the existing accessory residential uses.

I again urge you and your partners to make a formal pre-application meeting request; bring your architect and/or design professional; and meet formally with Building, Planning, Fire and respective professional staffs so that we could map out precisely, and in writing, the application of AB-005 and other specific steps you would need to take in order to meet code requirements to legalize the accessory residential use.

As you know, Planning requested on Monday, October 28th, and we suspended, the building permit issued to you on August 2, 2013. Per the letter from Acting Zoning Administrator Corey Teague, "...we are requesting suspension of the permit in order to obtain and analyze permits, plans, and relevant occupancy information related to the existing use of the building....'

This action, along with the returning to staff of the Order of

Abatement advisement issued on October 1st, provides additional time for your ownership group to meet formally with the City's reviewing agencies and to mutually agree upon steps you would take to achieve code compliance in the buildings' life-safety systems and thus be enabled to retain your existing accessory residential occupancy.

Thank you for your attention and consideration. We look forward to hearing from you on this important matter at your earliest convenience.

Sincerely,  
Tom Hui, S.E., C.B.O, and Director

two projects.

Thanks,  
Jeffrey Ma

On Nov 26, 2013, at 2:33 PM, "Tom, Ronald" <[ronald.tom@sfgov.org](mailto:ronald.tom@sfgov.org)> wrote:

John:

Jeff and I will be attending the pre-application meeting that has been rescheduled to next Friday, 12/6/13, at 10 AM.

For your projects, we will apply the 2010 San Francisco/California Electrical and Plumbing codes. Sprinkler/life-safety features of the buildings will follow the 2010 San Francisco/California Building and Fire codes (SFFD to confirm).

However, the project may use the Live/Work Quarters Code Ruling No. BC-502-1, dated October 11, 1988. The current version of the Energy Code will not be applicable. Other elements of the Live/Work Quarters covering occupancy classification, exits, handicapped access cooking, sanitary facilities, heating, sound transmission, security, ceiling heights, light and ventilation requirements are contained in the bulletin.

Regards,

Ron

Ron Tom  
Chief Building Inspector  
Architect

415/558-6013  
[ronald.tom@sfgov.org](mailto:ronald.tom@sfgov.org)

San Francisco Department of Building Inspection  
1660 Mission Street, 2nd Floor  
San Francisco, CA 94103

---

**From:** Hui, Tom  
**Sent:** Thursday, November 21, 2013 1:43 PM  
**To:** John Gall  
**Cc:** Strawn, William; Sweeney, Edward; Lowrey, Daniel; Jayin, Carolyn; O'Riordan, Patrick; Kim, Jane; Ma, Jeffrey; Tom, Ronald; Buckley, Jeff; Zhan, James  
**Subject:** Re: 1049 Market and 1067 Market

Hi John,

We greatly appreciate that you are requesting a formal pre-application. We will have my deputy director to handle this case with my Jeff Ma and Ron Tom.

Please, set up the time with Ed including Fire, Mechanical, Electrical divisions.

Bye

Tom Hui

Sent from my iPhone

On Nov 21, 2013, at 1:36 PM, "John Gall" <[john.gall@live.com](mailto:john.gall@live.com)> wrote:

Bill,

I have the go-ahead to get a Pre-App meeting regarding AB-005 for 1049 Market St and also from the 1067 Market St ownership groups. As you may be aware, notices to vacate are still active at 1049 for several tenants, and the sooner we can get the code determination and the planning approval for our current "accessory use" set up, the closer we may be to a resolution.

Although this issue has moved slowly due to unusual circumstances, I want to thank you, Tom and all others for being available and willing to work with me. Navigating this issue brings lots of challenges. Jane Kim and various other City officials have also been helpful in moving this along.

We would like to have one meeting to discuss both buildings at everyone's earliest convenience.

I will drop off hard copies and the fees at DBI later today.

Look forward to hearing from you.

Regards,

John Gall

---

From: [william.strawn@sfgov.org](mailto:william.strawn@sfgov.org)  
To: [john.gall@live.com](mailto:john.gall@live.com)  
CC: [tom.hui@sfgov.org](mailto:tom.hui@sfgov.org); [edward.sweeney@sfgov.org](mailto:edward.sweeney@sfgov.org);  
[daniel.lowrey@sfgov.org](mailto:daniel.lowrey@sfgov.org); [william.strawn@sfgov.org](mailto:william.strawn@sfgov.org);  
[carolyn.javin@sfgov.org](mailto:carolyn.javin@sfgov.org); [patrick.oriordan@sfgov.org](mailto:patrick.oriordan@sfgov.org)  
Subject: Follow Up following the limited inspections of 1049  
Market and 1067 Market on Oct. 17  
Date: Fri, 1 Nov 2013 18:42:08 +0000

November 1, 2013

John Gall, Ownership Group, 1049 Market Street  
Via E-mail: [john.gall@live.com](mailto:john.gall@live.com)

Mr. Gall:

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As you know, neither you nor your ownership partners attended the October 17th limited inspection. Participating that day were DBI's Chief Plumbing Inspector, Chief Electrical Inspector, Jeffrey Ma from our Plan Review staff, the Deputy Director for Inspection Services, the Deputy Director for Permit Services, myself, and representatives from the San Francisco Fire Department.

While I will attach the notes each of the above provided me following the inspection visit, which do make clear ongoing questions about a number of life-safety code compliance matters, and which raised additional questions in the inspectors' minds about conditions in most of the residential units, as well as about the building's mechanical systems – none of which could be inspected or accessed on October 17th – my overall opinion is that your ownership group could manage in economically feasible ways the corrections of these buildings' life-safety systems and meet code compliance requirements to retain the existing accessory residential uses.

I again urge you and your partners to make a formal pre-application meeting request; bring your architect and/or design professional; and meet formally with Building, Planning, Fire and respective professional staffs so that we could map out precisely, and in writing, the application of AB-005 and other specific steps you would need to take in order to meet code requirements to legalize the accessory residential use.

As you know, Planning requested on Monday, October 28th, and we suspended, the building permit issued to you on August 2, 2013. Per the letter from Acting Zoning Administrator Corey Teague, "...we are requesting suspension of the permit in order to obtain and analyze permits, plans, and relevant occupancy information related to the existing use of the building....'

This action, along with the returning to staff of the Order of Abatement advisement issued on October 1st, provides additional time for your ownership group to meet formally with the City's reviewing agencies and to mutually agree upon steps you would take to achieve code compliance in the buildings' life-safety systems and thus be enabled to retain your existing accessory residential occupancy.

Thank you for your attention and consideration. We look forward to hearing from you on this important matter at your earliest convenience.

Sincerely,  
Tom Hui, S.E., C.B.O, and Director

**From:** [Rahaim, John](#)  
**To:** [Sanchez, Scott](#); [Slider, Dan](#)  
**Subject:** Fwd: 1049 Market  
**Date:** Thursday, October 10, 2013 3:41:28 PM

---

Please excuse any typos. This was sent from my iPhone

Begin forwarded message:

**From:** "Buckley, Jeff" <[jeff.buckley@sfgov.org](mailto:jeff.buckley@sfgov.org)>  
**Date:** October 10, 2013, 3:25:36 PM PDT  
**To:** "Rufo, Todd" <[todd.rufo@sfgov.org](mailto:todd.rufo@sfgov.org)>, "Rahaim, John" <[john.rahaim@sfgov.org](mailto:john.rahaim@sfgov.org)>  
**Cc:** "Hui, Tom" <[tom.hui@sfgov.org](mailto:tom.hui@sfgov.org)>, "Hallisey, Jeremy" <[jeremy.hallisey@sfgov.org](mailto:jeremy.hallisey@sfgov.org)>  
**Subject:** 1049 Market

Todd,

Good news to report. DBI has found a pathway for the property owner of 1049 Market Street to legalize the building as commercial with an accessory residential use without jeopardizing the life safety of the residents there. This could prevent the evictions of the 150+ residents who live there and at another Mid-Market property owned by the same property owner. The Chronicle and Examiner will likely be doing a story on this for tomorrow. John Gall the Property Owner is coming into DBI on Tuesday of next week to go through the steps with Tom and senior building staff. Ultimately it's the property owner's decision but he has consistently told me, DBI, Jeremy, and others that it's his preference to legalize the residential use and prevent the evictions. Now a pathway is open for him. We should all encourage him to follow the path.

DBI has discretion to apply this model to similar buildings that have an illegal residential use in a commercial building. Ultimately, each building would have to be reviewed on a case-by-case basis. But it could be helpful for you to know that we have tools in place to develop our economy while also at the same time preventing displacement for vulnerable residents. I think that's your talking point if the Chron or Examiner ask for comment...

Great work Tom and DBI staff...

Jeff Buckley | Senior Advisor  
Office of Mayor Edwin M. Lee  
City and County of San Francisco

[Jeff.Buckley@sfgov.org](mailto:Jeff.Buckley@sfgov.org)  
(415) 554-7925

# **EXHIBIT 2**

1 STEPHEN L. COLLIER, ESQ., State Bar #124887  
2 MATT McFARLAND, ESQ., State Bar #225537  
3 TENDERLOIN HOUSING CLINIC, INC.  
4 126 Hyde Street, 2<sup>nd</sup> Floor  
5 San Francisco, CA 94102  
6 Telephone: (415) 771-9850  
7 Facsimile: (415) 771-1287  
8 E-mail: [Steve@thclinic.org](mailto:Steve@thclinic.org)  
9 E-mail: [Matt@thclinic.org](mailto:Matt@thclinic.org)

10 Attorneys for Real Parties in Interest  
11 Ben Cady, Chandra Redack, Peter Taylor, Chad Benjamin Potter, Manuel Rodriguez, Ann  
12 Cooper, Melissa Bracero, Adam Wojewidka, Chris Baker, Brendan Barthel, Carina C. Zona,  
13 Karl Hass, Juan P. Escobedo, Darren Brown and Bogdan Marcol

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SAN FRANCISCO — UNLIMITED CIVIL JURISDICTION

16 1049 MARKET STREET, LLC, a California  
17 Limited Liability Company,  
18  
19 Plaintiffs/Petitioners,  
20  
21 vs.  
22 AARON MILLER, MARK TSE, STEBAN  
23 GUEVARA, ANDREW GREENLEES,  
24 CLARENCE WILSON, IV, RON ROSEN,  
25 JASON GROHMAN, MICHAEL MASON,  
26 MICHAEL GREENLEES, and DOES 1 to 25,  
27  
28 Defendants.

) Case No. CGC-15-545950

) **REAL PARTIES IN INTEREST**  
) **BEN CADY, CHANDRA REDACK,**  
) **PETER TAYLOR, CHAD**  
) **BENJAMIN POTTER, MANUEL**  
) **RODRIGUEZ, ANN COOPER,**  
) **MELISSA BRACERO, ADAM**  
) **WOJEWIDKA, CHRIS BAKER,**  
) **BRENDAN BARTHEL, CARINA C.**  
) **ZONA, KARL HAAS, JUAN P.**  
) **ESCOBEDO, DARREN BROWN,**  
) **AND BOGDAN MARCOL'S**  
) **REQUEST FOR JUDICIAL**  
) **NOTICE**

21 CITY AND COUNTY OF SAN FRANCISCO,  
22 BOARD OF SUPERVISORS OF THE CITY  
23 AND COUNTY OF SAN FRANCISCO,  
24 PLANNING DEPARTMENT OF THE CITY  
25 AND COUNTY OF SAN FRANCISCO, SAN  
26 FRANCISCO DEPARTMENT OF  
27 BUILDING INSPECTION, SAN  
28 FRANCISCO BUILDING INSPECTION  
COMMISSION, SAN FRANCISCO BOARD  
OF APPEALS, AND DOES 25-50,  
  
Respondent/Defendants,

) Date: October 29, 2015  
) Time: 9:30 a.m.  
) Dept.: 503

) Judge: Hon. Teri L. Jackson

1  
2 BEN CADY, CHANDRA REDACK, PETER )  
3 TAYLOR, BRAD K. ALDER, CHAD )  
4 BENJAMIN POTTER, MANUEL )  
5 RODRIGUEZ, ANN COOPER, MELISSA )  
6 BRACERO, ADAM WOJEWIDKA, CHRIS )  
7 BAKER, BRENADAN BARTHEL, CARINA )  
8 C. ZONA, KARL HAAS, JUAN P. )  
9 ESCOBEDO, DARREN BROWN, BOGDAN )  
10 MARCOL, CHRISTOPHER FIGUEROA, )

Real Parties in Interest.

11 TO THE COURT, PETITIONER, RESPONDENTS, AND THEIR ATTORNEYS OF  
12 RECORD:

13 PLEASE TAKE NOTICE that Real Parties in Interest Ben Cady, Chandra Redack,  
14 Peter Taylor, Chad Benjamin Potter, Manuel Rodriguez, Ann Cooper, Melissa Bracero, Adam  
15 Wojewidka, Chris Baker, Brendan Barthel, Carina C. Zona, Karl Hass, Juan P. Escobedo,  
16 Darren Brown and Bogdan Marcol (collectively RPI) respectfully request that the Court take  
17 judicial notice, pursuant to Evidence Code §§ 451 and 452, of the following documents and  
18 public testimony:

- 19 1. December 7, 2011 Craigslist posting regarding live/work rentals at 1049 Market  
20 Street, San Francisco, California (the premises). RPI introduced this December  
21 2011 Craigslist posting, via overhead projector, at the April 8, 2015 San  
22 Francisco Board of Appeals hearing (AR, Vol. 1, at 95:6-25). A true and  
23 correct copy of the December 2011 Craigslist posting RPI introduced at the  
24 April 8, 2015 Board of Appeals hearing is attached hereto as Exhibit A.
- 25 2. John Gall and Amy Bogart's May 16, 2012 public testimony before the San  
26 Francisco Building Inspection Commission (BIC). Mr. Gall and Ms. Bogart's  
27 May 16, 2012 testimony is publicly available at  
28 [http://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=14&clip\\_id=15123](http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=14&clip_id=15123&meta_id=259949)  
&meta\_id=259949 at time stamp 2:08:00 through 2:08:18. RPI requests judicial  
notice of Mr. Gall and Ms. Bogart's public testimony as Exhibit B.

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3. California Building Code § 1205. A true and correct copy of California Building Code § 1205 is attached hereto as Exhibit C.
4. San Francisco Building Code § 1205.1. A true and correct copy of San Francisco Building Code § 1205.1 is attached hereto as Exhibit D.
5. San Francisco Department of Building Inspection (DBI) Administrative Bulletin, AB-005. A true and correct copy of AB-005 is attached hereto as Exhibit E.
6. California Building Code § 1029.1 and the July 1, 2015 Errata. A true and correct copy of California Building Code § 1029.1 and the July 1, 2015 Errata is attached hereto as Exhibit F.
7. Petitioner 1049 Market Street, LLC and lessee ProxV, Inc. dba WhatWeOrder's January 1, 2015 through December 31, 2015 Lease for Units 106 and 107 at the premises. Petitioner produced its January 1, 2015 Lease with Lessee ProxV, Inc. dba WhatWeOrder in response to plaintiffs' Requests for Production of Documents in the case *Potter, et al. v. 1049 Market Street, LLC, et. al.*, CGC-14-537501. A true and correct copy of the January 1, 2015 Lease produced by Petitioner in CGC-14-537501 is attached hereto as Exhibit G.
8. August 13, 2015 Declaration of Tessa K. Weeks In Support of Request for Stay of the Board of Appeals Decision, Or in the Alternative An Order Shortening Time And/Or Order Compelling Defendant to Produce the Administrative Record. A true and correct copy of the August 13, 2015 Declaration of Tessa K. Weeks is attached hereto as Exhibit H.

Dated: October 9, 2015

  
\_\_\_\_\_  
Steve Collier  
Matt McFarland  
Attorneys for Plaintiffs

*1049 Market Street, LLC. v. Aaron Miller, et al.*

**CGC-15-545950**

**Real Party in Interest Ben Cady, Chandra Redack, Peter Taylor, Chad Benjamin Potter, Manuel Rodriguez, Ann Cooper, Melissa Bracero, Adam Wojewidka, Chris Baker, Brendan Barthel, Karl Haas, Juan P. Escobedo, Darren Brown, and Bogdan Marcol's Request for Judicial Notice**

**Exhibit A**

SF bay area craigslist > san francisco > housing > apts/housing [email this posting to a friend](#)  
for rent

Stating a discriminatory preference in a housing post is illegal - please flag discriminatory posts as prohibited

please flag with care: [?]

Avoid scams and fraud by dealing locally! Beware any arrangement involving Western Union, Moneygram, wire transfer, or a landlord/owner who is out of the country or cannot meet you in person. [More info](#)

miscategorized

prohibited

spam/overpost

best of craigslist

**\$835 / 300ft<sup>2</sup> - Loft with exposed brick  
(downtown / civic / van ness) (map)**

1 MONTH  
+ \$200  
\$ 25 CREDIT

BOB (415) 652-7062  
1005 MARKET ST  
STG 310

Date: 2011-12-06, 2:07PM PST  
Reply to: [hous-dupck-2739573601@craigslist.org](mailto:hous-dupck-2739573601@craigslist.org) [Error when replying to a post]

@ 6TH ST

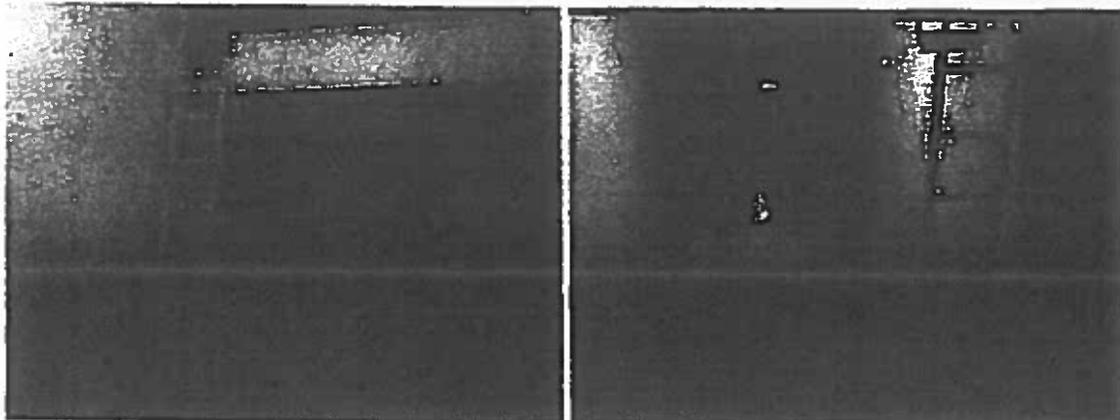
~~\$850~~ Sunny loft with oiled wood floors. Loft takes a queen sized mattress. Kitchenette with sink and mini fridge. Bathrooms are shared and cleaned daily. Laundry in building

HOT PLATE  
MICROWAVE

market Street at 7th Street ([google map](#)) ([yahoo map](#))

cats are OK - purrr  
it's NOT ok to contact this poster with services or other commercial interests

RENT 835  
D&P 835  
+ 200  
+ 25-21  
\$ 1895<sup>00</sup>



PostingID: 2739573601

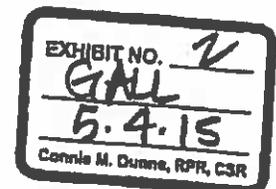
5:30 PM

\$835  
1049 MARKET ST

12/7/11

Copyright © 2011 craigslist, inc. [terms of use](#) [privacy policy](#) [feedback forum](#)

SENT EMAIL REQUEST TO VIEW ASAP



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**Exhibit B**

John Gall and Amy Bogart's May 16, 2012 public testimony before the San Francisco Building Inspection Commission (BIC). Mr. Gall and Ms. Bogart's May 16, 2012 testimony is publically available at

[http://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=14&clip\\_id=15123&meta\\_id=259949](http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=14&clip_id=15123&meta_id=259949) at time stamp 2:08:00 through 2:08:18.

RPI requests judicial notice of this public testimony as Exhibit B.

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**Exhibit C**

**1203.5 Other ventilation and exhaust systems.** Ventilation and exhaust systems for occupancies and operations involving flammable or combustible hazards or other contaminant sources as covered in the *California Mechanical Code* or the *California Fire Code* shall be provided as required by both codes.

### SECTION 1204 TEMPERATURE CONTROL

**1204.1 Equipment and systems.** Interior spaces intended for human occupancy shall be provided with active or passive space-heating systems capable of maintaining an indoor temperature of not less than 68°F (20°C) at a point 3 feet (914 mm) above the floor on the design heating day.

**Exceptions:**

1. Space heating systems are not required for interior spaces where the primary purpose of the space is not associated with human comfort.
2. *[HCD 1] For limited-density owner-built rural dwellings, a heating facility or appliance shall be installed in each dwelling subject to the provisions of Subchapter 1, Chapter 1, Title 25, California Code of Regulations, commencing with Section 74; however, there shall be no specified requirement for heating capacity or temperature maintenance. The use of solid-fuel or solar-heating devices shall be deemed as complying with the requirements of this section. If nonrenewable fuel is used in these dwellings, rooms so heated shall meet current installation standards.*
3. *[OSHPD 1, 2, 3 & 4] Space heating systems shall comply with the requirements of the California Mechanical Code.*
4. *[HCD 1] When a passive solar energy collector is designed as a conditioned area it shall comply with the California Energy Code, Title 24, Part 6. Non-conditioned passive solar energy collectors are exempt from Title 24, Part 6.*

### SECTION 1205 LIGHTING

**1205.1 General.** Every space intended for human occupancy shall be provided with natural light by means of exterior glazed openings in accordance with Section 1205.2 or shall be provided with artificial light in accordance with Section 1205.3. Exterior glazed openings shall open directly onto a public way or onto a yard or court in accordance with Section 1206.

*[HCD 1] Glazed openings may open into a passive solar energy collector provided the area of exterior glazed openings in the passive solar energy collector is increased to compensate for the area required by the interior space.*

**1205.2 Natural light.** The minimum net glazed area shall be not less than 8 percent of the floor area of the room served.

**1205.2.1 Adjoining spaces.** For the purpose of natural lighting, any room is permitted to be considered as a portion of an adjoining room where one-half of the area of the common wall is open and unobstructed and provides an opening of not less than one-tenth of the floor area of the interior room or 25 square feet (2.32 m<sup>2</sup>), whichever is greater.

**Exception:** Openings required for natural light shall be permitted to open into a sunroom with thermal isolation or a patio cover where the common wall provides a glazed area of not less than one-tenth of the floor area of the interior room or 20 square feet (1.86 m<sup>2</sup>), whichever is greater.

**1205.2.2 Exterior openings.** Exterior openings required by Section 1205.2 for natural light shall open directly onto a public way, yard or court, as set forth in Section 1206.

**Exceptions:**

1. Required exterior openings are permitted to open into a roofed porch where the porch:
  - 1.1. Abuts a public way, yard or court;
  - 1.2. Has a ceiling height of not less than 7 feet (2134 mm); and
  - 1.3. Has a longer side at least 65 percent open and unobstructed.
2. Skylights are not required to open directly onto a public way, yard or court.

**1205.3 Artificial light.** Artificial light shall be provided that is adequate to provide an average illumination of 10 footcandles (107 lux) over the area of the room at a height of 30 inches (762 mm) above the floor level.

**1205.4 Stairway illumination.** Stairways within dwelling units and exterior stairways serving a dwelling unit shall have an illumination level on tread runs of not less than 1 footcandle (11 lux). Stairs in other occupancies shall be governed by Chapter 10.

**1205.4.1 Controls.** The control for activation of the required stairway lighting shall be in accordance with the *California Electrical Code*.

**1205.5 Emergency egress lighting.** The means of egress shall be illuminated in accordance with Section 1006.1.

**1205.6 Campus lighting for parking facilities and primary walkways at California state universities, colleges and community colleges.** Artificial light shall be provided for parking facilities and primary walkways at California State Universities, colleges and community colleges in accordance with provisions of this subsection. This subsection shall not apply to the University of California unless the Regents of the University of California, by resolution, make it applicable.

**1205.6.1 Lighting requirements.** Based on the recommendations of the most current edition of the Illumination Engineering Society lighting handbook, the following lighting standards shall be used for all new construction of open parking facilities, covered parking facilities and primary walkways:

1. Open and covered parking facilities.

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**Exhibit D**

**Chapter 12**

**INTERIOR ENVIRONMENT**

**SECTION 1203 - VENTILATION**

*1203.4 Add a second paragraph as follows:*

In other than high-rise buildings, public corridors, public hallways and other public spaces having openings into adjoining dwelling units, guest rooms, or congregate residences within R-1 and R-2 Occupancies, shall be provided with natural ventilation by means of openable exterior openings with an area of not less than 1/25 of the floor area of such rooms or spaces with a minimum of 4 square feet (0.37 m<sup>2</sup>).

*1203.4 Add a third paragraph as follows:*

In lieu of required exterior openings for natural ventilation, a mechanical ventilating system may be provided. Such system shall be capable of providing two air changes per hour in public corridors, public hallways and other public spaces having openings into adjoining dwelling units, guest rooms, or congregate residences with R-2 occupancies, with a minimum of 7-1/2 cubic feet per minute (3-1/2 L/s) of outside air per occupant during such time as the building is occupied.

*1203.5 Add a second paragraph as follows:*

For all buildings containing any sensitive land use located within the Air Pollutant Exposure, as determined by the Director of Public Health pursuant to Article 38 of the San Francisco Health Code, that are:

- (a) Newly constructed;
- (b) Undergoing a "Major Alteration to Existing Building" as defined by the San Francisco Green Building Code; or
- (c) Applying for a San Francisco Planning Department-permitted Change of Use, such buildings shall incorporate an enhanced ventilation system designed and constructed to be in compliance with San Francisco Health Code Article 38.

(Amended by Ord. 224-14, File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

**SECTION 1205 - LIGHTING**

*1205.1 Add an exception after the first paragraph:*

**Exception:** Habitable rooms (excluding kitchens, home offices and media rooms) within a dwelling unit or congregate residence shall be provided with natural light by means of exterior glazed openings in accordance with Section 1205.2.

*1205.2.2 Add the following paragraphs after the Exceptions:*

The depth of all structural projections, including balconies, decks, porches, rooms or roofs, shall not exceed 9 feet (2.134 m) when extending over exterior wall openings that provide required natural light or natural ventilation for spaces intended for human occupancy.

The height of a balcony, deck or porch shall not be less than 7 feet (2.134 m) measured from the floor to the lowest projection above.

*1205.4 Revise this section as follows:*

**1205.4 Stairway Illumination.** Stairways within dwelling units and exterior stairways serving a dwelling unit shall have an illumination level on tread runs and landings of not less than 1 foot-candle (11 lux). Stairs in other occupancies shall be governed by Chapter 10.

*1049 Market Street, LLC. v. Aaron Miller, et al.*

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**Exhibit E**

## ADMINISTRATIVE BULLETIN

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**NO. AB-005** :

**DATE** : September 18, 2002 (Updated 01/01/2014 for code references)

**SUBJECT** : Plan Review and Permit Process

**TITLE** : **Procedures for Approval of Local Equivalencies**

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**PURPOSE** : The purpose of this Administrative Bulletin is to detail the procedures to be used for the application and case-by-case review of requests for approval of equivalencies, when work is proposed which does not strictly comply with the provisions of the 2013 San Francisco Building, Electrical, Mechanical, or Plumbing Codes. Requests for approval of modifications or alternates will be considered by the Department of Building Inspection and, when applicable, the Fire Department on a case-by-case basis when reasonable equivalency is proposed.

**REFERENCES** : 2013 San Francisco Building Code - Section 104A, Organization and Enforcement  
 - Section 104A.2.7, Modifications  
 - Section 104A.2.8, Alternate materials, design and methods of construction  
 DBI Administrative Bulletin AB-042, Board of Examiners: Request for Variance, New Materials, or Alternate Methods of Construction  
 DBI Administrative Bulletin AB-028, Pre-application and Pre-Addendum Plan Review Procedures

**DISCUSSION** : Project sponsors may request the application of standard local equivalencies, as detailed in various Administrative Bulletins, or approval of other alternates when it can be demonstrated on a case-by-case basis that there are practical difficulties in meeting the specific provisions of the codes, that the modification is in conformance with the intent and purpose of the codes, and that reasonable equivalency is provided in fire-protection and structural integrity.

Project sponsors may request the application of standard local equivalencies, as detailed in various Administrative Bulletins, or approval of other alternates when it can be demonstrated on a case-by-case basis that there are practical difficulties in meeting the specific provisions of the codes, that the modification is in conformance with the intent and purpose of the codes, and that reasonable equivalency is provided in fire-protection and structural integrity.

Proposed modifications may be administratively approved by the Departments if they conform to the standard provisions of Local Equivalency. Other modifications and applications for use of alternate materials, designs and methods of construction may be administratively approved or may be referred to the Board of Examiners or other review body as appropriate.

Based upon individual building and property conditions, the Department of Building Inspection and other City departments, such as the Fire Department, may impose requirements in addition to those proposed by the project sponsor when approving any request for use of a standard Local Modification, code modification or alternate material, design or method of construction. Additionally, the Department of Building Inspection or any other City agency may require that additional substantiation be provided supporting any claims made for such proposals.

**Procedure for Application for Local Equivalencies**

Project sponsors wishing to apply for local equivalencies must fill out and submit the Request for Approval of Local Equivalency form (Attachment A). Fees are required to be paid as noted on that form.

**Review Procedures for Application for Local Equivalencies**

The Department of Building Inspection and the Fire Department, when applicable, will conduct review meetings as required to consider requests for the approval of Local Equivalencies, Modifications and Alternates. At such review meetings each request will be either approved, approved with conditions, disapproved, referred to another official body, or placed on "Hold" pending submittal of additional information. Upon approval of the local equivalency, a copy of the signed form approving the equivalency and indicating any conditions of approval will be attached to the submittal documents as part of the permanent record of the project, and a copy will be sent to the project sponsor.

Please note that the Board of Examiners reviews requests for variances and requests for approval of certain new materials, methods, and types of construction. The Board of Examiners considers requests concerning structural provisions related to unreinforced masonry buildings. The Access Appeals Commission considers requests for equivalencies for issues related to disabled access.

**Appeals**

Determinations of the staff of the Department of Building Inspection regarding local equivalencies may be administratively brought for further review to the Deputy Director and the Director of the Department of Building Inspection. Determinations of the Director may be appealed to the Building Inspection Commission or other designated appeal body.

Originally signed by:

Frank Y. Chiu, Director  
October 3, 2002

Gary Massetani, Fire Marshal  
October 9, 2002

Approved by the Building Inspection Commission on September 18, 2002

Attachment A: Request for Approval of Local Equivalency

ATTACHMENT A



DEPARTMENT OF BUILDING INSPECTION
City & County of San Francisco
1660 Mission Street, San Francisco, California 94103-2414

REQUEST FOR APPROVAL OF LOCAL EQUIVALENCY FOR MODIFICATION
OR ALTERNATE MATERIALS, DESIGN OR METHODS OF CONSTRUCTION

DATE SUBMITTED [Note: This form shall be recorded as part of the permanent construction records of the property]

If no permit application has been filed, a Preapplication Review Fee is required for review of a request for local equivalency or modification, per SFBC Table 1A-B, Item 5. Additional fees may be required by Fire Department and other City review agencies.

If a permit application has been filed, no additional fees are required for this review.

Permit Application #

Property Address:

Block and Lot: / Occupancy Group: Type of Construction: No. of Stories:

Describe Use of Building

Under the authority of the 2013 San Francisco Building Code, Sections 104A.2.7 and 104A.2.8; the 2013 San Francisco Mechanical Code, Section 103.0; the 2013 San Francisco Electrical Code, Section 89.117; and the 2013 San Francisco Plumbing Code, Section 301.2; the undersigned requests modifications of the provisions of these codes and/or approval of alternate materials, designs or methods of construction. Two copies of supporting documents, including plans showing the proposed modifications or alternate materials, design or methods of construction, are attached.

Regular Code Requirement (specify Code and Sections)

Multiple horizontal lines for specifying code requirements.

Proposed Modification or Alternate

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Case-by-Case Basis of Request - Describe the practical difficulties presented in meeting the specific conditions of the code and how the proposed modification or alternate meets the intent of the code. A separate form should be filled for each requested modification or alternate. Attach copies of any Administrative Bulletin, Code Ruling, reference, test reports, expert opinions, etc., which support this request. The Department may require that an approved consultant be hired by the applicant to perform tests or analysis and to submit an evaluation report to the Department for consideration.

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Requested by:

PROJECT SPONSOR

ARCHITECT/ENGINEER

Print Name:

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Signature:

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[PROFESSIONAL  
STAMP HERE]

Telephone:

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**CGC-15-545950**

**Real Party in Interest Ben Cady, Chandra Redack, Peter Taylor, Chad Benjamin Potter, Manuel Rodriguez, Ann Cooper, Melissa Bracero, Adam Wojewidka, Chris Baker, Brendan Barthel, Karl Haas, Juan P. Escobedo, Darren Brown, and Bogdan Marcol's Request for Judicial Notice**

**Exhibit F**

**Exception:** Where the backs of seats on the front of the cross aisle project 24 inches (610 mm) or more above the adjacent floor of the aisle, a guard need not be provided.

**1028.14.2 Sightline-constrained guard heights.** Unless subject to the requirements of Section 1028.14.3, a fascia or railing system in accordance with the guard requirements of Section 1013 and having a minimum height of 26 inches (660 mm) shall be provided where the floor or foot-board elevation is more than 30 inches (762 mm) above the floor or grade below and the fascia or railing would otherwise interfere with the sightlines of immediately adjacent seating. At bleachers, a guard must be provided where required by ICC 300.

**Exception:** The height of the guard in front of seating shall be measured from the adjacent walking surface.

**1028.14.3 Guards at the end of aisles.** A fascia or railing system complying with the guard requirements of Section 1013 shall be provided for the full width of the aisle where the foot of the aisle is more than 30 inches (762 mm) above the floor or grade below. The fascia or railing shall be a minimum of 36 inches (914 mm) high and shall provide a minimum 42 inches (1067 mm) measured diagonally between the top of the rail and the nosing of the nearest tread.

## SECTION 1029 EMERGENCY ESCAPE AND RESCUE

**1029.1 General.** In addition to the means of egress required by this chapter, provisions shall be made for emergency escape and rescue openings in Group R occupancies. Basements and sleeping rooms below the fourth story above grade plane shall have at least one exterior emergency escape and rescue opening in accordance with this section. Where basements contain one or more sleeping rooms, emergency escape and rescue openings shall be required in each sleeping room, but shall not be required in adjoining areas of the basement. Such openings shall open directly into a public way or to a yard or court that opens to a public way.

**Exceptions:**

1. In Groups R-1 and R-2 occupancies constructed of Type I, Type IIA, Type IIIA or Type IV construction equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1
2. Basements with a ceiling height of less than 80 inches (2032 mm) shall not be required to have emergency escape and rescue openings.
3. Emergency escape and rescue openings are not required from basements or sleeping rooms that have an exit door or exit access door that opens directly into a public way or to a yard, court or exterior exit balcony that opens to a public way.
4. Basements without habitable spaces and having no more than 200 square feet (18.6 m<sup>2</sup>) in floor area

shall not be required to have emergency escape and rescue openings.

**1029.2 Minimum size.** Emergency escape and rescue openings shall have a minimum net clear opening of 5.7 square feet (0.53 m<sup>2</sup>).

**Exception:** The minimum net clear opening for grade-floor emergency escape and rescue openings shall be 5 square feet (0.46 m<sup>2</sup>).

**1029.2.1 Minimum dimensions.** The minimum net clear opening height dimension shall be 24 inches (610 mm). The minimum net clear opening width dimension shall be 20 inches (508 mm). The net clear opening dimensions shall be the result of normal operation of the opening.

**1029.3 Maximum height from floor.** Emergency escape and rescue openings shall have the bottom of the clear opening not greater than 44 inches (1118 mm) measured from the floor.

**1029.4 Operational constraints.** Emergency escape and rescue openings and any exit doors shall be maintained free of any obstructions other than those allowed by this section and shall be operational from the inside of the room. Bars, grilles, grates or similar devices are permitted to be placed over emergency escape and rescue openings provided the minimum net clear opening size complies with Section 1029.2 and such devices shall be releasable or removable from the inside without the use of a key, tool, special knowledge or effort or force greater than that which is required for normal operation of the escape and rescue opening. Where such bars, grilles, grates or similar devices are installed, smoke alarms shall be installed in accordance with Section 907.2.11 regardless of the valuation of the alteration. The release mechanism shall be maintained operable at all times.

*Such bars, grills, grates or any similar devices shall be equipped with an approved exterior release device for use by the fire department only when required by the authority having jurisdiction.*

*Where security bars (burglar bars) are installed on emergency egress and rescue windows or doors, on or after July 1, 2000, such devices shall comply with California Building Standards Code, Part 12, Chapter 12-3 and other applicable provisions of Part 2.*

**Exception:** Group R-1 occupancies provided with a monitored fire sprinkler system in accordance with Section 903.2.8 and designed in accordance with NFPA 13 may have openable windows permanently restricted to a maximum 4-inch (102 mm) open position.

**1029.5 Window wells.** An emergency escape and rescue opening with a finished sill height below the adjacent ground level shall be provided with a window well in accordance with Sections 1029.5.1 and 1029.5.2.

**1029.5.1 Minimum size.** The minimum horizontal area of the window well shall be 9 square feet (0.84 m<sup>2</sup>), with a minimum dimension of 36 inches (914 mm). The area of the window well shall allow the emergency escape and rescue opening to be fully opened.

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**Exhibit G**



**AIR COMMERCIAL REAL ESTATE ASSOCIATION  
STANDARD INDUSTRIAL/COMMERCIAL  
MULTI-TENANT LEASE - GROSS**

**1. Basic Provisions ("Basic Provisions").**

1.1 Parties: This Lease ("Lease"), dated for reference purposes only December 16, 2014 is made by and between SFOI, a California corporation acting as agent for 1049 Market Street, LLC and ProxV, Inc. dba WhatWeOrder ("Lessor")

("Lessor"), collectively the "Parties", or individually a "Party".

1.2(a) Premises: That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 1049 Market Street located in the City of San Francisco County of San Francisco State of California with zip code 94103, as outlined on Exhibit A attached hereto ("Premises") and generally described as (describe briefly the nature of the Premises), Suites 106 & 107 consisting of approximately 680 rentable square feet

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility easeways of the building containing the Premises ("Building") and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)

1.2(b) Parking: 0 unreserved vehicle parking spaces. (See also Paragraph 2.6)  
1.3 Term: 1 years and 0 months ("Original Term") commencing January 1, 2015 ("Commencement Date") and ending December 31, 2015 ("Expiration Date"). (See also Paragraph 3)

1.4 Early Possession: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing January 1, 2015 ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$ 1,950.00 per month ("Base Rent"), payable on the 1st day of each month commencing January 1, 2015. (See also Paragraph 4)

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 4.1  
1.6 Lessee's Share of Common Area Operating Expenses: 1.5 percent (1.5 %) ("Lessee's Share")

In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

- 1.7 Base Rent and Other Monies Paid Upon Execution:
- (a) Base Rent: \$ 1,950.00 for the period January 1, 2015 - January 31, 2015
  - (b) Common Area Operating Expenses: \$ for the period
  - (c) Security Deposit: \$ 3,900.00 ("Security Deposit"). (See also Paragraph 5)
  - (d) Other \$  for
  - (e) Total Due Upon Execution of this Lease: \$ 5,850.00

1.8 Agreed Use: Office (See also Paragraph 6)

1.9 Insuring Party Lessor is the "Insuring Party". (See also Paragraph 8)

1.10 Real Estate Brokers (See also Paragraph 15 and 25)  
(a) Representation: The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- \_\_\_\_\_ represents Lessor exclusively ("Lessor's Broker").
- \_\_\_\_\_ represents Lessee exclusively ("Lessee's Broker"); or
- Starboard Commercial Brokerage, Inc. represents both Lessor and Lessee ("Dual Agency")

(b) Payment to Brokers: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of \_\_\_\_\_ or 25 % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.11 Guarantor: The obligations of the Lessee under this Lease are to be guaranteed by \_\_\_\_\_ ("Guarantor"). (See also Paragraph 37)

- 1.12 Attachments Attached hereto are the following, all of which constitute a part of this Lease
- an Addendum consisting of Paragraphs 51 through 59;
  - a site plan depicting the Premises;
  - a site plan depicting the Project;
  - a current set of the Rules and Regulations for the Project;
  - a current set of the Rules and Regulations adopted by the owners' association

JS  
INITIALS

PB  
JS  
INITIALS

a Work Letter;  
 other (specify) \_\_\_\_\_

2 Premises.

2.1 Letting. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. NOTE: Lessee is advised to verify the actual size prior to executing this Lease.

2.2 Condition. Lessor shall deliver that portion of the Premises contained within the Building ("Unit") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7) Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premises; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 Compliance. Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 4B), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past use of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 9 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determined that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises; (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and the sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use; (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises; (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor; (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein; and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor this Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

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2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 Vehicle Parking. Lessee shall be entitled to use the number of Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Area designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.8. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities

(b) Lessee shall not service or store any vehicles in the Common Area

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveway and landscaped areas.

2.8 Common Areas - Lessee's Rights. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use the Common Area as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Area be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 Common Areas - Rules and Regulations. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 Common Areas - Changes. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

### 3 Term

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3

3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and Insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 Delay in Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, the Lease shall terminate unless other agreements are reached between Lessor and Lessee in writing.

3.4 Lessee Compliance. Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 3.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

### 4 Rent

4.1 Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

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4.2 Common Area Operating Expenses". Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

- (a) The following costs relating to the ownership and operation of the Project are defined as "Common Area Operating Expenses":
- (i) Costs relating to the operation, repair and maintenance, in neat, clean, good order and condition, but not the replacement (see subparagraph (e)), of the following:
    - (ia) The Common Areas and Common Area improvements including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems
    - (ib) Exterior signs and any tenant directories.
    - (ic) Any fire sprinkler systems.
    - (id) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.
  - (ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.
  - (iii) The cost of trash disposal, pest control services, property management, security services, owner's association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.
  - (iv) Reserves set aside for maintenance and repair of Common Areas and Common Area equipment
  - (v) Any increase above the Base Real Property Taxes (as defined in Paragraph 10)
  - (vi) Any "insurance cost increase" (as defined in Paragraph 3)
  - (vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.
  - (viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.
  - (ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided, however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.
  - (x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Common Area Operating Expenses shall not include the cost of replacing equipment or capital components such as the roof, foundations, exterior walls or Common Area capital improvements such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

4.3 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check or draft. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expenses, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

  
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6. Use.

6.1 Use Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

(a) Reportable Uses Require Consent. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) Duty to Inform Lessor. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) Lessee Remediation. Lessee shall not cause or permit any Hazardous Substance to be applied or released in or under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease by or for Lessee, or any third party.

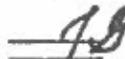
(d) Lessee Indemnification. Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) Lessor Indemnification. Except as otherwise provided in paragraph 6.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) Investigations and Remediations. Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) Lessor Termination Option. If a Hazardous Substance Condition (see Paragraph 6.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 Lessee's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire

  
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insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to such Requirements, without regard to whether said Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

**6.4 Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

**7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

**7.1 Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 4.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 8 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessor's use, any prior use, the elements or the age of such portion of the Premises) including, but not limited to, all equipment or facilities, such as plumbing HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (a 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

**7.2 Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 8 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

**7.3 Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lightning fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 months' Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

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(c) **Lien; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialman's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

**7.4 Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below

**8. Insurance; Indemnity.**

**8.1 Payment of Premium Increases.**

(a) As used herein, the term "Insurance Cost Increase" is defined as any increase in the actual cost of the insurance applicable to the Building and/or the Project and required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. Insurance Cost Increase shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project and/or a general premium rate increase. The term Insurance Cost Increase shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. The "Base Premium" shall be the annual premium applicable to the 12 month period immediately preceding the Start Date. If, however, the Project was not insured for the entirety of such 12 month period then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Start Date, assuming the most nominal use possible of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date

**8.2 Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessee's of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

**8.3 Property Insurance - Building, Improvements and Rental Value**

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquakes unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

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(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

**8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible or not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent leasees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a "Waiver of Subrogation" endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

**8.5 Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

**8.6 Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

**8.7 Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

**8.8 Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

**8.9 Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

**9 Damage or Destruction.**

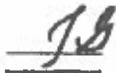
**9.1 Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

  
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(e) "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

**9.2 Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect, provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds in addition when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

**9.3 Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

**9.4 Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

**9.5 Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

**9.6 Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value Insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

**9.7 Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee as much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

**10 Real Property Taxes**

**10.1 Definitions.**

(a) **"Real Property Taxes."** As used herein the term "Real Property Taxes" shall include any form of assessment, real estate general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes), improvement bond, and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project, address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

(b) **"Base Real Property Taxes."** As used herein, the term "Base Real Property Taxes" shall be the amount of Real Property Taxes, which are assessed against the Premises, Building, Project or Common Areas in the calendar year during which the Lease is executed. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

**10.2 Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the

  
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Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2

**10.3 Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other tenants or by Lessor for the exclusive enjoyment of such other Tenants. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessor's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

**10.4 Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof in good faith, shall be conclusive.

**10.5 Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

**11 Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directors.

## 12 Assignment and Subletting.

### 12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default; curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

### 12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 38)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

**Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by

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Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein.

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to atorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease, provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

### 13 Default; Breach; Remedies

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the resolution of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice, provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 30 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach.

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of relating, including necessary renovation and restoration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of

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this Lease. The worth at the time of award of the amount referred to in provision (ii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled, if termination of this Lease is obtained through the provisional remedy of unlawful detainer. Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Provisions. Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of such such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

(a) Notice of Breach. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessee, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) Performance by Lessee on Behalf of Lessor. In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of the parking spaces is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's

  
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Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be obtained by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16 **Estoppel Certificates**

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Responding Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risks that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessor's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to each party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or by email shall be deemed delivered upon telephone confirmation of receipt (if by fax, a confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of the Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in

      
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connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent, under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations: To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessor and the Lessee: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associates licensed, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Assignment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recording thereof.

30.2 **Assignment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, atom to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner; and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership, (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the

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Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, amendment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereinafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Showing Premises. Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. Except as otherwise provided herein, whenever in this Lease the consent of a Party is required to an act by or for the other Party such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architect's, attorneys', engineers' and other consultants' fees) incurred in the consideration of or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to collect Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted any option, as defined below, then the following provisions shall apply.

39.1 Definition. "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 Options Personal To Original Lessee. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 Multiple Options. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of

      
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the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

41. **Reservations.** Lessor reserves the right, (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recreation of parcel maps and restrictions, and (iii) to create add/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not institute suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. **Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease  is  is not attached to this Lease.

49. **Accessibility; Americans with Disabilities Act.**

(a) The Premises:  have not undergone an inspection by a Certified Access Specialist (CASp)  have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.  have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

(b) Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the date specified above their respective signatures

      
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Executed at \_\_\_\_\_  
On: \_\_\_\_\_

Executed: \_\_\_\_\_  
On: \_\_\_\_\_

By LESSOR:  
SFOL, a California corporation acting as  
agent for 1049 Market Street, LLC

By LESSEE:  
ProxV, Inc.  
dba WhatWeOrder

By \_\_\_\_\_  
Name Printed: John Gall  
Title: President

By \_\_\_\_\_  
Name Printed: Jeffrey Farber  
Title: President

By \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name Printed: Paul Baumgart  
Title: Treasurer

Address: 1005 Market Street, Suite 310  
San Francisco, CA 94103

Address: 1601 Lincoln Way #106  
San Francisco, CA 94122

Telephone: (650) 208-9107  
Facsimile: ( ) \_\_\_\_\_  
Email: jcgali@sbcglobal.net  
Federal ID No. \_\_\_\_\_

Telephone: (415) 320-7587  
Facsimile: ( ) \_\_\_\_\_  
Email: jeff@whatweorder.com  
Federal ID No. 45-J061225

BROKER: \_\_\_\_\_

BROKER: \_\_\_\_\_

All Marie Previtali  
Title: Associate  
Address: 33 New Montgomery Street #1490  
San Francisco, CA 94105  
Telephone: (415) 755-8905  
Facsimile: ( ) \_\_\_\_\_  
Email: marie@starboardnet.com  
Federal ID No. \_\_\_\_\_  
Broker/Agent BRE License #: 01103055/01902075

Att: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_  
Email: \_\_\_\_\_  
Federal ID No. \_\_\_\_\_  
Broker/Agent BRE License #: \_\_\_\_\_

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 505 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-6777. Fax No.: (213) 687-3816.

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# ADDENDUM

Date: December 16, 2014

By and Between (Lessor) SFOI, a California Corporation  
(Lessee) ProxV, Inc. dba WhatWeOrder

Address of Premises: 1049 Market Street, Suitses 106 & 107 San Francisco, CA 94103

Paragraph \_\_\_\_\_

In the event of any conflict between the provisions of this Addendum and the printed provisions of the Lease, this Addendum shall control.

**51. Common Area Maintenance and Janitorial service:** Lessee and its employees will have access to shared common area restrooms that will be maintained daily by the Lessor. Lessee shall be responsible for their pro rata share of actual common area maintenance expenses (CAM). The formula is based on Lessee's actual workforce percentage of building occupants divided into the management overhead and janitorial expenses. The Lessee will provide the Lessor with their numbers of workforce. The Lessor shall re-calculate CAM annually. Lessee will pay for all janitorial within their occupied space.

**52. INCLUDED IN CAM:**

**Sewer/water/hot water:** Landlord to pay for and provide water, sewer and hot water for all spaces provided that the Tenant(s) use is not anything other than incidental use of these utilities in the normal course of business and residential use.

**Common area janitorial:** Regular daily janitorial for common areas.

**Garbage (1) Regular daily ongoing refuse disposal:** Provided that the Tenant(s) generate only a nominal amount of garbage consistent with the occupancy and usage prescribed in this lease, Landlord will pay for and provide garbage service. Tenant to use building common area refuse containers.

For utilities required to be paid directly by Tenant, Tenant must place all utilities in his or her name promptly. Tenant agrees to comply with any energy or water conservation, or utility-sharing programs implemented by Owner. Tenant understands that the rent by all Tenants is partially determined by the cost of utilities. Nothing contained herein prevents Owner from passing through to Tenant utility costs as provided by the law. Tenant shall be provided access to the Building and the Premises for the installation of utility and communication lines and services as required by law and upon prior written consent by Owner. To the extent that any utilities, services and charges provided to the Premises are not paid by Tenant as set forth above, Tenant agrees to only use such utilities, services and charges provided to the Premises which are reasonably necessary for the ordinary comfort and safety of Tenant to reside in the Premises. Excessive use of such utilities, services and charges provided to the Premises shall constitute a material breach of this Agreement. Tenant may not charge any device, including vehicles, in Building common areas or in designated parking/storage spaces without Owner's express written consent. If a parking area is rented to Tenant for Tenant's exclusive use, Tenant may not use the electrical outlet to charge Tenant's vehicle unless Tenant has obtained the express written permission of Owner to do so. Owner's requirement to provide shall be limited to what is required by local law.

**55. 1.11(g) Utility Interruption:** Except to the extent caused by Lessor's gross negligence or willful misconduct, Lessor has no liability to Lessee for any damages caused by a utility interruption resulting from the utility company's failure to provide the utility to the Premises such as (but not limited to) "rolling blackouts" of electrical service to the Premises.

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54. NOT INCLUDED IN CAM

Electric: Tenant(s) to pay for his own electrical usage. Landlord will read the meter on or about the 8<sup>th</sup> of the month. The amount will be calculated to include fee including but not limited to the current electrical rates and all taxes, regulatory fees charged by the provider. This amount due will be considered to be rent under the terms of this lease and the amount will be added to the monthly rent that is due on the following first of the month.

55. Tenant's share of the building is 1.5%

56. Total Annual Common Area Expenses are as follows:

+/- \$6,600 - Janitorial supplies & contract labor

+/- \$12,781 - Repairs & Maintenance

+/- \$15,500 - Payroll & Insurance

+/- \$34,881 - Total Annual Common Area Expenses

\$34,881 x 1.5% of share = \$523.22 per year or \$43.60 per month

57. This Lease was prepared by Starboard Commercial Brokerage, Inc. and should be reviewed by any other professionals/Attorneys Lessor and/or Lessee deems necessary. Both Lessor and Lessee hereby hold Starboard Commercial Brokerage, Inc. harmless in the preparation of this Lease. Starboard Commercial Brokerage, Inc. is acting as dual agent in this transaction.

58. Address for rent payment:

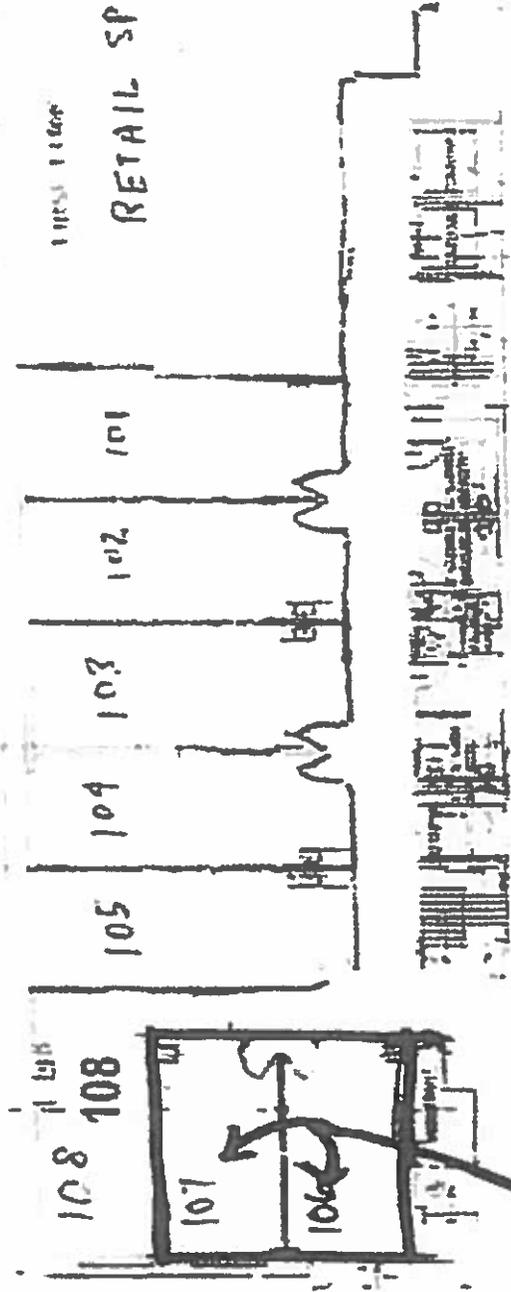
All rental sums due under this Lease are to be paid in United States currency with all checks or money orders made payable to "1049 Market Street, LLC" and delivered or mailed to 1005 Market Street, Suite 310 San Francisco, CA 94103

59. If Tenant is not able to achieve the appropriate internet speeds required to run their business, approximately 13 mbps at a reasonable cost, then the Tenant has the right to terminate this Lease Agreement.

      
JB  
INITIALS

PB

      
JB  
INITIALS



1049 MARKET STREET - GROUND FLOOR

REVISED

JB  
PB  
JB



## Audit Trail

Unique document ID: 43ba0639e3e828eedc47ffac0363809b8dc80c9f

Document name: 1049 Market 106&107 Lease

Status: Signed by everyone and closed

12/16/2014

23:58:42 UTC Document (1049 Market 106&107 Final Lease.pdf)  
uploaded by accounts@whatweorder.com  
IP: 107.3.134.164

12/17/2014

00:24:18 UTC Document sent for signature to: Jeff Ferber  
(jeff@whatweorder.com), Paul Baumgart  
(paul@whatweorder.com) and John Gall  
(jcgall@sbcglobal.net)  
IP: 107.3.134.164

00:25:01 UTC Document viewed by Jeff Ferber  
(jeff@whatweorder.com)  
IP: 107.3.134.164

00:25:15 UTC Document viewed by Jeff Ferber  
(jeff@whatweorder.com)  
IP: 107.3.134.164

00:25:13 UTC Document viewed by Paul Baumgart  
(paul@whatweorder.com)  
IP: 73.162.123.6

00:26:31 UTC Document signed by Jeff Ferber  
(jeff@whatweorder.com)  
IP: 107.3.134.164

00:28:06 UTC Document signed by Paul Baumgart  
(paul@whatweorder.com)  
IP: 73.162.123.6

12/18/2014



## Audit Trail

Unique document ID: 43ba0639e3e828eedc47ffac0363809b8dc80c9f

Document name: 1049 Market 106&107 Lease

Status: Signed by everyone and closed

- 16:06:56 UTC Document viewed by John Gall  
(jcgall@sbcglobal.net)  
IP: 50.168.124.203
- 16:10:04 UTC Document signed by John Gall  
(jcgall@sbcglobal.net)  
IP: 50.168.124.203
- 16:10:04 UTC The document has been signed by everyone and is  
now closed.

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time on Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

Thank you for banking with Bank of America. Save time with fast, reliable deposits, withdrawals, transfers and more at thousands of convenient ATM locations.

Tran 000110 12/23/2014 10:22  
Entity NCA CC 0000066 Tlr 00016  
Account \*\*\*\*\*4374  
R/TH 540930135  
Deposit \$5,850.00


0285

Member FDIC  
4-14-2005B 10-2012

\$ 5,850.-

⑆540930106⑆ 164100284374⑈

PLEASE POST THIS PAYMENT FOR OUR MUTUAL CUSTOMER

Account: 108-107 \$5,850.00

Please Direct Any Questions To 2267/1211  
OUR OPERATIONS DEPARTMENT 000005016

JEFFREY FERBER  
1601 LINCOLN WAY APT 106  
SAN FRANCISCO, CA 94122-1904

MEMO: 106 8107: Jan rent + sec deposit

US BANK NA. December 23, 2014

Pay FIVE THOUSAND EIGHT HUNDRED FIFTY AND 00/100 DOLLARS

\$ \*\*\*\*\*5,850.00

TO 1049 MARKET STREET, LLC  
THE 1005 MARKET ST UNIT 310  
ORDER SAN FRANCISCO, CA 94103 1625  
OF

Void After 180 DAYS.  
Signature On File  
This check has been authorized by your depositor

⑈005016⑈ ⑆121122676⑆ 153467366966⑈

1st deposit 1,950.-  
3900.-

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time on Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

Thank you for banking with Bank of America. Save time with fast, reliable deposits, withdrawals, transfers and more at thousands of convenient ATM locations.

Tran 001230 12/22/2014 15:44  
Entity NCA CC 0000066 Tlr 00021  
Account \*\*\*\*\*3770  
R/TH 540930135  
Deposit \$6,215.79

Member FDIC  
4-14-2005B 10-2012

*1049 Market Street, LLC. v. Aaron Miller, et al.*

**CGC-15-545950**

**Real Party in Interest Ben Cady, Chandra Redack, Peter Taylor, Chad Benjamin Potter, Manuel Rodriguez, Ann Cooper, Melissa Bracero, Adam Wojewidka, Chris Baker, Brendan Barthel, Karl Haas, Juan P. Escobedo, Darren Brown, and Bogdan Marcol's Request for Judicial Notice**

**Exhibit H**

ZACKS & FREEDMAN, P.C.  
235 MONTGOMERY STREET, SUITE 400  
SAN FRANCISCO, CALIFORNIA 94104

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ANDREW M. ZACKS (SBN 147794)  
PIPER MORRISON (SBN 245402)  
EMILY H. LOWTHER (SBN 284943)  
ZACKS & FREEDMAN, P.C.  
235 Montgomery Street, Suite 400  
San Francisco, CA 94104  
Tel: (415) 956-8100  
Fax: (415) 288-9755

Attorneys for Petitioner  
1049 MARKET STREET, LLC

**ELECTRONICALLY  
FILED**  
*Superior Court of California,  
County of San Francisco*  
**08/13/2015**  
Clerk of the Court  
BY: JUDITH NUNEZ  
Deputy Clerk

**SUPERIOR COURT – STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO – UNLIMITED CIVIL JURISDICTION**

1049 MARKET STREET, LLC, a California  
Limited Liability Company,

Plaintiffs/Petitioners,

vs.

AARON MILLER, MARK TSE, STEBAN  
GUEVARA, ANDREW GREENLEES,  
CLARENCE WILSON, IV, RON ROSEN,  
JASON GROHMAN, MICHAEL MASON,  
MICHAEL GREENLEES, and DOES 1 to 25,

Defendants,

CITY AND COUNTY OF SAN  
FRANCISCO, BOARD OF SUPERVISORS  
OF THE CITY AND COUNTY OF SAN  
FRANCISCO, PLANNING DEPARTMENT  
OF THE CITY AND COUNTY OF SAN  
FRANCISCO, SAN FRANCISCO  
DEPARTMENT OF BUILDING  
INSPECTION, SAN FRANCISCO  
BUILDING INSPECTION COMMISSION,  
SAN FRANCISCO BOARD OF APPEALS,  
and DOES 25-50,

Respondents/Defendants,

Case Number: CGC-15-545950

**DECLARATION OF TESSA K. WEEKS  
IN SUPPORT OF REQUEST FOR STAY  
OF THE BOARD OF APPEALS  
DECISION, OR IN THE ALTERNATIVE  
AN ORDER SHORTENING TIME  
AND/OR ORDER COMPELLING  
DEFENDANT TO PRODUCE THE  
ADMINISTRATIVE RECORD**

CCP § 1094.5(g)

Date: August 13, 2015  
Time: 11:00 a.m.  
Dept. 503

*DECLARATION OF TESSA K. WEEKS IN SUPPORT OF REQUEST FOR STAY  
1049 Market Street v. Miller, et al. (CGC-15-545950)*

ZACKS & FREEDMAN, P.C.  
235 MONTGOMERY STREET, SUITE 400  
SAN FRANCISCO, CALIFORNIA 94104

1 BEN CADY, CHANDRA REDACK, PETER  
2 TAYLOR, BRAD K. ALDER, CHAD  
3 BENJAMIN POTTER, MANUEL  
4 RODRIGUEZ, ANN COOPER, MELISSA  
5 BRACERO, ADAM WOJEWIDKA, CHRIS  
6 BAKER, BRENDAN BARTHEL, CARINA  
7 C. ZONA, KARL HASS, JUAN P.  
8 ESCOBEDO, DARREN BROWN, BOGDAN  
9 MARCOL, CHRISTOPHER FIGUEROA,

Real Parties in Interest.

10 I, Tessa K. Weeks, declare:

11 1. I am an associate in the firm of Bledsoe, Diestel, Treppa & Crane LLP,  
12 attorneys of record for 1049 MARKET STREET, LLC in an action that is captioned *Chad*  
13 *Benjamin Potter, et al. v. 1049 Market Street, LLC, et al.*, Case No. CGC-14-537501, and  
14 pending in the Superior Court of the State of California, County of San Francisco.

15 2. I am personally familiar with the facts set forth herein and if called upon to  
16 testify thereto in a court of law, I could and would do so competently. I make this declaration  
17 in support of 1049 MARKET STREET, LLC's Request For Stay of the Board of Appeals  
18 Decision (1094.5(g)) or in the Alternative an order Compelling Defendant To Produce the  
19 Administrative Record.

20 3. In the action of *Potter, et al. v. 1049 Market Street, LLC, et al.*, the Plaintiffs  
21 have alleged the following eight causes of action against 1049 MARKET STREET, LLC and  
22 its former and current management: (1) Breach of Implied Warranty of Habitability; (2) Breach  
23 of Covenant of Quiet Enjoyment; (3) Nuisance; (4) Negligence; (5) Unfair Business Practices;

1 (6) Violation of CCP 1940.6; (7) Excessive Rent Charges; and (8) Tenant Harassment [Rent  
2 Ordinance § 37.10B]. Trial is currently set for August 31, 2015.

3 4. On behalf of 1049 MARKET STREET, LLC, our office recently filed a Motion  
4 for Summary Adjudication as to Plaintiffs' eighth cause of action for tenant harassment as well  
5 as Plaintiffs' claim for punitive damages on the grounds that 1049 MARKET STREET, LLC  
6 acted, at all relevant times, in accordance with the City's orders as well as in compliance with  
7 all applicable laws.

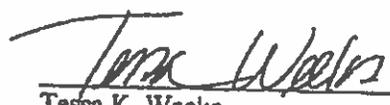
8  
9 5. In response to the Motion for Summary Adjudication, Plaintiffs argued that  
10 there exists evidence to support a dispute of material fact regarding 1049 MARKET STREET,  
11 LLC'S tenant harassment and Plaintiffs' claim for punitive damages. In making this argument,  
12 Plaintiffs rely, in part, upon the San Francisco Board of Appeals' suspension of 1049  
13 MARKET STREET, LLC'S August 2, 2013 Alteration Permit. *See Exhibit A*, 10:5-13, 18:18-  
14 23 and 20:10, which is a true and accurate copy of Plaintiffs' Memorandum of Points and  
15 Authorities in Opposition to Defendants' Motion for Summary Adjudication. More  
16 specifically, Plaintiffs argued that 1049 MARKET STREET, LLC acted in bad faith when  
17 continuing to pursue the evictions despite the invalidated August 2, 2013 Alteration Permit.  
18 *See id.*

19  
20  
21 6. To the extent we are unsuccessful on our Motion for Summary Adjudication, we  
22 anticipate that Plaintiffs will similarly rely upon the San Francisco Board of Appeals'  
23 suspension of 1049 MARKET STREET, LLC'S August 2, 2013 Alteration Permit at trial to  
24 (1) argue that 1049 MARKET STREET, LLC acted with bad faith and in violation of the San  
25 Francisco Rent Ordinance, and (2) as a basis for punitive damages.

ZACKS & FREEDMAN, P.C.  
235 MONTGOMERY STREET, SUITE 400  
SAN FRANCISCO, CALIFORNIA 94104

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on the 11<sup>th</sup> day of August 2015, in San Francisco, California.

  
Tessa K. Weeks

**PROOF OF SERVICE**

San Francisco Superior Court  
1049 Market Street, LLC v. Aaron Miller, et al., CGC-15-545950

I declare that: I am employed in the City and County of San Francisco, California. I am over the age of eighteen years, and I am not a party to the action entitled below. My business address is 126 Hyde Street, 2<sup>nd</sup> Floor, San Francisco, California 94102.

On October 9, 2015, I served the attached document(s):

**REAL PARTIES IN INTEREST BEN CADY, CHANDRA REDACK, PETER TAYLOR, CHAD BENJAMIN POTTER, MANUEL RODRIGUEZ, ANN COOPER, MELISSA BRACERO, ADAM WOJEWIDKA, CHRIS BAKER, BRENDAN BARTHEL, CARINA C. ZONA, KARL HAAS, JUAN P. ESCOBEDO, DARREN BROWN, AND BOGDAN MARCOL'S REQUEST FOR JUDICIAL NOTICE**

**BY MESSENGER SERVICE.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service.

**BY ELECTRONIC SERVICE:** In accordance with Local Rule 2.10, I caused the said document to be transmitted by electronic mail service via File & ServeXpress to the addresses noted below.

**ADDRESSEE(S):**

Andrew M. Zacks, Esq.  
Piper Morrison, Esq.  
ZACKS & FREEDMAN  
235 Montgomery Street, Suite 400  
San Francisco, CA 94104

Via Electronic Service Per Local Rule 2.10 and Messenger Service

Kristen A. Jensen  
James M. Emery  
Deputy City Attorneys  
1 Dr. Carlton B. Goodlet Place  
City Hall, Room 234  
San Francisco, CA 94102-4692

Via Electronic Service Per Local Rule 2.10 and Messenger Service

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: October 9, 2015

  
Mercy Gonzales

AFFIDAVIT OF SERVICE

# **EXHIBIT 3**

City and County of San Francisco Residential Rent Stabilization and Arbitration Board



2016 FEB 24 AM 11:55

Notice of Intent to Withdraw Residential Units from the Rental Market [RENT ORDINANCE SECTION 37.9A]

NOTE: Owners seeking to withdraw from the rental market their units which are subject to the San Francisco Rent Ordinance must submit this completed form to the Rent Board's office. Submittal may be by personal delivery, registered mail, or certified mail. Please refer to the specific procedures pursuant to Section 37.9A of the San Francisco Rent Ordinance.

I. OWNER INFORMATION (All owners of the property must be listed. If additional space is needed, attach a separate sheet using the same format.)

Name: See Attached
Address: See Attached
Phone Number: See Attached (home) (work)

II. PROPERTY INFORMATION

Address: See Attached San Francisco, CA 941 (street number and name) (zip)

Number of Units: See Attached

Legal Description: Attach a legal description of the property and mark it as Attachment A.\*

\*This Notice of Intent to Withdraw Residential Units will not be processed by the Rent Board without a legal description, which is required by the San Francisco Recorder's Office.

III. UNIT INFORMATION (All units, including owner-occupied, commercial and vacant units, and all occupants of the property must be listed. If additional space is needed, attach a separate sheet using the same format.)

Table with 4 columns: UNIT #, DATE TENANCY COMMENCED, NAME OF EACH CURRENT OCCUPANT, CURRENT RENT. Rows contain 'See Attached' for each field.

RECEIVED

2018 FEB 21 AM 11:55

Notice of Intent to Withdraw  
Residential Units from the Rental Market (continued)

[RENT ORDINANCE SECTION 37.9A]

IV. OWNER'S DECLARATION

Do you certify that actions have been initiated as required by law to terminate all existing tenancies on the property by service of a written notice of termination of tenancy?  Yes  No See Attached

I declare under penalty of perjury, under the laws of the State of California, that the information provided on this Notice of Intent to Withdraw Form, including any attachments, is true and correct to the best of my knowledge and belief.

Executed on See Attached in See Attached, California.  
(date) (city)

See Attached See Attached  
(print name) (signature)

**ALL OWNERS MUST SIGN.** Attach an additional declaration and signature for each owner of record. Attorneys and/or non-attorney representatives may not sign the owner's declaration on behalf of an owner.

ATTACHMENT TO NOTICE OF INTENT TO WITHDRAW  
RESIDENTIAL UNITS FROM RENTAL MARKET  
(Rent Ordinance Section 37.9A)

**I. OWNER INFORMATION:**

2016 FEB 24 AM 11:55

Owners:

S.F. RESIDENTIAL RENT  
1049 Market Street, LLC,  
ARBITRATION BOARD  
a California limited liability company

Address:

c/o Zacks & Freedman, P.C.  
A Professional Corporation  
235 Montgomery Street, Suite 400  
San Francisco, CA 94104

Local Contact for Owner:

Andrew M. Zacks, Esq.  
Justin A. Goodman, Esq.  
ZACKS & FREEDMAN, P.C.  
A Professional Corporation  
235 Montgomery Street, Suite 400  
San Francisco, CA 94104  
Telephone: (415) 956-8100  
Facsimile: (415) 288-9755

**II. PROPERTY INFORMATION:**

Address:

1049-1051 Market Street (A.K.A. 1049-1053 Market Street), San Francisco, CA 94103<sup>1</sup>

Number of Units:

Eighty-Six (86) total units, comprised of commercial units, residential units, and mixed-use units.

Legal Description:  
("Attachment A")

The real property is located in the City of San Francisco, County of San Francisco, State of California, and is described as follows:

Assessor's Block 3703, Lot 067

COMMENCING at a point on the Southeasterly line of Market Street, distant thereon 374 feet, 11-1/4 inches Southwesterly from the Southwesterly line of 6th Street; running thence Southwesterly along said line of Market Street 50 feet, 3/4 of an inch; thence at a right angle Southeasterly 165 feet to the Northwesterly line of Stevenson Street; thence Northeasterly along said line of Stevenson Street 49 feet; 11-1/2 inches; thence Northwesterly 66 feet and a fraction of an inch to a point 66 feet Northwesterly from the Northwesterly line of Stevenson Street, measured on a line drawn perpendicularly to said line of Stevenson Street, which last mentioned point is also distant 375 feet Southwesterly from the Southwesterly line of 6th Street; measured on a line drawn perpendicularly to said Southwesterly line of 6th Street; and thence Northwesterly in a straight line 99 feet and a fraction of an inch to the point of commencement.

BEING a part of 100 VARA BLOCK 393.

**III. UNIT INFORMATION** (including owner-occupied, commercial, and vacant units):

Unit #	Date Tenancy Commenced	Name of Each Current Occupant	Current Rent
1049 Market Street Unit 101	07-02-10	2016 FEB 24 AM 11:55 Chad Potter	\$0.00 <sup>2</sup> (\$738.00) <sup>3</sup>
1049 Market Street Unit 102	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 103	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 104	06-15-11	Karl Haas	\$0.00 <sup>2</sup> (\$868.00) <sup>3</sup>
1049 Market Street Unit 105	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 106 <sup>4,5</sup>	01-01-15	ProxV, Inc., dba WhatWeOrder	\$1,950.00 <sup>5</sup>
1049 Market Street Unit 107 <sup>4,5</sup>	01-01-15	ProxV, Inc., dba WhatWeOrder	\$1,950.00 <sup>5</sup>
1049 Market Street Unit 108 <sup>4</sup>	10-08-15	KnowMe Systems Inc.	\$1,200.00
1049 Market Street Unit 121	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 122	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 123	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 124	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 125	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 201	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 202	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 203	N/A (vacant)	N/A (vacant)	N/A (vacant)

1049 Market Street Unit 204	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 205	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 206	07-01-00	Ann Cooper (A.K.A. Ann Naomi Cooper)	\$0.00 <sup>2</sup> (\$643.00) <sup>3</sup>
1049 Market Street Unit 207	04-11-03	Peter Taylor	\$0.00 <sup>2</sup> (\$682.00) <sup>3</sup>
1049 Market Street Unit 208	09-01-09	Adam Wojewidka <sup>7</sup>	\$0.00 <sup>2</sup> (\$762.00) <sup>3</sup>
1049 Market Street Unit 209	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 210	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 211	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 212	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 213	01-15-12	Brendan Barthel	\$0.00 <sup>2</sup> (\$957.00) <sup>3</sup>
1049 Market Street Unit 214	03-01-12	Christopher Figueroa	\$0.00 <sup>2</sup> (\$957.00) <sup>3</sup>
1049 Market Street Unit 215	09-22-09	Bogdan Marcol	\$0.00 <sup>2</sup> (\$862.00) <sup>3</sup>
1049 Market Street Unit 216	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 301	05-01-12 <sup>8</sup>	Juan Escobedo <sup>8</sup>	\$0.00 <sup>2</sup> (\$752.00) <sup>3</sup>
1049 Market Street Unit 302	12-15-11	Melissa Bracero	\$0.00 <sup>2</sup> (\$863.00) <sup>3</sup>
1049 Market Street Unit 303	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 304	N/A (vacant)	N/A (vacant)	N/A (vacant)

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1049 Market Street Unit 305	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 306	N/A (vacant)	RECEIVED 2010 FEB 24 AM 11:56 N/A (vacant)	N/A (vacant)
1049 Market Street Unit 307	N/A (vacant)	S.F. RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD N/A (vacant)	N/A (vacant)
1049 Market Street Unit 308	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 309	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 310	05-11-02	Chris Baker	\$0.00 <sup>2</sup> (\$725.00) <sup>3</sup>
1049 Market Street Unit 311	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 312	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 313	06-01-04	Chandra Redack	\$0.00 <sup>2</sup> (\$817.00) <sup>3</sup>
1049 Market Street Unit 314	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 315	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 316	11-15-11	Carina Zona	\$0.00 <sup>2</sup> (\$982.00) <sup>3</sup>
1049 Market Street Unit 401	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 402	07-01-13	Alejandra Beseler (A.K.A., Alejandra Bessler) <sup>9</sup>	\$0.00 <sup>2</sup> (\$1,150.00) <sup>3</sup>
1049 Market Street Unit 403	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 404	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 405	N/A (vacant)	N/A (vacant)	N/A (vacant)

//

1049 Market Street Unit 406	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 407	N/A (vacant)	2016 N/A 24 AM 11:56 (vacant)	N/A (vacant)
1049 Market Street Unit 408	03-05-99 <sup>10</sup>	Darren Brown	\$0.00 <sup>2</sup> (\$732.00) <sup>3</sup>
1049 Market Street Unit 409	09-01-06 <sup>11</sup>	Benjamin Cady (A.K.A. Ben Cady)	\$0.00 <sup>2</sup> (\$599.62) <sup>3 12</sup>
1049 Market Street Unit 410	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 411	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 412	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 413	03-15-04 <sup>13</sup>	Patrick Cook	\$0.00 <sup>2</sup> (\$862.00) <sup>3 14</sup>
1049 Market Street Unit 414	08-28-10	Manuel Rodriguez	\$0.00 <sup>2</sup> (\$825.00) <sup>3 15</sup>
1049 Market Street Unit 415	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 416	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 501	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 502	03-01-09	Brad Alder	\$0.00 <sup>2</sup> (\$808.00) <sup>3</sup>
1049 Market Street Unit 503	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 504	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 505	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 506	N/A (vacant)	N/A (vacant)	N/A (vacant)

//

1049 Market Street Unit 507	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 508	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 509	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 510	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 511	04-01-12	Chadwick Putney	\$0.00 <sup>2</sup> (\$830.00) <sup>3</sup>
1049 Market Street Unit 512	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 513	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 514	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 515	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 516	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 601	N/A (vacant)	N/A (vacant)	N/A (vacant)
1049 Market Street Unit 602 <sup>4</sup>	12-04-15	PritchardPeck Lighting Inc.	\$3,200.00
1049 Market Street Unit 603 <sup>4</sup>	12-04-15	PritchardPeck Lighting Inc.	\$2,400.00
1049 Market Street Unit 605 <sup>16</sup>	07-01-04	Anthony Breaux (A.K.A. Ellis Anthony Breaux)	\$0.00 <sup>2</sup> (\$970.00) <sup>3</sup>
1049 Market Street Unit 606 <sup>16</sup>	12-01-05	Veronica Johnson	\$0.00 <sup>2</sup> (\$730.00) <sup>3 17</sup>
1049 Market Street Unit 607 <sup>18</sup>	10-15-11 <sup>18</sup>	Ian Hunter <sup>18</sup>	\$3,900.00 <sup>18</sup>
1049 Market Street Unit 608	06-17-11	Scott Biggart	\$3,400.00 <sup>19</sup>

//



END NOTES

RECEIVED

1. A portion of the building existing on A.P.N. 37087067, constituting a single, insular commercial rental unit, has come to be known as "1053 Market Street", as a matter of fact, and it bears that mailing address.
2. The lease agreement by which this occupant took possession of the rental unit requires the payment of rent. However, owner cannot collect rent, pursuant to *Gruzen v. Henry* (1978) 84 Cal. App. 3d 515, such that the "rent applicable" to this rental unit, as that term is used in Section 37.9A(f)(1) of the San Francisco Rent Ordinance, as of the time of the filing of this Notice with the Rent Board, is \$0.00. Nonetheless, this rental unit is subject to the jurisdiction of the Rent Ordinance (see, *Da Vinci Grp. v. San Francisco Residential Rent etc. Bd.* (1992) 5 Cal. App. 4th 24), and it is therefore being withdrawn from residential rental use pursuant to Sections 37.9(a)(13) and 37.9A of the San Francisco Rent Ordinance.
3. The occupant(s) of this commercial rental unit are in possession of the same pursuant to a commercial lease, ¶18 of which states, in relevant part, "Lessee agrees that this rental space is to be used for commercial purposes only". The most recent applicable contract rent for this commercial tenancy is the amount stated in parentheses above. Nonetheless, on information and belief, the occupant(s) have made residential rental use of the same. As stated more fully in Footnote 2 herein, the Owner's position is that it cannot collect the contract rent while there is residential use by the occupant(s), such that the rent applicable to this rental unit is \$0 and that, if the Owner were required to again offer the rental unit for rent or lease, it could not lawfully charge more than \$0.
4. This tenancy is strictly commercial, this unit is not an "accommodation" as defined by the Ellis Act, and this commercial tenancy is not being terminated.
5. The tenancy for Units 106 and 107 arises from the same lease agreement, which includes both units, for a combined monthly rent of \$1,950.00 total for both units.
6. The operative lease agreement for this unit commenced on 07-01-00. However, the Owner believes this occupant originally commenced a tenancy at this rental unit under a written lease agreement commencing on 11-01-98.
7. The lease agreement for this tenant spells his name "Wojcwwidka"; however, owner believes that the correct spelling is "Wojewidka".
8. The Owner believes that this occupant first took possession of the rental unit some time before 05-01-12, during the tenancy of another occupant, Jorge Kobe, whose written lease agreement commenced on or around 03-01-05. On or around 10-10-11, Mr. Kobe notified the predecessor of the Owner that Mr. Kobe had vacated this rental unit as early as September of 2009, leaving this occupant in possession. Mr. Kobe also indicated on 10-10-11 that he had commenced his occupation of this rental unit as early as 12-05-03, however the Owner has no knowledge of the same.
9. The written lease agreement for this rental unit also names a "Michael Coyle"; however, owner believes this was a typographical error and no such person took possession of this rental unit. Further, the lease agreement spells the name of this occupant as "Alejandra Bessler"; however, the signature on the lease agreement appears to be spelled as "Alejandra Beseler", and owner believes that the latter is the correct spelling of this occupant's name.
10. The operative lease agreement for this unit commenced on 09-01-00. However, the Owner believes that this occupant originally took possession under a written lease agreement that commenced on 03-05-99.
11. Per Rent Board Petition No. T140769, Mr. Cady has claimed to have first moved into this rental unit sometime in 2007. However, the written lease agreement indicates that his tenancy commenced on 09-01-06, and the Owner believes that this is the actual date of the commencement of his tenancy.
12. Per the 08-24-15 decision in Rent Board Petition No. T140769, the contract rate for this rental unit was set to \$599.62.
13. The operative written lease agreement for this unit states that it commenced, alternatively, on 03-01-04 and on 03-15-04, at different points in the lease agreement. However, the lease agreement

is executed on 03-05-04, and so the owner believes that, between the two, 03-15-04 is the correct date of commencement of this tenancy.

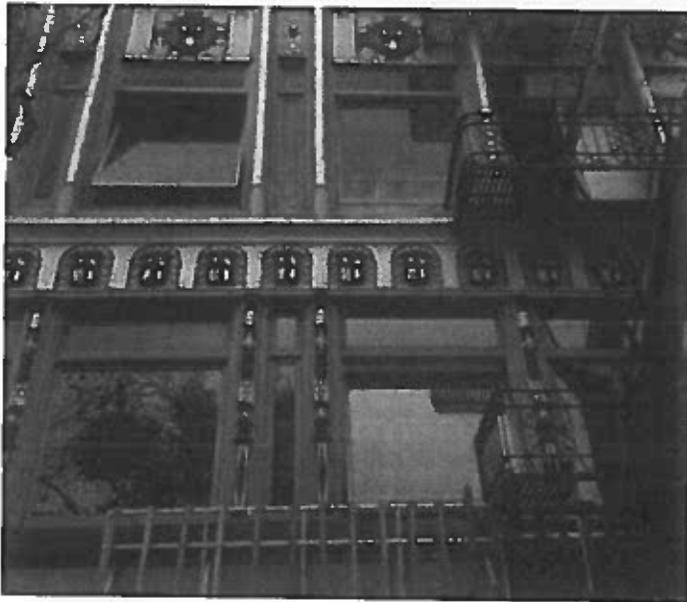
14. This occupant has an agreement with the Owner to receive an offset to his applicable rental rate, in the amount of \$300.00 per month, as compensation for being resident manager, which offset had reduced the amount of collected rent from ~~\$825.00~~ to \$525.00 per month, subject to Footnote 2 herein.
15. Per the 03-10-15 decision in Rent Board Petition No. T140770, the contract rate for this rental unit was set to \$825.00.
16. Owner believes that the sixth floor of the Property contains six rental units that were permitted live-work units, each of which received its certificate of final completion after the effective date of the Rent Ordinance, before any residential use. See, San Francisco Rent Board Rules and Regulations Section 1.17(e), (g); *Da Vinci Grp. v. San Francisco Residential Rent etc. Bd.* (1992) 5 Cal. App. 4th 24. However, one such rental unit had been subdivided into two rental units, which are not themselves permitted for residential use. See, Footnote 2 herein. The Owner believes that this rental unit is one of the subdivided units.
17. Per the 06-26-15 decision in Rent Board Petition No. T140255, the contract rate for this rental unit was set to \$730.00.
18. (Former) lessee for this unit is out of possession, pursuant to the enforcement of a court judgment, San Francisco Superior Court Case No. CUD-15-654019, as of 02-03-16; However, judgment will not be final until time for appeal has passed, which owner believes is on or around 04-05-16, pursuant to notice of entry of judgment served via first class U.S. Mail on 02-05-16, subject to California Code of Civil Procedure, §473(b). Meanwhile, there is no extant tenancy at the time of the filing of this document, and the foregoing is provided for informational purposes only. In the event of an appeal or the setting aside of any default, however, the provided information is accurate, at the time of the filing of this notice.
19. The occupant(s) of this commercial rental unit are in possession of the same pursuant to a commercial lease, ¶18 of which states, in relevant part, "Lessee agrees that this rental space is to be used for commercial purposes only". Nonetheless, the Owner believes that the occupant(s) is/are using this rental unit for residential use, and to the extent there is residential use, this rental unit is a lawful live-work unit, permitted for residential use. See, San Francisco Rent Board Rules and Regulations Section 1.17(g)
20. Lessee is an assignee of a lease agreement that commenced on 06-12-13.
21. The Owner believes that this commercial occupant first took possession on or around 03-05-98, and that there have been several lease agreements since, but that the most recent lease agreement commenced on 09-01-12. Further, the Owner believes that the lessee for this rental unit is "Azar Azar", but that Azar Azar is also an owner and/or officer of Azar Brothers, Inc., which the Owner believes is a sublessee/assignee of Azar Azar for this rental unit, and that either Azar Azar or Azar Brothers, Inc. is doing business as City Souvenirs and Cigarettes for Less in the rental unit.

# EXHIBIT 4

CL SF bay area > san francisco > housing > office & commercial

Posted: 4 days ago

### ★ \$750 / 350ft<sup>2</sup> - Mid-Market offices (downtown / civic / van ness)



Best deal in San Francisco in a great building with style \$750 to \$2,200 /per month . Larger spaces available. Six month minimum term. Conference room available.Owner can provide desks. Makes an nice upgrade from WeWork.

- do NOT contact me with unsolicited services or offers

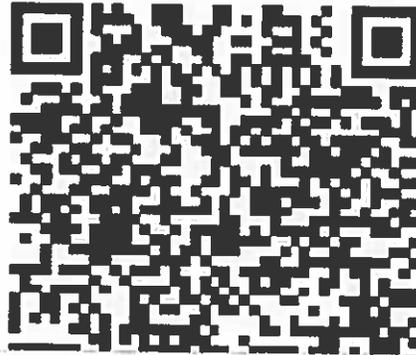


Mid-Market offices



Market Street at Seventh Street

350ft<sup>2</sup>



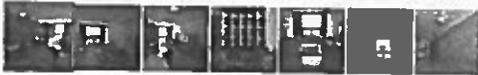
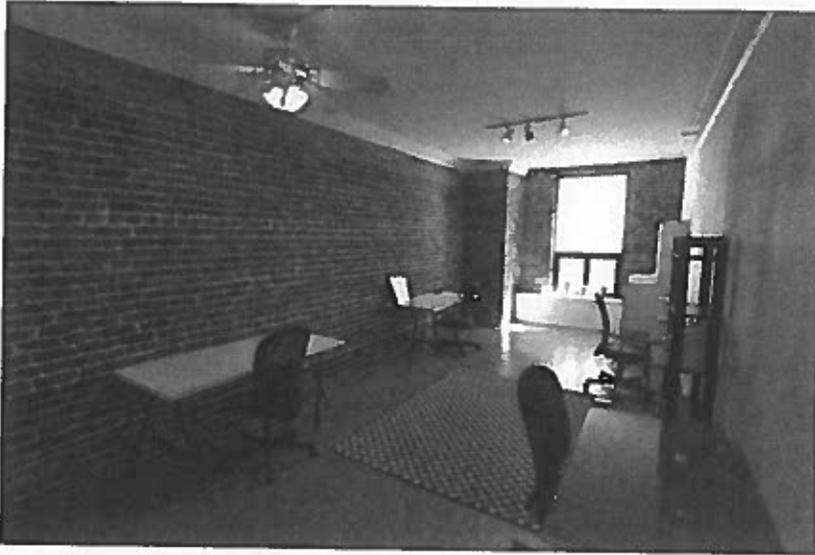
reply

 prohibited <sup>(2)</sup>

Posted 4 days ago

print

## ★ San Francisco Creative Small Office Suites (downtown / civic / van ness)



1049 Market Street  
San Francisco, CA

Creative small office suites in prime/central Mid-Market location

4th Floor Suites Available (non-contiguous):

Suite 401: ±260 RSF

Suite 403: ±250 RSF

Suite 404: ±250 RSF

Suite 405: ±320 RSF

Suite 406: ±240 RSF

Suite 412: ±435 RSF

Suite 415: ±270 RSF

Suite 416: ±302 RSF

**Features/Amenities:**

- Open layout, with exposed brick and high ceilings
- New hardwood floors
- Operable window lines with abundant natural light
- Private large common area conference room
- Prime/central Mid-Market location
- One block to Civic Center Bart/Muni stop
- Rate & Term: Inquire with broker

**Contact:**

Max Sander

Kidder Mathews

Office: [show contact info](#)

Cell: [show contact info](#)

Email: [show contact info](#)

DRF# 01979663

- it's ok to contact this poster with services or other commercial interests

post id 5280801236

posted 4 days ago

updated a day ago

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CL SF bay area > san francisco > housing > office & commercial

Posted: a day ago

## ★ 260 square foot creative office space in Mid-Market (downtown / civic / van ness)



**1049 Market Street  
San Francisco, CA**

Creative small office suite in prime/central Mid-Market location

Suite 401: ±260 RSF

**Features/Amenities:**

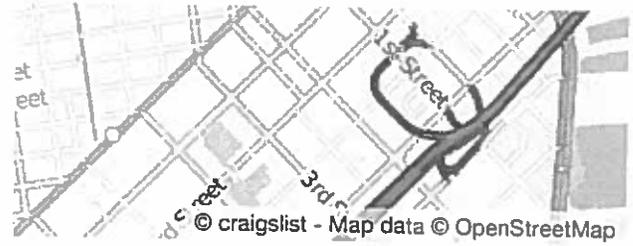
- Open layout, with exposed brick and high ceilings



10/27/2015

260 square foot creative office space in Mid-Market

- New hardwood floors
- Operable window lines with abundant natural light
- Private large common area conference room
- Prime/central Mid-Market location
- One block to Civic Center Bart/Muni stop
- Rate & Term: Inquire with broker



1049 Market Street

**Contact:**

Max Sander

Kidder Mathews

Office: [show contact info](#)

Cell: [show contact info](#)

Email: [show contact info](#)

DRE# 01979663

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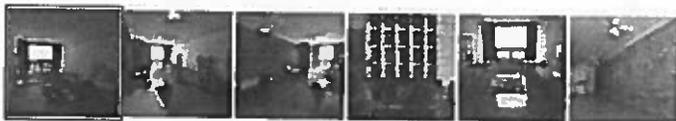


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Posted: a day ago

## ★ 250 square foot creative office spaces in Mid-Market (downtown / civic / van ness)



**1049 Market Street  
San Francisco, CA**

Creative small office suites in prime/central Mid-Market location

4th Floor Suites Available:

Suite 403: ±250 RSF



Suite 404: ±250 RSF

**Features/Amenities:**

- Open layout, with exposed brick and high ceilings
- New hardwood floors
- Operable window lines with abundant natural light
- Private large common area conference room
- Prime/central Mid-Market location
- One block to Civic Center Bart/Muni stop
- Rate & Term: Inquire with broker

**Contact:**

Max Sander

Kidder Mathews

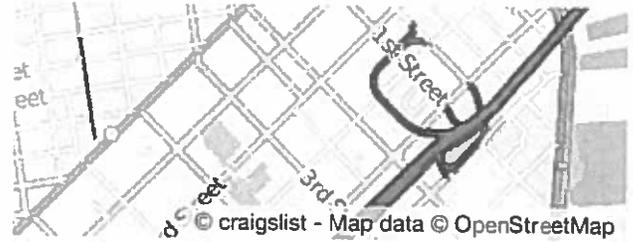
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Cell: [show contact info](#)

Email: [show contact info](#)

DRE# 01979663

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1049 Market Street



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Posted: a day ago

## ☆ 320 square foot creative office space in Mid-Market (downtown / civic / van ness)



1049 Market Street  
San Francisco, CA

Creative small office suite in prime/central Mid-Market location

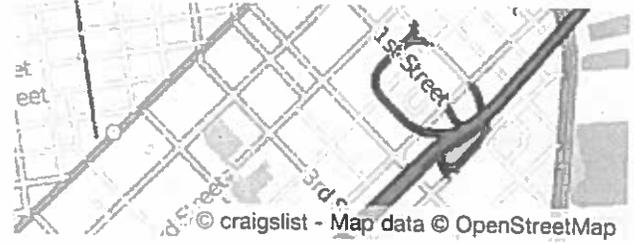
4th Floor Suite Available:

Suite 405: ±320 RSF



**Features/Amenities:**

- Open layout, with exposed brick and high ceilings
- New hardwood floors
- Operable window lines with abundant natural light
- Private large common area conference room
- Prime/central Mid-Market location
- One block to Civic Center Bart/Muni stop
- Rate & Term: Inquire with broker



1049 Market Street

**Contact:**

Max Sander

Kidder Mathews

Office: [show contact info](#)

Cell: [show contact info](#)

Email: [show contact info](#)

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Posted: a day ago

## ☆ 240 square foot creative office space in Mid-Market (downtown / civic / van ness)



1049 Market Street  
San Francisco, CA

Creative small office suite in prime/central Mid-Market location

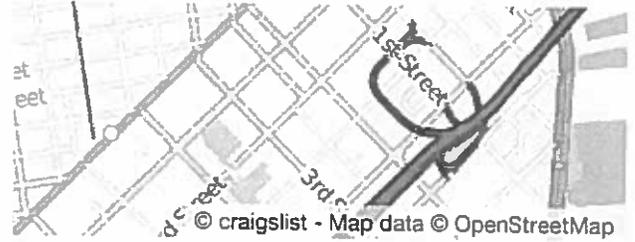
4th Floor Suite Available:

Suite 406: ±240 RSF



**Features/Amenities:**

- Open layout, with exposed brick and high ceilings
- New hardwood floors
- Operable window lines with abundant natural light
- Private large common area conference room
- Prime/central Mid-Market location
- One block to Civic Center Bart/Muni stop
- Rate & Term: Inquire with broker



1049 Market Street

**Contact:**

Max Sander

Kidder Mathews

Office: [show contact info](#)

Cell: [show contact info](#)

Email: [show contact info](#)

DRE# 01979663

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Posted: a day ago

## ☆ 435 square foot creative office space in Mid-Market (downtown / civic / van ness)



**1049 Market Street  
San Francisco, CA**

Creative small office suite in prime/central Mid-Market location

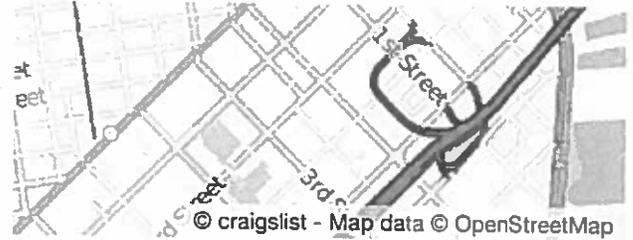
4th Floor Suite Available:

Suite 412: ±435 RSF



**Features/Amenities:**

- Open layout, with exposed brick and high ceilings
- New hardwood floors
- Operable window lines with abundant natural light
- Private large common area conference room
- Prime/central Mid-Market location
- One block to Civic Center Bart/Muni stop
- Rate & Term: Inquire with broker



1049 Market Street

**Contact:**

Max Sander

Kidder Mathews

Office: [show contact info](#)

Cell: [show contact info](#)

Email: [show contact info](#)

DRE# 01979663

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Posted: a day ago

## ☆ 270 square foot creative office space in Mid-Market (downtown / civic / van ness)



**1049 Market Street  
San Francisco, CA**

Creative small office suite in prime/central Mid-Market location

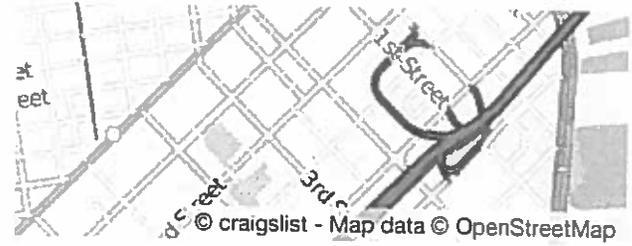
4th Floor Suite Available:

Suite 415: ±270 RSF



**Features/Amenities:**

- Open layout, with exposed brick and high ceilings
- New hardwood floors
- Operable window lines with abundant natural light
- Private large common area conference room
- Prime/central Mid-Market location
- One block to Civic Center Bart/Muni stop
- Rate & Term: Inquire with broker



1049 Market Street

**Contact:**

Max Sander

Kidder Mathews

Office: [show contact info](#)

Cell: [show contact info](#)

Email: [show contact info](#)

DRE# 01979663

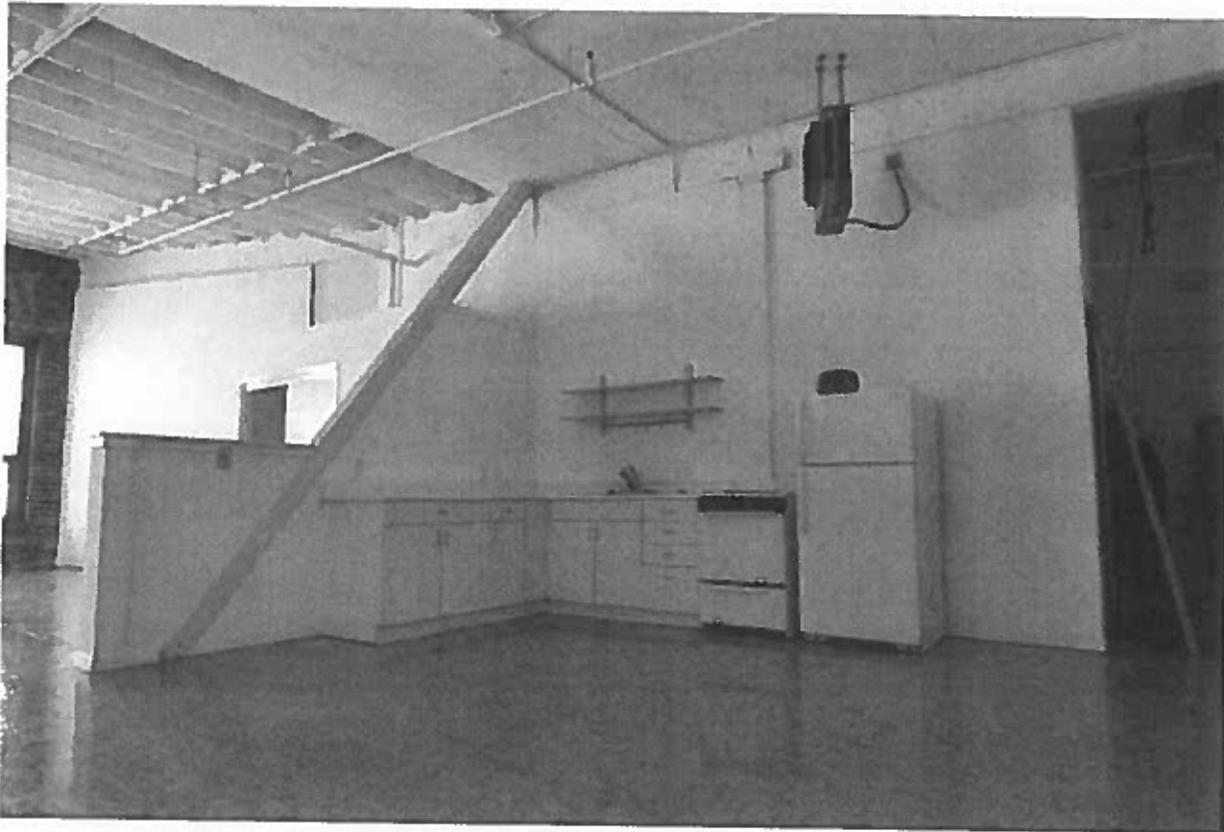
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Posted: 4 days ago

☆ ±1,000 SF Creative Office Suite on Market Street (downtown / civic / van ness)



1049 Market Street  
San Francisco, CA

Creative office suite in prime/central Mid-Market location

6th Floor Suite Available: ±1,000 RSF

**Features/Amenities:**

- Open layout, with exposed brick and high ceilings

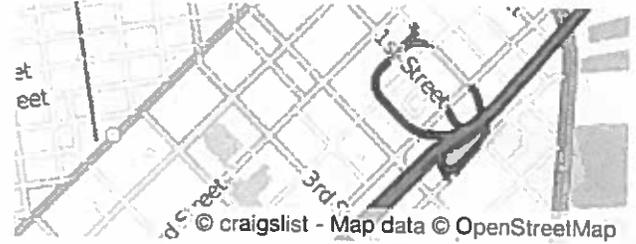
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10/27/2015

±1,000 SF Creative Office Suite on Market Street

- New hardwood floors
- Operable window lines with abundant natural light
- Private large common area conference room
- Prime/central Mid-Market location
- One block to Civic Center Bart/Muni stop
- Rate & Term: Inquire with broker



1049 Market Street

**Contact:**

Max Sander

Kidder Mathews

Office: [show contact info](#)

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## Creative Small Suites

1049 Market Street  
San Francisco, CA

±240 RSF to ±1,000 RSF non-contiguous

Open layout, with exposed brick and high ceilings

Hardwood floors

Operable window lines with abundant natural light

Private large common area conference room

Mid-Market location

One block to Civic Center Bart/Muni stop

Rate & Term: Inquire with broker

### Location

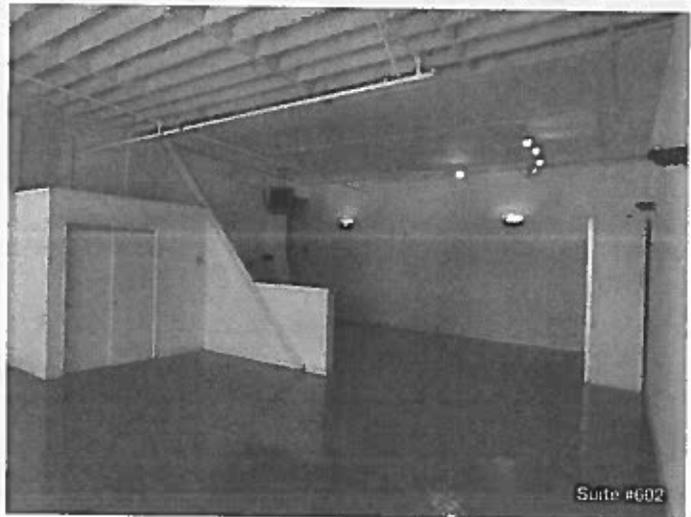
### Contact

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mariop@kiddermathews.com  
LIC #01902075

**Evan House**  
415.948.3729  
ehouse@kiddermathews.com  
LIC #01882475



## 1049 Market Street



### Contact

**Mario Previtali**  
415.755.8905  
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LIC #01902075

**Evan Housel**  
415.948.3729  
ehousel@kiddermathews.com  
LIC #01882475

## 1049 Market Street

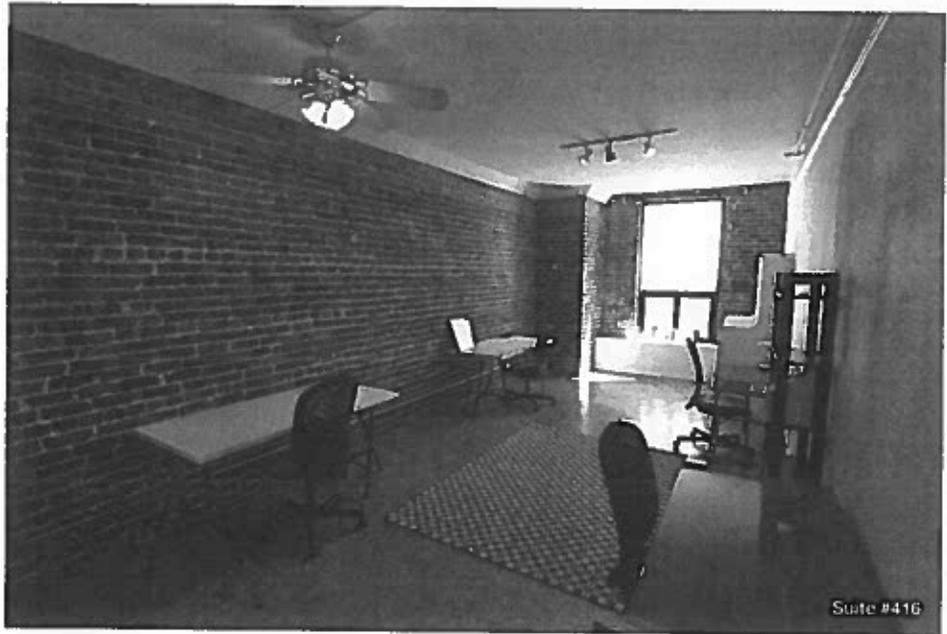
### AVAILABLE SPACE

#### 4th Floor

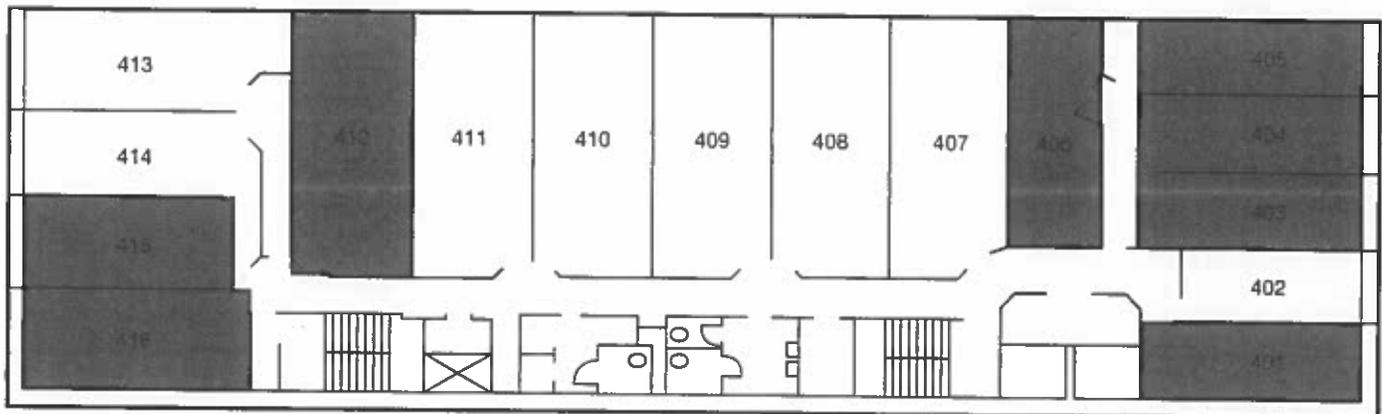
Suite 401	±260 RSF
Suite 403	±250 RSF
Suite 404	±250 RSF
Suite 405	±320 RSF
Suite 406	±240 RSF
Suite 412	±435 RSF
Suite 415	±270 RSF
Suite 416	±302 RSF

#### 6th Floor

Suite 602	±1,000 RSF
-----------	------------



### 4TH FLOOR PLAN



Floor plan not to scale

### Contact

**Mario Previtali**  
 415.755.8905  
 mariop@kiddermathews.com  
 LIC #01902075

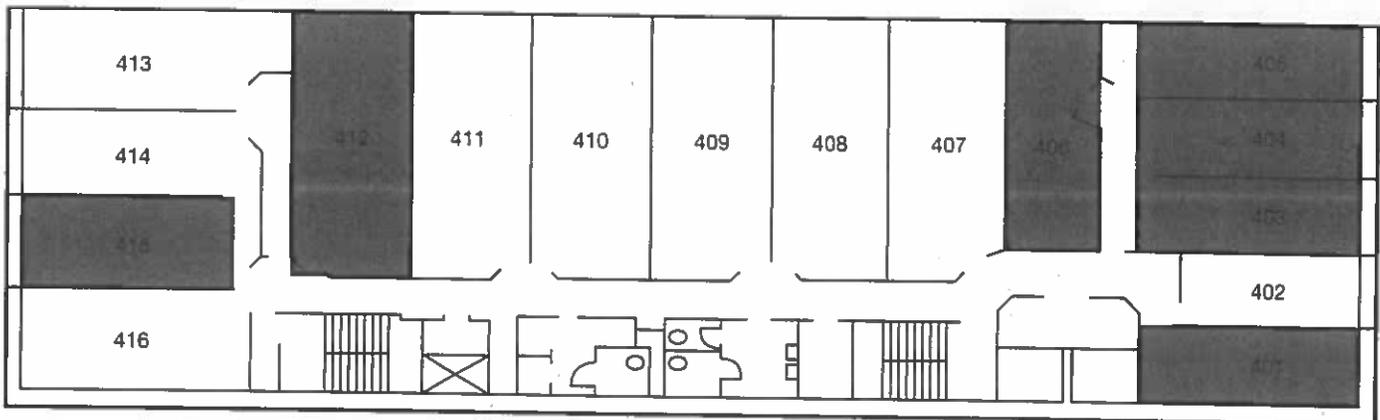
**Evan Housel**  
 415.948.3729  
 ehousel@kiddermathews.com  
 LIC #01882475

## 1049 Market Street

AVAILABLE SPACE	
<b>4th Floor</b>	
Suite 401	±260 RSF
Suite 403	±250 RSF
Suite 404	±250 RSF
Suite 405	±322 RSF
Suite 406	±240 RSF
Suite 412	±435 RSF
Suite 415	±270 RSF
Suite 416	LEASED
<b>6th Floor</b>	
Suite 602	±1,000 RSF



### 4TH FLOOR PLAN



Floor plan not to scale

### Contact

**Mario Previtali**  
 415.755.8905  
 mariop@kiddermathews.com  
 LIC #01902075

**Evan Housel**  
 415.948.3729  
 ehousel@kiddermathews.com  
 LIC #01882475

## 1049 Market Street



### Contact

**Mario Previtali**  
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 mariop@kiddermathews.com  
 LIC #01902075

**Evan Housel**  
 415.948.3729  
 ehousel@kiddermathews.com  
 LIC #01882475

the 1990s, the number of people with a mental health problem has increased in the UK (Mental Health Act 1983, 1990).

There is a growing awareness of the need to improve the lives of people with mental health problems. The Department of Health (1999) has set out a vision of a new mental health system, which will be based on the following principles:

- People with mental health problems should be treated as individuals, with their own needs and wishes.
- People with mental health problems should be given the opportunity to participate in decisions about their care and treatment.
- People with mental health problems should be given the opportunity to live as fully as possible in their own homes and communities.

These principles are reflected in the new Mental Health Act 2003, which came into force in 2005.

The new Act is based on the following principles:

- People with mental health problems should be given the opportunity to participate in decisions about their care and treatment.
- People with mental health problems should be given the opportunity to live as fully as possible in their own homes and communities.

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72 Germania Street,  
SF, CA 94117  
March 23, 2017

Dear Board of Appeals,

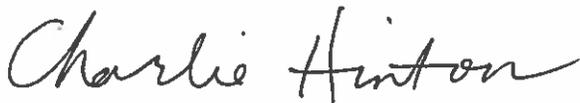
I'm writing out of concern for the tenants of 1049 Market Street, who once again find themselves threatened with eviction, this time under the nefarious Ellis Act. Some of the tenants have lived in the building for more than 16 years. They are a mixed group of artists, young, elder, black, white, latina, LGBTQ and straight who mostly do some kind of waged work for a living.

They ultimately would like to purchase the building and keep their homes; but the landlord/owners, so far will not budge on this and insist on eviction. In fact they have hired the same attorney Andrew M. Zacks, who has been working on the case of the now 100 year old woman Iris Canada—recently locked out of her home in the Fillmore District by Sheriff Vicki Hennessy.

Their building houses 84 units and the owners own two other similar buildings on the same block (Market St. between 6th St. & 7th St.), plus associated storefronts. This is a matter of pure greed. In these times of perilous housing options for low income people, the last thing we need is an eviction of people living in 84 apartment units.

Please take all appropriate action to guarantee that the 1049 Market Street tenants can continue to live in their building.

Sincerely yours,

A handwritten signature in cursive script that reads "Charlie Hinton". The signature is written in black ink and is positioned above the printed name.

Charlie Hinton



ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO 131,675 NAME Raquel Fox, Esq. FIRM NAME Tenderloin Housing Clinic, Inc. STREET ADDRESS 126 Hyde Street, 2nd Floor CITY San Francisco STATE CA ZIP CODE 94102 TELEPHONE NO 415-771-9850 FAX NO 415-771-1287 E-MAIL ADDRESS Raquel@thclinic.org ATTORNEY FOR (name): Plaintiff Gail Y. Izaguirre	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS 400 McAllister Street MAILING ADDRESS CITY AND ZIP CODE San Francisco, CA 94102 BRANCH NAME Unlimited Civil Jurisdiction	CASE NUMBER CGC-16-551225
Plaintiff/Petitioner: Gail Y. Izaguirre Defendant/Respondent: Renka Prop, LLC	JUDICIAL OFFICER:
<b>PROOF OF ELECTRONIC SERVICE</b>	DEPARTMENT: 501

1. I am at least 18 years old.
  - a. My residence or business address is (specify):  
 Tenderloin Housing Clinic, Inc.  
 126 Hyde Street, 2nd Floor  
 San Francisco, CA 94102
  - b. My electronic service address is (specify):  
 via File & ServeXpress
  
2. I electronically served the following documents (exact titles):  
 REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF RESPONSE IN OPPOSITION TO JULIE N. NONG'S MOTION TO BE RELIEVED AS COUNSEL FOR RENKA PROP, LLC

The documents served are listed in an attachment (Form POS-050(D)/EFS-050(D) may be used for this purpose.)

3. I electronically served the documents listed in 2 as follows:
  - a. Name of person served:  
 On behalf of (name or names of parties represented, if person served is an attorney):  
 Julie N. Nong, Esq.
  - b. Electronic service address of person served :  
 julienong@ntlawgroup.com
  - c. On (date): March 16, 2017
  - d. At (time):

The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment. (Form POS-050(P)/EFS-050(P) may be used for this purpose.)

Date: March 16, 2017

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Susan Bryan  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME OF DECLARANT)

  
 \_\_\_\_\_  
 (SIGNATURE OF DECLARANT)



BOARD OF APPEALS

MAR 30 2017

APPEAL # 16-111/112/113

March 29, 2017

Dear members of the Board of Appeals:

As a tenants rights organization that was in the forefront of fighting for the tenants at 1049 Market, Housing Rights Committee urges you to uphold the revocation of the landlord's permit to demolish any of the units at that location and the penalties imposed by the Zoning Administrator.

These units have been rented for years to artists and others who have enjoyed affordable rents and an ability to remain in the city. The loss of these units at a time when the city desperately needs affordable housing, especially for artists, would be devastating and just simply wrong. It would also displace the tenants who are still in their units, adding to the massive displacement that we are seeing in this city.

These tenants hope that one day the SF Community Land Trust can purchase their building and help preserve its 84 units as affordable housing for artists and others. It's a goal that we, and many others in the tenants rights community, support as well.

Sadly, the landlord has begun renting vacant units for commercial purposes, in defiance of the interim and the permanent zoning controls passed by Jane Kim and John Avalos respectively. We urge you not to overturn the penalties that the Zoning Administrator imposed on the landlord for illegally converting those units. Do not reward him for what he has done.

We urge you to reject the appeal and help keep the tenants of 1049 Market in their units.

Sincerely,

Tommi Avicolli Mecca  
Director of Counseling Programs  
Housing Rights Committee

1663 Mission, Suite 504, SF CA 94103 415-703-8634 [www.hrcsf.org](http://www.hrcsf.org)

Fighting for tenants rights since 1979



1360 Mission St., Suite 400  
San Francisco, CA 94103  
415-546-1333  
www.sdaction.org

March 30, 2017

Dear members of the Board of Appeals:

BOARD OF APPEALS

MAR 30 2017

APPEAL # 16-111/112/113

As a tenants rights organization that is at the forefront of the anti-eviction fight on behalf of seniors and people with disabilities, Senior and Disability Action urges you to uphold the revocation of the landlord's permit to demolish any of the units at 1040 Market Street and the penalties imposed by the Zoning Administrator.

These units have been rented for years to artists and others who have enjoyed affordable rents and an ability to remain in the city. The loss of these units at a time when the city desperately needs affordable housing, especially for artists, would be devastating and just simply wrong. It would also displace the tenants who are still in their units, adding to the massive displacement that we are seeing in this city.

These tenants hope that one day the SF Community Land Trust can purchase their building and help preserve its 84 units as affordable housing for artists and others. It's a goal that we, and many others in the tenants rights community, support as well.

Sadly, the landlord has begun renting vacant units for commercial purposes, in defiance of the interim and the permanent zoning controls passed by Jane Kim and John Avalos respectively. We urge you not to overturn the penalties that the Zoning Administrator imposed on the landlord for illegally converting those units. Do not reward him for what he has done.

We urge you to reject the appeal and help keep the tenants of 1049 Market in their units.

Sincerely,

A handwritten signature in black ink that reads "Tony Robles".

Tony Robles  
Housing Organizing Director  
Senior and Disability Action



SAN FRANCISCO  
TENANTS UNION

558 Capp Street • San Francisco CA • 94110 • (415) 282-6543 • www.sftu.org

March 30, 2017

RE: Upholding penalties imposed by Zoning Administrator for 1049  
Market Street

BOARD OF APPEALS  
MAR 30 2017  
APPEAL # 16-111/112/113

Dear members of the Board of Appeals:

As a tenants rights organization that has been on the forefront of fighting on behalf of the affordable units in unconventional spaces, the San Francisco Tenants Union implores you to uphold the revocation of the landlord's permit to demolish any of the units at that location and the penalties imposed by the Zoning Administrator.

These units have been rented for years to artists and others who have enjoyed affordable rents and an ability to remain in the city. The loss of these units at a time when the city desperately needs affordable housing, especially for artists, would be a terrible loss. It would also displace the tenants who are still in their units, adding to the massive displacement that we are seeing in this city.

These tenants hope that one day the SF Community Land Trust can purchase their building and help preserve its 84 units as affordable housing for artists and others. It's a goal that we, and many others in the tenants rights community, support as well.

Sadly, the landlord has begun renting vacant units for commercial purposes, in defiance of the interim and the permanent zoning controls passed by Jane Kim and John Avalos respectively. We urge you not to overturn the penalties that the Zoning Administrator imposed on the landlord for illegally converting those units. Please do not reward this bad actor for what he has done, because this would only encourage other landlords to follow suit.

We urge you to reject the appeal and help keep the tenants of 1049 Market in their units.

Thank you,



Deepa Varma  
Executive Director, San Francisco Tenants Union

**Mejia, Xiomara (PAB)**

---

**From:** Julio Rios <julio.rios@gmail.com>  
**Sent:** Wednesday, March 15, 2017 9:08 AM  
**To:** BoardofAppeals (PAB)  
**Subject:** Please don't evict the residents of 1049 Market St

**BOARD OF APPEALS**  
MAR 15 2017  
APPEAL #16-111/112/113

SF Board of Appeals,

Please don't make the same mistakes that were made in the inhumane eviction of the residents of the International Hotel in the 1970s. History will not as easily forget.

Thanks for your concern,  
Julio Rios

**Mejia, Xiomara (PAB)**

---

**From:** OBO HELP <obohlp@yahoo.com>  
**Sent:** Thursday, March 16, 2017 11:28 AM  
**To:** BoardofAppeals (PAB)  
**Subject:** 1049 Market St

BOARD OF APPEALS  
MAR 16 2017  
1049 Market St 16-111/112/113

I support the tenants at 1049 Market!

Obo Help  
1531 Fulton St.  
SF CA 94117

**Mejia, Xiomara (PAB)**

---

**From:** xan joi <joiyssey@gmail.com>  
**Sent:** Thursday, March 16, 2017 12:15 PM  
**To:** BoardofAppeals (PAB)  
**Subject:** STOP the eviction at 1049 Market St!!! PLEASE!!!

BOARD OF APPEALS  
MAR 16 2017  
APPEAL # 16-111/112/113

To: SF Board of Appeals:

You must act to stop this horrific and illegal eviction of the people at 1049 Market Street.

We cannot act in such an inhumane way, to deprive these tenants of their homes, let alone turn much needed affordable residential space into commercial space. It's unconscionable.

Please help these tenants purchase this building and keep their housing.

Every human being deserves a safe (especially from greedy corporations and individuals), affordable housing which these tenants now have.

THANK YOU in advance for supporting human beings and not corporate greed.

In solidarity and action,  
Xan (Zanne) Sam Joi  
DISARM! DISARM! DISARM!  
work for peace; hold all life sacred; eliminate violence  
[www.codepinkjournals.blogspot.com](http://www.codepinkjournals.blogspot.com)

From: Keith Hennessy, MFA, PhD  
2842 Folsom St, SF CA 94110

3.17.2017  
BOARD OF APPEALS

To: San Francisco Board of Appeals  
1650 Mission St, Suite 304, SF CA 94103

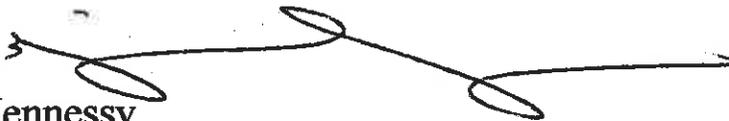
MAR 22 2017  
APPEAL # 16-111 / 112 / 113

**RE: 1049 MARKET STREET / PROTECT THE TENANTS!**

I support the residents of 1049 Market St. Affordable San Francisco is almost dead. We do not need to protect real estate profiteers and their eviction lawyers. We need to protect the low-income tenants. Let's keep San Francisco interesting, complicated, diverse, creative, and ethically engaged in cross-class solidarity!!!!

Please do what you can to protect the tenants, stop the eviction, and support permanent affordable housing. The City has the money to buy this building (to loan, to support the purchase of), whether to be managed by the SF Community Land Trust or one of the other agencies who believe in resident-managed, publically owned, permanently affordable, low income housing.

Thank you



Dr Keith Hennessy  
artist, teacher, organizer

**Longaway, Alec (PAB)**

---

**From:** Cari <Cari@allwomenscount.net>  
**Sent:** Thursday, March 23, 2017 5:03 AM  
**To:** BoardofAppeals (PAB)  
**Subject:** Re: 1049 Market St Tenants Association

**BOARD OF APPEALS**

MAR 23 2017

APPEAL # 16-111/112/113

To the San Francisco Board of Appeals,

I live in London and am horrified to hear news from my colleagues in San Francisco about the greedy and brutal treatment she and others in her housing block at 1049 Market Street are receiving from their landlord who is trying to evict them.

I ask that you treat these tenants as you would yourself would want to be treated were you in a similar situation, having lived in one place for many years. It would be inexcusable for these people to be evicted and made homeless. All lives are of equal value.

I am passing this news to my very wide network of friends and colleagues.

I would appreciate a reply.

Thank you,

Cari Mitchell

**Longaway, Alec (PAB)**

---

**From:** Charlie Hinton <lifewish@lmi.net>  
**Sent:** Thursday, March 23, 2017 12:29 PM  
**To:** BoardofAppeals (PAB)  
**Subject:** 1049 Market Street

BOARD OF APPEALS

MAR 23 2017

APPEAL # 16-111 | 112 | 113

Dear Board of Appeals,

I'm writing out of concern for the tenants of 1049 Market Street, who once again find themselves threatened with eviction, this time under the nefarious Ellis Act. Some of the tenants have lived in the building for 16 years or longer. They are a mixed group of artists, young, elder, black, white, latina, LGBTQ and straight who mostly do some kind of waged work for a living.

They ultimately would like to purchase the building and keep their homes; but the landlord/owners, so far will not budge on this and insist on eviction. In fact they have hired the same attorney Andrew M. Zacks, who has been working on the case of the now 100 year old woman Iris Canada—recently locked out of her home in the Fillmore District by Sheriff Vicki Hennessy.

Their building houses 84 units and the owners own two other similar buildings on the same block (Market St. between 6th St. & 7th St.), plus associated storefronts. This is a matter of pure greed. In these times of perilous housing options for low income people, the last thing we need is an eviction of people living in 84 apartment units, so some rich landlord can convert their homes to make more money.

Please take all appropriate action to guarantee that the 1049 Market Street tenants can continue to live in their building.

Sincerely yours,  
Charlie Hinton  
72 Germania Street  
SF, CA 94117

March 22, 2017

BOARD OF APPEALS

MAR 27 2017

APPEAL # 13-111 / 112 / 113

To: San Francisco Board of Appeals  
Re: 1049 Market St., San Francisco tenants facing eviction  
1650 Mission Street, Suite 304  
San Francisco, CA 94103

We are writing to urge you to oppose the eviction of the 1049 Market Street Tenants. 1049 Market is a low income building and has become well known as a space for artists. It consists of 84 units with common bathroom and shower areas. This is a crucial legal case for renters in San Francisco and all eyes are on it.

As a multi-racial women's organization of mothers, grandmothers, caregivers, teachers, nurses, cashiers, queer people and other renters, we respect and support the tenants at 1049 Market who have worked hard for over 3 years for their right to stay and to draw attention to the lack of affordable housing in San Francisco.

Sandwiched in-between the Tenderloin and SOMA districts, the mid-Market St. area of 1049 Market is losing its special character of being a place where grass-roots and low income people from different backgrounds -- Asian, Latin, Black and white people -- live and work alongside each other. This loss by gentrification is a racist, homophobic and classist outrage.

The diverse group of tenants at 1049 have endured emotional and economic hardship, not knowing if they will be evicted. People have had to take time from trying to make a living and money from their meager resources, to hire lawyers, meet with representatives in City Hall and at City agencies, speak to the press, mobilize with Community Housing Rights groups and work with their community supporters. All this done while also working low-waged jobs. Some of the tenants are elders.

They have all faced a barrage of legal maneuvers from high priced lawyers. It is an outrage that landlords are making millions by selling to corporations who are buying up buildings in the area and making Market Street a prime location for those select few who can afford to pay exorbitant rent. Even some in the tech industry are complaining they cannot afford the sky high rents! What about the people who cannot afford these prices, are they to be evicted and set aside like old baggage no longer useful? Thousands of women and men in the Bay Area have been protesting corporate profiteering being the priority over caring for the needs of people.

There has been no regard for the fact that people have lived in the building for decades and have worked to build a supportive community. We have heard these tenants speak about their lives and contributions. They, like many of us, have contributed to the multi-cultural diversity of this city, as artists, musicians, activists and writers who have documented the story of the people of San Francisco who are often left out of history books because they are not from the upper echelons of society. They are workers, part of the people whose sweat blood and tears built this city. Today, their labor provides quality organic food to people, teaches the city's children, takes care of those who are ill, cleans and services hotels, supports people with mental health crises and disabilities and much more. This is all an essential part of the San Francisco

economy and these tenants should have their contributions valued, not treated as though they don't matter. They are entitled to support not eviction.

When will the pillage of our neighborhoods stop? Our city is being carved up and sold to the rich 1% who don't even live here but use this city as a "bedroom community". Valencia Street, the heart of a vibrant Mission culture in years past, is now mainly high-end restaurants which only the wealthy can afford. Even 24<sup>th</sup> St. shows signs of gentrification. The divide between the rich and poor is stark and growing. It is a stain on a city's reputation that the wealthy step over homeless people, struggling to survive on the sidewalks, as they make their way to the front door of expensive restaurants. It has been documented that some of these homeless are recently evicted SF residents! And this in San Francisco that touts itself as a "liberal" and caring city.

To remain true to our reputation as a sanctuary city, as a diverse and progressive city, we need the City government to stop these terrible evictions.

You are in a position to stop this from happening, to make a huge difference in the lives of these tenants. We urge you to please do the right thing and vote to stop the eviction of tenants at 1049 Market.

Thank you for your attention concerning this matter,

Lori Nairne, for the Global Women's Strike Bay Area  
PO Box 14512, SF, CA. 94114  
sf@allwomenscount.net, 415- 626-4114

A handwritten signature in black ink that reads "Lori Nairne". The signature is written in a cursive, flowing style with a large initial "L".

San Francisco Board of Appeals  
1650 Mission Street, Suite 304  
San Francisco, CA 94103

BOARD OF APPEALS

MAR 28 2017

APPEAL # 16-111 | 11a | 113

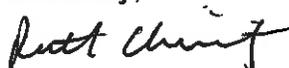
Re: 1049 Market Street

Dear Appeals Board,

I am writing in relation to and in support of the tenants at 1049 Market Street in San Francisco. As you likely know, they have been fighting an eviction from their building for three years. I'm very concerned about this case, which I've heard about from a work colleague who lives there. Some of the tenants have lived there for 16 years or more. They're a mixed group of artists, young, old, Black, white, Latino & LGBTQ, and low-income. I'm aware of their struggle to stay in their homes. Their recalcitrant landlord has refused to budge and insists on evicting them from their homes.

This case is a prime example of the huge housing crisis that tenants in San Francisco are facing. We all know that once evicted there is no affordable housing for low-income tenants, and in this way San Francisco is losing its diversity and working class people. I'm appalled at how property developers and corporations are rapaciously taking over properties in San Francisco, displacing long-term residents and brutally evicting tenants. In the case of 1049 Market Street, the landlord has tried every trick in the book, finally using the Ellis Act to evict residents from these rent-controlled units. I urge you to vote against this eviction.

Sincerely,



Ruth Chimowitz

1227 Hampshire St.  
San Francisco, CA 94110