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Completed by:  Linda Laws  Date  July 17, 2009
Completed by:  

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.
[Trinity Plaza Development Agreement Amendment; Property at 1167 Market Street, 670-693 Stevenson Street, and 1164 Mission Street]

Ordinance amending a development agreement between the City and County of San Francisco and 1169 Market Street, L.P. for certain real property located at 1167 Market Street (Assessor's Block 3702/Lot 053), 670 Stevenson Street (Assessor's Block 3702/Lot 051), 693 Stevenson Street (Assessor's Block 3702/Lot 052), 1164 Mission Street (Assessor's Block 3702/Lot 039), and a portion of former Jessie Street between 7th and 8th Streets, altogether consisting of approximately 177,295 square feet (4.07 acres) and commonly known as Trinity Plaza, entered into on June 15, 2007, pursuant to Ordinance No. 92-07 adopted by the Board of Supervisors on April 17, 2007 (File No. 061217), to add 5 years to the term, to permit the construction of the entirety of a parking garage, to amend the definition of Existing Tenants, to identify the BMR Units for Building A, to modify the location and selection process for the Replacement Units, and to permit a Project-wide art component for the Project; and adopting environmental, General Plan and Planning Code Section 101.1(b) findings.

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

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

Section 1. Findings. The Board of Supervisors makes the following findings:

(a) California Government Code Section 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within the jurisdiction or the city, county, or city and county.
(b) Chapter 56 of the San Francisco-Administrative Code sets forth the procedure by which any request for a development agreement, or an amendment thereto, will be processed and approved in the City and County of San Francisco ("City").

(c) On April 17, 2007, the Board of Supervisors adopted Ordinance No. 92-07 (File No. 061217) approving a development agreement by and between the City and 1169 Market Street, L.P. ("Developer") for certain real property located at 1167 Market Street (Assessor's Block 3702/Lot 053), 670 Stevenson Street (Assessor's Block 3702/Lot 051), 693 Stevenson Street (Assessor's Block 3702/Lot 052), 1164 Mission Street (Assessor's Block 3702/Lot 039), and a portion of former Jessie Street between 7th and 8th Streets ("Development Agreement"), and authorizing the Planning Director to execute the Development Agreement on behalf of the City ("Enacting Ordinance"). The Enacting Ordinance was approved by the Mayor on April 27, 2007, and took effect thirty (30) days thereafter.

(d) On or about June 15, 2007, the City, acting by and through the Planning Director, executed the Development Agreement, which was recorded in the Official Records of the City and County of San Francisco on July 25, 2007, as Document No. 2007I427186, Reel J440, Image 0670.

(e) Section 10.1 of the Development Agreement provides that the Development Agreement can be amended only with the mutual written consent of the parties, and shall be processed in the manner provided in the California Government Code Section 65864 et seq. and Chapter 56 of the San Francisco Administrative Code as of the Effective Date of the Development Agreement.

(f) On December 22, 2008, Developer filed an application pursuant to San Francisco Administrative Code Sections 56.4 and 56.15 with the Planning Director to amend the Development Agreement.
(g) On March 26, 2009, San Francisco Planning Commission ("Planning Commission") held a public hearing on the amendment request and adopted Resolution M17851 recommending approval of the amendment request, as modified by the Planning Commission (the "DA Amendment"). The copy of the DA Amendment is on file with the Clerk of the Board of Supervisors in File No. 090829.

Section 2. CEQA Findings. The Board of Supervisors makes the following findings:

(a) On August 3, 2006, at a duly noticed public hearing, the Planning Commission certified the Final Environmental Impact Report ("Final EIR") for the proposed mixed-use project, as more particularly described in the Development Agreement (the "Project"), by Motion No. 17291 finding that the Final EIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, contains no significant revisions to the Draft EIR, and the content of the report and the procedures through which the Final EIR was prepared, publicized and reviewed comply with the provisions of the California Environmental Quality Act (California Public Resources Code Section 21000 et seq., "CEQA"), the State CEQA Guidelines (California Code of Regulations Title 14 Section 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"). A copy of the Final EIR is on file with the Clerk of the Board of Supervisors in File Nos. 061217 and 070194.

(b) The letter from the Department of Planning transmitting the Development Agreement to the Board of Supervisors, the Final EIR and supplemental materials described above, and the CEQA Findings adopted by the Planning Commission with respect to the approval of the Project, are on file with the Clerk of the Board in File Nos. 061217 and 070194. These and any and all other documents referenced in this Ordinance have been made available to, and have been reviewed by, the Board of Supervisors, and may be found in either the files of the City Department of Planning, as the custodian of records, at
1650 Mission Street in San Francisco, or in File Nos. 061217 and 070194 with the Clerk of the
Board of Supervisors at 1 Dr. Carlton B. Goodlett Place, San Francisco and are incorporated
herein by reference.

(c) The Board of Supervisors has reviewed and considered the Final EIR and the
environmental documents on file referred to herein, and the CEQA Findings adopted by the
Planning Commission in support of the approval of the proposed Project. As set forth in the
Ordinance approving the Development Agreement (Ordinance No. 92-07), the Board of
Supervisors adopted the Planning Commission CEQA findings as its own and incorporated
them by reference.

(d) In recommending approval of the DA Amendment, the Planning Commission
incorporated the CEQA Findings for the Project previously made by the Commission and the
Board of Supervisors, and found that since the Final EIR was certified, there have been no
substantial Project changes and no substantial changes in Project circumstances that would
require revisions to the Final EIR due to the involvement of new significant environmental
effects or an increase in the severity of previously identified significant impacts, and there is
no new information of substantial importance which indicates that (1) the Project will have
significant effects not discussed in the Final EIR, (2) significant environmental effects will be
substantially more severe, (3) mitigation measures or alternatives found not feasible which
would reduce one or more significant effects have become feasible or (4) mitigation measures
or alternatives which are considerably different from those in the Final EIR would substantially
reduce one or more significant effects on the environment.

(e) The Board of Supervisors hereby incorporates all of the CEQA Findings made
by the Planning Commission in recommending approval of the DA Amendment, and finds that
there have been no substantial Project changes and no substantial changes in Project
circumstances that would require revisions to the Final EIR due to the involvement of new
significant environmental effects or an increase in the severity of previously identified
significant impacts, and there is no new information of substantial importance which indicates
that (1) the Project will have significant effects not discussed in the Final EIR, (2) significant
environmental effects will be substantially more severe, (3) mitigation measures or
alternatives found not feasible which would reduce one or more significant effects have
become feasible or (4) mitigation measures or alternatives which are considerably different
from those in the Final EIR would substantially reduce one or more significant effects on the
environment.

Section 3. Adoption of General Plan and Planning Code Section 101.1(b) Findings.

(a) The Board of Supervisors finds, pursuant to Planning Code Section 302, that the
proposed DA Amendment will serve the public necessity, convenience and general welfare for
the reasons set forth in Planning Commission Resolution No. 17298 and incorporates those
reasons herein by reference.

(b) The Board of Supervisors finds that the proposed DA Amendment is in
conformity with the General Plan, as amended, and the eight priority policies of Planning
Code Section 101.1 for the reasons set forth in Planning Commission Resolution No. 17298.
The Board of Supervisors hereby adopts the findings set forth in Planning Commission
Resolution No. 17298 and incorporates those findings herein by reference.

Section 4. Amendment of the Development Agreement.

(a) The Board of Supervisors hereby approves the DA Amendment, including the
following provisions as more specifically set forth in the DA Amendment: (i) the 5-year
extension of the term, from 15 years to 20 years, (ii) the right of Developer to build a parking
garage for the entire Project during or after the construction of Building B and before the
completion of the remainder of the Project, provided that Developer maintains the original
parking ratio set forth in the Development Agreement by use of a barrier, (iii) the change in the
definition of "Existing Tenant" as those persons in residence with a lease on the date of
issuance of the first temporary certificate of occupancy for Building A instead of the date of
issuance of the final certificate of occupancy, (iv) the identification of the BMR Units, (v) the
location and selection process for the Replacement Units, and (vi) the right of Developer to
develop a Project-wide artworks program under Planning Code Section 149 instead of
proposing and providing art works specific to each phase of the Project.

(b) The Board of Supervisors authorizes the execution, delivery and performance of
the DA Amendment. Without limiting the foregoing, the Director of Planning (or his or her
designee) at his or her discretion is hereby authorized to take all actions reasonably
necessary or prudent to perform the City's obligations under the Development Agreement, as
amended by the DA Amendment, subject to the terms of San Francisco Administrative Code
Chapter 56. The Director of Planning, at his or her discretion and in consultation with the City
Attorney, is authorized to enter into any additions, amendments or other modifications to the
DA Amendment that the Director of Planning determines are in the best interests of the City
and that do not materially increase the obligations or liabilities of the City.

Section 5. Ratification of Prior Actions. All actions taken by City officials in preparing
and submitting the DA Amendment to the Board of Supervisors for review and consideration
are hereby ratified and confirmed, and the Board hereby authorizes all subsequent action to
be taken by City officials consistent with this Ordinance.

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: [Signature]
Charles Sullivan
Deputy City Attorney
LEGISLATIVE DIGEST

[Trinity Plaza Development Agreement Amendment; Property at 1167 Market Street, 670-693 Stevenson Street, and 1164 Mission Street]

Ordinance amending a development agreement between the City and County of San Francisco and 1169 Market Street, L.P. for certain real property located at 1167 Market Street (Assessor's Block 3702/Lot 053), 670 Stevenson Street (Assessor's Block 3702/Lot 051), 693 Stevenson Street (Assessor's Block 3702/Lot 052), 1164 Mission Street (Assessor's Block 3702/Lot 039), and a portion of former Jessie Street between 7th and 8th Streets, altogether consisting of approximately 177,295 square feet (4.07 acres) and commonly known as Trinity Plaza, entered into on June 15, 2007, pursuant to Ordinance No. 92-07 adopted by the Board of Supervisors on April 17, 2007 (File No. 061217), to add 5 years to the term, to permit the construction of the entirety of a parking garage, to amend the definition of Existing Tenants, to identify the BMR Units for Building A, to modify the location and selection process for the Replacement Units, and to permit a Project-wide art component for the Project; and adopting environmental, General Plan and Planning Code Section 101.1(b) findings.

Existing Law

On April 17, 2007, the Board of Supervisors adopted Ordinance No. 92-07 (File No. 061217) approving a development agreement by and between the City and 1169 Market Street, L.P. ("Developer") for certain real property located on Market Street between 7th and 8th Streets known as Trinity Plaza (the "Development Agreement"). Under the Development Agreement, Developer was given the vested right to develop, in 2 or more phases, a mixed-use project including 1,900 residential units, 60,000 square feet of commercial space, and 1,425 parking spaces, all as more particularly described in the Development Agreement. Developer agreed to include in the project 360 replacement units for the existing tenants (the "Replacement Units") in the first phase of the project and 15% affordable inclusionary units on the remainder of the project, to grant the existing tenants at the site rent-controlled leases in the Replacement Units, and to relocate all of the existing tenants to the Replacement Units at no cost to the tenants. Developer now requests certain amendments to the Development Agreement. The City's Planning Commission rejected some of Developer's requests, and recommended approval of the amendment in the form forwarded to the Board of Supervisors.

Amendments to Current Law

The proposed ordinance, if adopted, would approve an amendment to the Development Agreement to: (i) extend the initial term from 15 years to 20 years; (ii) permit Developer to build a parking garage for the entire Project provided that Developer maintains the original parking ratio set forth in the Development Agreement by use of a barrier to prevent use of spaces until full buildout; (iii) change the definition of "Existing Tenant" as those persons in residence with a lease on the date of issuance of the first temporary certificate of occupancy

Planning Department
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for Building A instead of the date of issuance of the final certificate of occupancy; (iv) identify the inclusionary units in Building A; (v) identify the Replacement Units in Building A and make clarifications and changes to the selection process for occupancy of the Replacement Units; and (vi) permit a project-wide arts program instead of providing art works specific to each phase of the project.

**Background Information**

The first building in the project, Building A, is currently under construction and will include all of the Replacement Units.
RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

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

AND WHEN RECORDED MAIL TO:

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

FIRST AMENDMENT TO THE
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND
1169 MARKET STREET, LP
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE TRINITY PLAZA DEVELOPMENT PROJECT
FIRST AMENDMENT TO THE
DEVELOPMENT AGREEMENT BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND 1169 MARKET STREET, LP
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE TRINITY PLAZA DEVELOPMENT PROJECT

THIS FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (this "Amendment") dated for reference purposes only as of this ________________ day of ___________, 2009, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the "City"), acting by and through its Planning Department, and 1169 MARKET STREET, a California limited partnership (the "Developer") pursuant to the authority of Section 65864 et seq. of the California Government Code and Chapter 56 of the San Francisco Administrative Code. City and Developer are also sometimes referred to individually as a "Party" and together as the "Parties."

RECITALS

This Amendment is made with reference to the following facts:

A. The City and Developer entered into that certain Development Agreement between the City and County of San Francisco and 1169 Market Street, LP relative to the Development known as the Trinity Plaza Development Project dated June 15, 2007 ("Development Agreement"). An ordinance approving and authorizing the Development Agreement was adopted by the City’s Board of Supervisors on April 17, 2007 (Ordinance no. 92-07, File No. 061217).

B. A copy of the Development Agreement was recorded in the Official Records of the City and County of San Francisco on July 25, 2007 as Instrument No. 20071427186 (Reel J440, Image 0670).

C. All of the Recitals set forth in the Development Agreement are hereby confirmed and restated as if hereinafter set forth in full.

D. On March 26, 2009, the City’s Planning Commission adopted a resolution approving this Amendment (Resolution No. M17851), subject to the approval of the City’s Board of Supervisors.

E. On ________________, 2009, the Board of Supervisors adopted Ordinance No. ________________, approving this Amendment and authorizing the Planning Director to execute this Amendment on behalf of the City (the "Enacting Ordinance"). The Enacting Ordinance took effect on ________________, 2009.

F. The parties desire to amend the Development Agreement as hereinafter set forth below.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:
1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Definitions. Any capitalized term used in this Amendment that is not defined in this Amendment shall have the meaning given to such term in the Development Agreement.

3. Term Extension. The Term of the Development Agreement is extended from 15 to 20 years. Accordingly, Section 1.4 of the Development Agreement is deleted in its entirety, and replaced with the following:

"The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for twenty (20) years thereafter, so as to accommodate the phased development of the Project, unless extended or earlier terminated as provided herein ("Term"). Notwithstanding anything to the contrary set forth above, Developer shall have the right to extend the Term for an additional five (5) years (the "Extension Term") by providing written notice of extension to City (the "Extension Notice") during the last year of the Term, but in no event later than thirty (30) days before the end of the Term; provided (i) Developer is not in default under this Agreement at the time of the delivery of the Extension Notice or at the time of the commencement of the Extension Term, (ii) the Commission or the Board have not made a determination, at the time of delivery of the Extension Notice or at the time of commencement of the Extension Term, that Developer has not complied with the terms of the Development Agreement as set forth in S.F. Administrative Code sections 56.17 and 56.18, and (iii) Developer pays a fee to City in the amount of Fifteen Thousand Dollars ($15,000) at the time of delivery of the Extension Notice.

Following expiration of the Term and any extension thereof, this Agreement shall be deemed terminated and of no further force and effect. All references in this Agreement to the "Term" shall include the Extension Term, if any."

4. Construction of Parking Garage. Developer shall be permitted to build the parking component for the entire Project following the completion of Building A and during or after the construction of Building B, subject to certain conditions. Accordingly, the following text shall be added at the end of Section 3.3.2 of the Development Agreement:

"Notwithstanding the foregoing, Developer may build all of the permitted parking spaces for the entire Project as described in Basic Approvals during or after the construction of Building B and before completion of the remainder of the Project, provided that: (1) any extra parking spaces that cause the parking ratio to exceed the permitted parking ratio as set forth above shall not be used or useable, and Developer shall construct a barrier, approved by the Planning Director in his or her reasonable discretion, to ensure the non-use of such parking spaces until the additional residential or commercial space is developed so as to permit the use of such parking spaces in keeping with the approved parking ratio; and (2) Developer constructs, at the time of the construction of the parking garage, the foundation and the subsurface infrastructure and utility lines and connections for the remainder of the Project in so far as the same are to be constructed in the area on which the parking garage is constructed."

5. Definition of Existing Tenants. The Existing Tenants shall be the tenants at Trinity Plaza on the date that Developer obtains a first temporary, not a final, certificate of
occupancy. Accordingly, the last sentence of Section 4.2 is hereby deleted and replaced with the following:

"For purposes of this Agreement, “Existing Tenants” shall mean a person residing at Trinity Plaza, with a lease, on the date that Developer obtains a first temporary certificate of occupancy for Building A including all of the Replacement Units."

6. Designation of BMR units. The City and Developer have agreed to identify the BMR units for Building “A”. Accordingly, new sub-sections 4.3.1 and 4.3.2 are hereby added with the following language:

"4.3.1 Building A contains a total of 440 units, of which 360 units are Replacement Units. The remaining 80 units are subject to the fifteen percent (15%) inclusionary housing requirement, so that 12 of the remaining 80 units shall be BMR Units.

4.3.2 The 12 BMR Units in Building A shall be the following units: Unit Nos. 313, 402, 414, 512, 602, 712, 803, 813, 912, 1013, 1112, and 1213."

The BMR Units for the subsequent buildings at the Project Site shall be identified in separate recorded document(s), and shall not require an amendment to the Development Agreement.

7. Tenant Selection of Replacement Units. Developer and the City have agreed to a process for the selection of the Replacement Units in order of Tenant seniority. Each Existing Tenant shall have the right to select a Replacement Unit in order of seniority from any of the available units within its replacement size category or any smaller category (or, to the extent available at the time of selection, a larger size category). Upon selection, the Replacement Unit will be removed from the list of available units. Accordingly, Sections 4.5.1 and 4.5.2 are deleted in their entirety and replaced with the following:

"4.5.1 Upon or before the completion of Building A, Developer shall notify the Existing Tenants that they have the right to occupy a Replacement Unit in Building A. It is anticipated that each floor of Building A will contain 20 units. The Replacement Units shall be located on floors 3 through 24.

4.5.2 Each Existing Tenant shall be entitled to a Replacement Unit of the same size or larger than his or her existing unit at Trinity Plaza. In order to ensure that an Existing Tenant receives a Replacement Unit of the same size or larger than his or her existing unit at Trinity Plaza, the following procedure shall be used in the selection of the Replacement Units:

(a) Existing Tenants whose existing unit at Trinity Plaza is a one-bedroom apartment shall have the first right to select the Replacement Unit of their choice as follows:

(i) Existing Tenants whose existing unit at Trinity Plaza is a one-bedroom apartment unit larger than 600 square feet in area shall have the choice of units 301, 302, 312, 401, 412, and 501 (total 6 units), or any other unit available for Replacement Unit selection as indicated in the subsections below;
(b) Existing Tenants whose existing unit at Trinity Plaza is unit no. 139, 156, 210, 239, 256, 310, 339, 356, 410, 510, 610, or 710 shall have the second right to select the Replacement Unit of their choice as follows:

(i) A choice of units 513, 518, 613, 618, 713, 1718, 1818, 1918, 2018, 2118, 2218, and 2318 (total 12 units), or any other unit available for Replacement Unit selection as indicated in the subsections below or above, provided such unit has not already been selected by an Existing Tenant with a higher seniority status;

(c) Existing Tenants whose existing unit at Trinity Plaza is unit no. 204, 304, 404, 504, 604, or 704 shall have the third right to select the Replacement Unit of their choice as follows:

(i) A choice of units 509, 510, 511, 615, 616, and 617 (total 6 units), or any other unit available for Replacement Unit selection as indicated in the subsections below or above, provided such unit has not already been selected by an Existing Tenant with a higher seniority status;

(d) All other Existing Tenants shall have the fourth right to select the Replacement Unit of their choice as follows:

(i) Floor 3 – a choice of units 303, 304, 305, 306, 307, 308, 309, 310, 311, 314, 315, 316, 317, 318, 319, and 320 (total 16 units), or any other unit available for Replacement Unit selection as indicated in subsections (a) through (c) above provided such unit has not already been selected by an Existing Tenant with a higher seniority status;

(ii) Floor 4 – a choice of units 403, 404, 405, 406, 407, 408, 409, 410, 411, 413, 415, 416, 417, 418, 419, and 420 (total 16 units), or any other unit available for Replacement Unit selection as indicated in subsections (a) through (c) above provided such unit has not already been selected by an Existing Tenant with a higher seniority status;

(iii) Floor 5 – a choice of units 503, 504, 505, 506, 507, 508, 514, 515, 516, 517, 519, and 520 (total 12 units), or any other unit available for Replacement Unit selection as indicated in subsections (a) through (c) above provided such unit has not already been selected by an Existing Tenant with a higher seniority status;

(iv) Floor 6 – a choice of units 603, 604, 605, 606, 607, 608, 609, 610, 611, 614, 619, and 620 (total 12 units), or any other unit available for Replacement Unit selection as indicated in subsections (a) through (c) above provided such unit has not already been selected by an Existing Tenant with a higher seniority status;

(v) Floor 7 – a choice of units 703, 704, 705, 706, 707, 708, 709, 710, 711, 714, 715, 716, 717, 718, 719, and 720 (total 16 units), or any other unit available for Replacement Unit selection as indicated in subsections (a) through (c) above provided such unit has not already been selected by an Existing Tenant with a higher seniority status;

(vi) Floor 8 – a choice of units 804, 805, 806, 807, 808, 809, 810, 811, 814, 815, 816, 817, 818, 819, and 820 (total 15 units), or any
other unit available for Replacement Unit selection as indicated in subsections (a) through (c) above provided such unit has not already been selected by an Existing Tenant with a higher seniority status;

(vii) Floors 9 through 11 – a choice of 16 units on each floor, excepting units 901, 902, 912, 913, 1001, 1002, 1012, 1013, 1101, 1102, 1112, and 1113 (total 48 units), or any other unit available for Replacement Unit selection as indicated in subsections (a) through (c) above provided such unit has not already been selected by an Existing Tenant with a higher seniority status;

(viii) Floors 12 through 16 – a choice of 16 units on each floor, excepting units 1201, 1202, 1212, 1213, 1301, 1302, 1312, 1313, 1401, 1402, 1412, 1413, 1501, 1502, 1512, 1513, 1601, 1602, 1612, and 1613 (total 80 units), or any other unit available for Replacement Unit selection as indicated in subsections (a) through (c) above provided such unit has not already been selected by an Existing Tenant with a higher seniority status;

(ix) Floors 17 through 23 – a choice of 15 units on each floor, excepting units 1701, 1702, 1712, 1713, 1801, 1802, 1812, 1813, 1901, 1902, 1912, 1913, 2001, 2002, 2012, 2013, 2101, 2102, 2112, 2113, 2201, 2202, 2212, 2213, 2301, 2302, 2312, and 2313 (total 105 units), or any other unit available for Replacement Unit selection as indicated in subsections (a) through (c) above provided such unit has not already been selected by an Existing Tenant with a higher seniority status; and

(x) Floor 24 – a choice of 16 units, excepting units 2401, 2402, 2412, and 2413 (total 16 units), or any other unit available for Replacement Unit selection as indicated in subsections (a) through (c) above provided such unit has not already been selected by an Existing Tenant with a higher seniority status;

(e) Any conflict among Existing Tenants in selecting units shall be resolved by seniority status, as determined by the issuance date for Tenant’s lease.

8. Notification Process for Tenant Selection of Replacement Units. The parties have agreed to additional provisions to implement the Replacement Unit selection process. Accordingly, Section 4.5.4 of the Development Agreement is deleted in its entirety, and replaced with a new Section 4.5.4, which reads as follows:

"4.5.4 Developer shall notify Existing Tenants of the anticipated completion date of the Replacement Units (including regular updates to the Tenant’s Association) and coordinate with such Existing Tenants on a mutually agreed upon move date to the Replacement Unit. Such notice by Developer shall indicate an Existing Tenant’s seniority status (i.e., the effective start date of each Existing Tenant’s lease), and shall include at least two (2) alternative dates/times when Developer will arrange for an opportunity for the Existing Tenant to visit some of the Replacement Units that are available for the Existing Tenant’s selection pursuant to Section 4.5.2. The first site visit offered by Developer shall be no sooner than thirty (30) days after the written notification described above, unless an earlier date is agreed to by an Existing Tenant. All notifications to Existing Tenants hereunder shall be both by U.S. Mail and by personal delivery to the applicable
residential unit on the Project Site. Each notice shall state the date by which an Existing Tenant must notify Developer of its selection, as described below.

In the event an Existing Tenant elects to accept the right to occupy a Replacement Unit, the Existing Tenant shall notify Developer of his or her acceptance in writing by providing Developer his or her selection of five (5) preferred Replacement Units, in the order of preference, at the conclusion of the site visit attended by, or the last site visitation date made available to, the Existing Tenant to view the Replacement Units, or within three (3) days thereafter. In the event that the five (5) preferred units selected by the Existing Tenant have already been selected and are therefore no longer available, the Existing Tenant shall be given an opportunity to provide Developer with five (5) additional preferred Replacement Units, in the order of preference.

Upon Developer’s receipt of an Existing Tenant’s written notification of preferred Replacement Units, Developer shall designate a Replacement Unit for such Existing Tenant in order of seniority as set forth in Section 4.5.2. Developer shall then relocate each Existing Tenant from its existing unit at Trinity Plaza to the Replacement Unit within sixty (60) days from the date that Developer receives a temporary certificate of occupancy for Building A from the City, or such earlier or later date as may be agreed to in writing by an Existing Tenant. In the event Developer receives more than one temporary certificate of occupancy for different portions of Building A, the Developer’s obligation to relocate an Existing Tenant is triggered only after a temporary certificate of occupancy has been received for the portion of Building A where the Existing Tenant’s Replacement Unit is located.

In the event an Existing Tenant elects to reject the right to occupy a Replacement Unit, the Existing Tenant shall notify Developer in writing no later than thirty (30) days after Developer’s notification of the available site visit dates as described above. In the event that an Existing Tenant does not respond by providing Developer a notification of acceptance consisting of a list of five (5) preferred Replacement Units, in the order of preference, at the conclusion of his or her site visit or an available visitation date/time or within three (3) days thereafter, or by sending a written notification of rejection of the right to occupy a Replacement Unit within the thirty (30) day period described above, then Developer shall send a second written notice informing the Existing Tenant of its right to select and occupy the Replacement Unit and the date by which such Existing Tenant must respond to the offer or lose his or her right to a Replacement Unit, which date shall be no earlier than five (5) days following Tenant's receipt of the second notice (and send a copy of such second notice to the City). If an Existing Tenant fails to respond to Developer’s second notice within five (5) days or fails to agree, by such date, to be moved to a Replacement Unit, then Developer may initiate an unlawful detainer action to evict the Existing Tenant.

Failure by an Existing Tenant to give written notification of his or her acceptance or rejection of the Replacement Unit within five (5) days following Developer’s second notification period shall constitute “just cause” under the demolition section of the Rent Ordinance (i.e., the demolition provisions of Section 37.9(a)(10)) for Developer to evict that Existing Tenant from his or her existing unit (except that Developer is not required to have necessary permits at the time the notice is given); provided, in the event that an Existing Tenant agrees to move within thirty (30) days following the filing of an unlawful detainer complaint, Developer shall dismiss the unlawful detainer and move the Existing
Tenant as set forth above (except that such Existing Tenant shall have lost his or her seniority status for the purpose of selecting a preferred Replacement Unit)."

9. Project-Wide Art. The City has agreed to permit Developer to implement a Project-wide art component for the Project. Accordingly, new section 6.12 is hereby added to the Development Agreement as follows:

"6.12 Art Requirement. Developer shall comply with Planning Code Section 149 by providing works of art costing an amount equal to one percent (1%) of the construction cost as more particularly described in San Francisco Planning Code Section 149 and Planning Commission Motion No. 17296 for the Section 309 review for the Project. The Section 149 requirements, as they apply to the Project, are hereby amended so that Developer shall develop a Project-wide artworks program, instead of proposing and providing art works specific to each Phase of the Project. A Project-wide artworks program is necessary and appropriate in order to ensure consistency and uniformity with the proposed works of art for the Project. The final art concept for the Project-wide artworks program shall be submitted for an informational presentation before the Planning Commission and for review and approval by the Planning Director no later than by the issuance of the temporary certificate of occupancy for Building A. The works of art under the Project-wide artworks program shall be installed and completed so that the art works associated with the cost for Building A shall be installed and completed prior to the issuance of a temporary certificate of occupancy for subsequent building (i.e. art works associated with the cost for Building A shall be installed and completed prior to the issuance of a temporary certificate of occupancy for Building B, and art works associated with the cost for Building B shall be installed and completed prior to the issuance of a temporary certificate of occupancy for Building C). In the event construction of the subsequent building has not commenced within 24 months after issuance of a temporary certificate of occupancy for the prior building, the art works related to the prior building shall become due as of such date, provided however that if the area where the art works are to be installed will be adversely impacted by current or future construction, then the delivery of such art works shall be deferred until such time when the area is no longer so impacted. Notwithstanding the foregoing, the art works associated with the last building for the Project shall be installed and completed within six (6) months following the issuance of the temporary certificate of occupancy for the last building."

10. Developer Representations. As of the effective date of this Amendment, Developer affirms and makes all of the representations set forth in Article 5 of the Development Agreement. Without limiting the foregoing, Developer warrants and represents that there is no prior lien or encumbrance against the Project Site which, upon foreclosure, would be free and clear of the obligations set forth in the Development Agreement (as amended by this Amendment).

11. Effective Date. Pursuant to Section 56.14(f) of the Administrative Code, this Amendment shall take effect upon the later of (i) full execution of the Parties, and (ii) the effective date of the ordinance adopted by the City's Board of Supervisors approving this Amendment.

12. Amendment Fee. Pursuant to Section 56.20 of the Administrative Code, the Developer shall pay a fee (the "Amendment Fee") to the City to defray its actual, reasonable costs in preparing, adopting, or amending this Amendment, including but not limited to the costs of the City Attorney's Office. The fee shall be charged and collected in accordance with the
procedures set forth in Section 56.20 of the Administrative Code and the requirements of state law, including Government Code Section 66005. The Amendment Fee shall be paid within thirty (30) days following City’s providing Developer with written notice of the amount of such fee, and no sooner than the Effective Date.


(a) Entire Agreement; Nonwaiver. Except as expressly modified herein, the terms, covenants and conditions of the Development Agreement shall remain in full force and effect. This Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not constitute a waiver of relinquishment of any rights which the City may have relating to the Development Agreement.

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

(c) Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Amendment and its terms and provisions have been reviewed and revised by legal counsel for both City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Amendment. Language in this Amendment shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Amendment are for convenience only and shall not be considered or referred to in resolving questions of construction.

(d) No Joint Venture or Partnership. Nothing contained in this Amendment, or in any document executed in connection with this Amendment, shall be construed as creating a joint venture or partnership between City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by the Developer hereunder.

(e) Recordation. Pursuant to Section 65868.5 of the Development Agreement Statute and Section 56.16 of the San Francisco Administrative Code as of the Effective Date, the Clerk of the Board shall have a copy of this Amendment recorded with the County Recorder within ten (10) days after execution, with costs to be borne by Developer.

(f) Obligations Not Dischargeable in Bankruptcy. Developer’s obligations under this Amendment are not dischargeable in bankruptcy.

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

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

(i) Severability. If any term, provision, covenant, or condition of this Amendment is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Amendment shall continue in full force and effect unless enforcement of the remaining portions of this Amendment would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Amendment.

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

CITY

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

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

By: By:

John Rahaim
Director of Planning

Deputy City Attorney

Approved on __________, 20__
Board of Supervisors Ordinance No. __________

DEVELOPER

1169 Market Street, LP, a California limited partnership

By: 1169 Market Street, LLC,
    General Partner of 1169 Market Street, LP

Angelo Sangiacomo, Manager

This signature(s) must be acknowledged by a notary public before recordation; add Notary Public Certification and Official Notarial Seal Below.
ACKNOWLEDGEMENT

STATE OF CALIFORNIA, )
County of_______________. ) ss.

On ______________, 2009, before me, a Notary Public in and for the State of California, personally appeared ____________________________, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he or she executed the within instrument in his or her authorized capacity and that, by his or her signature on the within instrument, the person or entity upon behalf of which he or she acted executed the within instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature________________________
(Seal)

STATE OF CALIFORNIA, )
County of_______________. ) ss.

On ______________, 2009, before me, a Notary Public in and for the State of California, personally appeared ____________________________, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he or she executed the within instrument in his or her authorized capacity and that, by his or her
signature on the within instrument, the person or entity upon behalf of which he or she acted executed the within instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature __________________________
(Seal)

Exhibit A

(Description of Property)
SAN FRANCISCO
PLANNING DEPARTMENT

SAN FRANCISCO
PLANNING COMMISSION
RESOLUTION NO. 17851


1. WHEREAS, California Government Code Section 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within the jurisdiction of the city, county, or city and county.

2. WHEREAS, Chapter 56 of the San Francisco Administrative Code sets forth the procedure by which any request for a development agreement will be processed and approved in the City and County of San Francisco.

3. WHEREAS, 1169 Market Street, LP ("Developer") owns the real property located in the City and County of San Francisco, California located at 1167 Market Street (Assessor’s Block 3702, Lots 039, 051, 052, and 53, and a portion of the former Jessie Street between Seventh And Eight Streets) consisting of approximately 4.1 Acres and commonly known as Trinity Plaza (the "Project Site").

4. WHEREAS, On June 28, 2005, the Board of Supervisors adopted Resolution No. 507-05 (the "Trinity Plaza Resolution"), which created policy of the Board of Supervisors that any development agreement presented to the Board for approval concerning the Project Site should contain specified unit affordability, tenant protection provisions, and required project amenities.

5. WHEREAS, on July 7, 2006, the Developer filed an application with the Planning Department ("Department") for approval of a development agreement pursuant to Administrative Code Chapter 56. Between 2003 and 2006, the Developer also filed various applications with the Department to (a) amend the City’s Planning Code to create the Trinity Plaza Special Use District, (b) amend the City’s General Plan to change applicable height and bulk classifications, (c) amend applicable zoning maps, (d) obtain conditional use authorization under Planning Code section 303, (e) obtain C-3 district review, including exceptions, under Planning Code section 309, in order to have the right to demolish an existing apartment building at the Project Site and replace it with a mixed
use project containing residential units, commercial space, open space, and parking, and (f) determine the Project's shadow impacts under Section 295 of the Planning Code.

6. WHEREAS, the Developer proposes to demolish all existing improvements on the Project Site and to develop on the Project Site a mixed-use residential and commercial development with accessory parking, loading, and open space (collectively, the "Project", Case No. 2002.1179). The Project also includes the replacement of 360 rent-controlled dwelling units and the provision of 15% of the dwelling units (excluding the rent-controlled replacement units) as below-market rate units.

7. WHEREAS, the Department analyzed the Project, including the Development Agreement and other actions related to the Project, in a Draft Environmental Impact Report published on February 4, 2006 ("DEIR"). On August 3, 2006, by Motion No. 17291, the Planning Commission ("Commission") made findings and certified the DEIR as a Final Environmental Impact Report ("FEIR") in compliance with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq., ("CEQA"), the State CEQA Guidelines (California Code of Regulations Title 14 Sections 15000 et seq.) and Chapter 31 of the San Francisco Administrative Code (Chapter 31), and these CEQA findings are applicable to this decision;

8. WHEREAS, on August 3, 2006, the Commission considered and approved the conditional use authorization, found that the Project complies with Planning Code Section 309 and granted certain exceptions, found that the shadow cast by the Project would not be adverse to public parks, and adopted resolutions recommending that the Board of Supervisors adopt associated changes to the Planning Code, zoning maps, and the General Plan. The Commission also adopted Resolution No. 17298 recommending that the Board of Supervisors approve the development agreement for the Project.

9. WHEREAS, on April 17, 2007, the Board of Supervisors considered and adopted changes to the Planning Code, zoning maps, and the General Plan necessary for implementation of the Project. In addition, the Board of Supervisors adopted Ordinance No. 92-07 approving the development agreement for the Project. Acting in accordance with the ordinance adopted by the Board of Supervisors, the Planning Department and the Developer subsequently executed the development agreement and recorded it in the Official Records of the City and County of San Francisco.

10. WHEREAS, on December 22, 2008, the Developer filed an application with the Planning Department for the first amendment to the development agreement ("Amendment") pursuant to Administrative Code Chapter 56. The Developer proposed changes that included the following: amend Section 1.2.20 to clarify a definition, amend Section 1.4 to add five (5) years to the base term of the development agreement, amend Section 3.3.2 regarding construction phasing for the Project, amend Section 4.2 to provide a clarification to the definition of "Existing Tenants", add Sections 4.3.1 and 4.3.2 to restate and designate the Below Market Rate Unit requirements and locations for Building A, amend Sections 4.5.1, 4.5.2 and 4.5.4 to modify the location and selection process for the replacement units, and add Section 6.12 to provide for a project-wide art component to satisfy the Planning Code Section 149 art requirements.
11. WHEREAS, the Director accepted the application for filing after it was deemed complete; published notice of acceptance in an official newspaper; and has made the application publicly available under Administrative Code Section 56.4(c).

12. WHEREAS, the Amendment proposes to amend Section 1.2.20 of the development agreement such that an elevation change to the buildings would not be deemed to be a material change to the Project. This specific change was voluntarily withdrawn by the Developer at the public hearing on March 26, 2009, and is not included in this resolution.

13. WHEREAS, the Amendment proposes to amend Section 3.3.2 of the development agreement to allow the podium/parking garage to be constructed in its entirety following the completion of phase one of the Project. The Commission recognizes the practicality of constructing the entire podium/parking garage simultaneously, and generally supports this change. However, the Commission will approve this request so long as the Amendment is modified to require that physical barriers be constructed and shifted in the garage throughout the development of the Project to release the amount of available parking as the various uses are developed and occupied in the ratio set forth in the development agreement.

14. WHEREAS, the Amendment proposed to add Sections 4.3.1 and 4.3.2 to the development agreement to identify twelve specific dwelling units on floors three through five to satisfy the Below-Market Rate ("BMR") housing requirements for Building A. Staff believes that the proposed change would concentrate these units on the less-desirable lower floors. This change would contradict the past practice of the Department to spread BMR units evenly throughout the lower one-half to two-thirds of the building, and to provide units in locations and configurations that are similar in quality and desirability to the mix of market-rate units in the Project. This Commission does not approve the specific BMR units proposed by the Developer, but will approve these new Sections so long as the Amendment is modified to identify a mix of BMR units that is consistent with the past practice of the Department.

15. WHEREAS, the Planning Commission authorizes staff from the City Attorney's office, in collaboration with the Developer, to modify the Amendment to make revisions to the Amendment consistent with this resolution as well as to make certain additional changes to the Amendment that, in the City Attorney's opinion, are in the best interests of the City, including the addition of representations and warranties and other standardized language that was in the original development agreement.

16. WHEREAS, the Planning Commission hereby finds, for the reasons set forth in Resolution No. 17293, that the Amendment, as modified herein, and related approval actions are, on balance, consistent with the General Plan including any area plans, and are consistent with the Planning Code Priority Policies of Planning Code Section 101.1(b).

17. WHEREAS, the Department is accounting for all costs of reviewing, revising and negotiating the Amendment and preparing all necessary materials for the associated public hearing. The Director recommends that the Developer be required to pay to the
City all of the City’s costs relating to the Amendment, including all staff time for the Planning Department and the City Attorneys’ Office.

18. WHEREAS, the Director has scheduled and the Commission has held a public hearing on March 26, 2009, as required by Administrative Code Section 56.4(c). The Planning Department gave notice as required by Planning Code Section 306.3 and mailed such notice on February 26, 2009, which is at least 10 days before the hearing to local public agencies as required by Administrative Code Section 56.8(b).

19. WHEREAS, the Planning Department file on this matter was available for public review at least 20 days before the first public hearing on the development agreement as required by Administrative Code Section 56.10(b). The file continues to be available for review at the Planning Department at 1650 Mission Street, San Francisco.

NOW THEREFORE BE IT RESOLVED that the Commission hereby approves the Amendment to the development agreement, in substantially the form attached hereto as Exhibit A, with the modifications as described above, including the proposed change to Section 3.3.2 to release a phased quantity of parking within the constructed parking garage (“Parking Garage Buildout”), the deletion of the proposed change to Section 1.2.20 (“Material Change”), the change to the new Sections 4.3.1 and 4.3.2 (“BMR Units”) to identify specific BMR units that are spread throughout floors 3 through 12 in locations and configurations that are similar in quality and desirability to the mix of market-rate units, and the addition of language inserted by the City Attorney’s Office, subject to the subsequent approval by the Board of Supervisors; and, be it

FURTHER RESOLVED, that the Planning Commission recommends approval of the Amendment to the Board of Supervisors, with the modifications described above; and, be it

FURTHER RESOLVED, that on or before the date the Amendment becomes effective, and pursuant to Administrative Code Section 56.20(b), the Developer shall pay the City an amount equal to all of the City’s costs in preparing and negotiating the Amendment, including all staff time for the Planning Department and the City Attorneys’ Office, as invoiced by the Planning Director.

FURTHER RESOLVED, the Project as proposed to be amended is consistent with the Project analyzed in the Final EIR.

FURTHER RESOLVED, the Commission finds that no substantial changes have occurred in the Project proposed for approval that will require revisions in the FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects, no substantial changes have occurred with respect to the circumstances under which the Project proposed for approval are undertaken which will require major revisions to the FEIR due to the involvement of new environmental effects or a substantial increase in the severity of effects identified in the FEIR and no new information of substantial importance to the Project as proposed has become available which indicates that (1) the Project will have significant effects not discussed in the FEIR, (2) significant environmental effects will be substantially more severe, (3) mitigation measure or alternatives found not feasible which would reduce one or more significant effects have become feasible or (4) mitigation measures or
alternatives which are considerably different from those in the FEIR would substantially reduce one or more significant effects on the environment.

FURTHER RESOLVED, In Motion No. 17291 the Planning Commission adopted findings pursuant to the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.), in connection with this Project and the Board affirmed those findings in Ordinance No. 91-07. Those findings are incorporated by reference herein.

I hereby certify that the foregoing Resolution was ADOPTED by the Planning Commission on March 26, 2009.

Linda D. Avery
Commission Secretary

AYES: Miguel, Borden, Lee, Moore, O Hague, Sugaya
NAYS: Antonini
ABSENT:
ADOPTED: March 26, 2009

Exhibits:

A. Draft Development Agreement Amendment, as proposed by the Developer and modified by the Planning Commission
June 4, 2009

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

Re: Transmittal of Planning Department Case Number 2009.0109W:
Trinity Plaza Development Agreement Amendment

PLANNING COMMISSION Recommendation: Approval with Modifications

Dear Ms. Calvillo,

On March 26th, the Planning Commission conducted duly a noticed public hearing to consider the proposed Development Agreement Amendment.

The Development Agreement Amendment, proposed by the Developer of the Trinity Plaza project, would change the existing Development Agreement by:

1. Amending Section 1.4 to add five (5) years to the base term of the Development Agreement;
2. Amending 3.3.2 regarding construction phasing for the project, allowing the podium/parking garage to be constructed in its entirety following the completion of phase one;
3. Amending Section 4.2 to redefine an "Existing Tenant" with a right to occupy a rent-controlled replacement unit in the new Building A. This change would require that such a tenant occupy a unit in the existing Trinity Plaza Apartments prior to temporary certificate of occupancy ("TCO"), rather than the final certificate of occupancy;
4. Adding Sections 4.3.1 and 4.3.2 to identify twelve specific dwelling units on floors three through five to satisfy the Below-Market Rate ("BMR") housing requirements for Building A;
5. Amending Sections 4.5.1, 4.5.2, and 4.5.4 to establish a system to allocate specific rent-controlled replacement units to existing tenants, based on seniority and the size of the existing occupied unit; and,
6. Adding Section 6.12 to allow the public art requirements of the project to be satisfied through the preparation of a comprehensive, project-wide artworks program.

The Development Agreement Amendment proposes no substantial changes that will require revisions to the Final Environmental Impact Report adopted for the Trinity Plaza development project, certified by the Planning Commission on August 3, 2006.

At the March 26th hearing, the Planning Commission voted to recommend approval of the proposed Development Agreement Amendment with the following modifications:

www.sfplanning.org
1. The amendment proposed to modify Section 1.2.20 such that a change to the architectural character of the building elevations would not be deemed to be a material change to the Project requiring further review by the Planning Commission. This specific revision was voluntarily withdrawn by the Developer at the public hearing on March 26, 2009.

2. The amendment to Section 3.3.2 was modified so that physical barriers will be constructed and shifted in the garage throughout the development of the project to release the amount of available parking in the ratio set forth in the Development Agreement.

3. The newly-added Sections 4.3.1 and 4.3.2 were modified so that the BMR units would be spread evenly throughout the lower one-half to two-thirds of the building, in locations and configurations that are similar in quality and desirability to the mix of market-rate units in the project.

4. The Planning Commission authorized staff from the City Attorney’s office, in collaboration with the developer, to make certain additional changes such as the addition of representations and warranties, and other standardized language that was in the original development agreement.

Please find attached documents relating to the Commission’s action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

[Signature]

John Rahaim
Director of Planning

Attachments (one copy of the following):
- Planning Commission Resolution No. 17851 (including Development Agreement Amendment, as modified by the Planning Commission)
- Draft Ordinance to Approve Development Agreement Amendment
- Planning Department Executive Summary
Executive Summary
Development Agreement Amendment
HEARING DATE: MARCH 26, 2009

Date: March 20, 2009
Case No.: 2009.0109W
Project Address: 1167 MARKET STREET
Zoning: C-3-G District (Downtown General Commercial)
120-X/150-S/240-S Height and Bulk Districts
Trinity Plaza Special Use District (SUD)
Block/Lot: 3702/039, 051-053, and a portion of the former Jessie Street
Project Sponsor: Tuja Catalano
Reuben & Junius
One Bush Street, Suite 600
San Francisco, CA 94104
Staff Contact: Kevin Guy – (415) 558-6163
kevin.guy@sfgov.org
Recommendation: Approval with Modifications

BACKGROUND
In 2006, 1169 Market Street, L.P. ("Project Sponsor") received the necessary approvals from the Planning Commission and the Board of Supervisors for the development of a large mixed-use project known as "Trinity Plaza", on a 4.1 acre site located at the southeast corner of Market and Eighth Streets. The project includes the demolition of the existing apartment building and surface parking lot on the site, and the construction of three buildings containing approximately 1,900 dwelling units, 2.1 acres of usable open space, 60,000 square feet of commercial uses, up to 1,200 residential parking spaces, and up to 225 commercial parking spaces. The first building in the development, which is currently under construction, includes 360 rent-controlled replacement units that will be offered to the tenants of the existing apartment building on the site. In addition, the inclusionsary housing requirements will be satisfied by providing 15% of the units (excluding the rent-controlled replacement units) as below-market rate units.

On June 15, 2007, the City and County of San Francisco entered into a Development Agreement with the Project Sponsor regarding the Trinity Plaza project. The Agreement details the terms and respective obligations of both parties with regards to the development of the project.

DESCRIPTION OF PROPOSED AMENDMENT
On December 22, 2008, the Project Sponsor submitted an application for proposed changes to the terms of the Development Agreement, (collectively, "Amendment") in several areas. These proposed changes, and the staff position on each change, are discussed below.
1. **Elevation Change (§1.2.20).** The Amendment adds a sentence stating that, "An elevation change to the Project buildings shall not be deemed to be a Material Change." The Project Sponsor has clarified to staff that this statement is intended to allow flexibility in the final architectural character of the buildings, and that the word "elevation" in this context does not refer to the heights of the buildings.

   **Staff Position.** Staff does not support the proposed change. It is standard practice for the Department to allow for minor refinements to the design of a project as it was approved by the Planning Commission, while the project moves through the building permit stage. Changes which are considered outside of an acceptable range of variation are subject to Planning Commission review and approval. Staff believes that the proposed change would create excessive latitude for alterations to the architectural character of the project.

   **Proposed Modification.** Do not add the proposed sentence, and maintain Section 1.2.20 as it reads in the existing Development Agreement.

2. **Term (§1.4).** The Amendment proposes that the base term of the Development Agreement be extended from 15 to 20 years.

   **Staff Position.** Staff supports this change. The existing Development Agreement offers a mechanism for the developer to request a five-year extension at the end of the 15-year term. However, the Amendment would automatically extend the base term to allow added time for the project to develop in the event of extenuating circumstances, such as a poor economic climate.

3. **Parking Garage Buildout (§3.3.2).** The Amendment proposes to allow the podium/parking garage to be constructed in its entirety following the completion of phase one of the project. This change eliminates requirements for phased construction of the parking structure that were intended to avoid the disproportionate delivery of excessive parking prior to the complete build-out of the project.

   **Staff Position.** Staff supports this change. While there are concerns about excessive parking, staff recognizes the practicality of constructing the entire podium/parking garage simultaneously.

4. **Definition of "Existing Tenant" (§4.2).** The Amendment proposes to redefine an "Existing Tenant" with a right to occupy a rent-controlled replacement unit in the new Building A. The change would require that such a tenant occupy a unit in the existing Trinity Plaza Apartments prior to temporary certificate of occupancy ("TCO"), rather than final certificate of occupancy.

   **Staff Position.** Staff has no position on this change.

5. **Identification of BMR Units (§4.3.1 and 4.3.2).** The Amendment adds a new section that proposes to identify twelve specific dwelling units on floors three through five to satisfy the Below-Market Rate ("BMR") housing requirements for Building A.

   **Staff Position.** Staff does not support this change. The Planning Department has consistently required that, for projects that provide on-site BMR units, the units must be spread evenly throughout the lower one-half to two-thirds of the building. In addition, the units must be in...
locations and configurations that are similar in quality and desirability to the mix of market-rate units in the project.

The proposed change would concentrate these units on the lower floors. The Project Sponsor contends that the Trinity Plaza project is exceptional, providing permanently affordable housing in the form of the 360 rent-controlled units that will be offered to the tenants of the existing apartment building. While recognizing this unique benefit of the project, staff disagrees that the BMR units should be clustered on the lower floors. The Planning Department has consulted with the Mayor's Office of Housing, who agrees that the units should be evenly distributed through the lower portion of the building, consistent with past practice.

Proposed Staff Modification. Do not add the proposed sections, and maintain the provisions of the existing Development Agreement with regard to the BMR units.

If the Amendment is approved as proposed by the Project Sponsor, staff recommends that the Commission include the attached set of reduced floor plans as an exhibit to the resolution. These reduced floor plans identify the specific physical locations of the BMR units proposed by the Amendment, and they include a table to synchronize the unit numbers in the Amendment with those identified on the cover sheet of the building plans.

Process for Tenant Relocations (§4.5.1, 4.5.2, and 4.5.4). The Amendment proposes a system to allocate specific Replacement Units to Existing Tenants based on seniority and the size of the existing occupied unit. The Amendment also proposes changes to the timelines for notification to, and selection of a Replacement Unit by, the Existing Tenant.

Staff Position. Staff has no position on this change.

6. Project-wide Art (§6.12). The Amendment proposes that the Public Art requirements of the project be satisfied through the preparation of a comprehensive, Project-wide artworks program, rather than providing individual art pieces as each phase of the project is completed. The Amendment also proposes that each art piece be installed and completed prior to the issuance of a TCO for the subsequent development phase. The art piece for the final phase would be installed within six months of the issuance of the TCO for that phase.

Staff Position. Staff supports the comprehensive approach to planning the public art component of the Trinity Plaza development. In order to provide target locations for the art pieces, and to avoid accidental damage to the art due to nearby construction, it is desirable for portions of the project and the associated open space to be completed prior to installation of any art.

SITE DESCRIPTION AND PRESENT USE

The subject property is bounded on the north by Market Street, on the west by 8th Street, and on the south by Mission Street, Block 3702, Lots 039 and 051-053, and a portion of the former Jessie Street between Seventh and Eight Streets. The subject property is located within the C-3-G (Downtown General Commercial), the 120-X, 150-S, and 240-S Height and Bulk Districts, and the Trinity Plaza Special Use
District. The property measures approximately 4.1 acres, and is currently occupied by a four- to seven-story apartment building containing a total of 377 units (including 360 rent-controlled units), a 12,500-square-foot restaurant, and a surface parking lot. “Building A” of the previously-approved Trinity Plaza project is currently under construction at the southeasterly portion of the project site.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The Project Site is situated along the Market Street corridor and is surrounded by dense urban development with a variety of uses. Hotels, office buildings, financial services, retail, and restaurant uses are situated along Market Street. Multiple civic and performing arts buildings are located within the Civic Center to the northwest. The Western SOMA area lies to the south, generally containing lower-scaled development containing light industrial, social service, nighttime entertainment, and retail establishments, punctuated by scattered enclaves of residential uses.

ENVIRONMENTAL REVIEW

The Department analyzed the project, including the Development Agreement and other actions related to the Project, in an Environmental Impact Report published on February 4, 2006. On August 3, 2006, by Motion No. 17291, the Planning Commission made findings and certified the DEIR as a Final Environmental Impact Report, and these CEQA findings are applicable to this decision.

HEARING NOTIFICATION

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PUBLIC COMMENT

As of the publication of this report, the Department has received two communications from the public regarding the proposed Amendment. Neither individual expressed opposition to the amendment, although one of the communications stated a concern that the installation of the street trees and other street improvements could be delayed by the requested extension to the term of the Development Agreement.

REQUIRED COMMISSION ACTION

Pursuant to Administrative Code Section 56.13, the Commission may approve, disapprove, or modify the proposed Amendment. Should the Commission recommend approval or modification of the Amendment, the recommendation will be forwarded to the Board of Supervisors for a final decision. Should the Commission disapprove the amendment, this disapproval is considered final unless the Project Sponsor appeals the item to the Board of Supervisors within ten days following the decision.
Planning Department staff recommends approval of the proposed Amendment with the modifications discussed under "Description of Proposed Changes" above. Please note that staff has prepared a resolution to approve the Amendment with these modifications.

BASIS FOR RECOMMENDATION

- The Amendment, as modified by staff, would implement practical changes to the Development Agreement to facilitate development of a project that provides substantial housing opportunities (including new rent-controlled units and on-site BMR units), open space, and new retail uses.
- It should be noted that, while staff supports the Amendment with the indicated modifications, staff would also be supportive of retaining the existing Development Agreement in its current form.

RECOMMENDATION: Approval with Modifications

Attachments:
Draft Resolution to Approve Amendment, with Modifications
Amendment Application Proposed by Sponsor
  - Includes existing Development Agreement
Correspondence from Project Sponsor, dated March 11, 2009
Block Book Map
Sanborn Map
Aerial Photograph
Zoning District Map
Correspondence from the Public
Reduced Floor Plans: Below-Market Rate Unit Locations
Executive Summary
Hearing Date: March 26, 2009

Attachment Checklist

☒ Executive Summary
☒ Draft Resolution
☐ Environmental Determination
☒ Zoning District Map
☐ Height & Bulk Map
☒ Parcel Map
☒ Sanborn Map
☒ Aerial Photo
☐ Context Photos
☐ Site Photos

Exhibits above marked with an “X” are included in this packet

Planner’s Initials

CASE NO. 2009.0109W
Trinity Plaza
Development Agreement Amendment

1. WHEREAS, California Government Code Section 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within the jurisdiction of the city, county, or city and county.

2. WHEREAS, Chapter 56 of the San Francisco Administrative Code sets forth the procedure by which any request for a development agreement will be processed and approved in the City and County of San Francisco.

3. WHEREAS, 1169 Market Street, LP ("Developer") owns the real property located in the City and County of San Francisco, California located At 1167 Market Street (Assessor's Block 3702, Lots 039, 051, 052, And 53, and a portion of the former Jessie Street between Seventh And Eight Streets) altogether consisting of approximately 4.1 Acres and commonly known as Trinity Plaza (the "Project Site").

4. WHEREAS, On June 28, 2005, the Board of Supervisors adopted Resolution No. 507-05 (the "Trinity Plaza Resolution"), which created policy of the Board of Supervisors that any development agreement presented to the Board for approval concerning the Project Site should contain specified unit affordability, tenant protection provisions, and required project amenities.

5. WHEREAS, on July 7, 2006, the Developer filed an application with the Planning Department ("Department") for approval of a development agreement pursuant to Administrative Code Chapter 56. Between 2003 and 2006, the Developer also filed various applications with the Department to (a) amend the City's Planning Code to create the Trinity Plaza Special Use District, (b) amend the City's General Plan to change applicable height and bulk classifications, (c) amend applicable zoning maps, (d) obtain conditional use authorization under Planning Code section 303, (e) obtain C-3 district review, including exceptions, under Planning Code section 309, in order to have the right to demolish an existing apartment building at the Project Site and replace it with a mixed...
use project containing residential units, commercial space, open space, and parking, and
(f) determine the Project's shadow impacts under Section 295 of the Planning Code.

6. WHEREAS, the Developer proposes to demolish all existing improvements on the Project Site and to develop on the Project Site a mixed-use residential and commercial development with accessory parking, loading, and open space (collectively, the "Project", Case No. 2002.1179). The Project also includes the replacement of 360 rent-controlled dwelling units and the provision of 15% of the dwelling units (excluding the rent-controlled replacement units) as below-market rate units.

7. WHEREAS, the Department analyzed the Project, including the Development Agreement and other actions related to the Project, in an Environmental Impact Report published on February 4, 2006 ("DEIR"). On August 3, 2006, by Motion No. 17291, the Planning Commission ("Commission") made findings and certified the DEIR as a Final Environmental Impact Report ("FEIR") in compliance with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq., ("CEQA"), the State CEQA Guidelines (California Code of Regulations Title 14 Sections 15000 et seq.) and Chapter 31 of the San Francisco Administrative Code (Chapter 31), and these CEQA findings are applicable to this decision;

8. WHEREAS, on August 3, 2006, the Commission considered and approved the conditional use authorization, found that the project complies with Planning Code Section 309 and granted certain exceptions, found that the shadow cast by the project would not be adverse to public parks, and adopted resolutions recommending that the Board of Supervisors adopt associated changes to the Planning Code, zoning maps, and the General Plan. The Commission also adopted Resolution No. 17298 recommending that the Board of Supervisors approve the development agreement for the Project.

9. WHEREAS, on April 17, 2007, the Board of Supervisors considered and adopted changes to the Planning Code, zoning maps, and the General Plan necessary for implementation of the Project. In addition, the Board of Supervisors adopted Ordinance No. 92-07 approving the development agreement for the Project. Acting on behalf of the City and County of San Francisco, in accordance with the ordinance adopted by the Board of Supervisors, Dean Macris of the Planning Department subsequently entered into the development with the Developer.

10. WHEREAS, on December 22, 2008, the Developer filed an application with the Planning Department for the first amendment to the development agreement ("Amendment") pursuant to Administrative Code Chapter 56. The Amendment proposes to amend development agreement Section 1.2.20 to clarify a definition, amend Section 1.4 to add five (5) years to the base term of the development agreement, amend Section 3.3.2 regarding construction phasing for the project, amend Section 4.2 to provide a clarification to the definition of "Existing Tenants", add Sections 4.3.1 and 4.3.2 to restate and designate the Below Market Rate Unit requirements and locations for Building A, amend Sections 4.5.1, 4.5.2 and 4.5.4 to modify the location and selection process for the replacement units, and add Section 6.12 to provide for the application of Planning Code Section 149 art requirements to Trinity Plaza.
11. WHEREAS, The Director accepted the application for filing after it was deemed complete; published notice of acceptance in an official newspaper; and has made the application publicly available under Administrative Code Section 56.4(c).

12. WHEREAS, the Amendment proposes to amend Section 1.2.20 of the development agreement such that an elevation change to the buildings would not be deemed to be a "Material Change" to the Project. Staff believes that the proposed change would create excessive latitude for alterations to the architectural character of the Project. This specific change is not included in this resolution approving the Amendment.

13. WHEREAS, the Amendment proposed to add Sections 4.3.1 and 4.3.2 to the development agreement to identify twelve specific dwelling units on floors three through five to satisfy the Below-Market Rate ("BMR") housing requirements for Building A. Staff believes that the proposed change would concentrate these units on the less-desirable lower floors. This change would contradict the past practice of the Department to spread BMR units evenly throughout the lower one-half to two-thirds of the building, and to provide units in locations and configurations that are similar in quality and desirability to the mix of market-rate units in the project. This specific change is not included in this resolution approving the Amendment.

14. WHEREAS, The Planning Commission hereby finds, for the reasons set forth in Resolution No. 17293, that the Development Agreement Amendment, as modified herein, and related approval actions are, on balance, consistent with the General Plan including any area plans, and are consistent with the Planning Code Priority Policies of Planning Code Section 101.1(b)

15. WHEREAS, The Department is accounting for all costs of reviewing the Development Agreement Amendment and preparing all necessary materials for the associated public hearing. The Director recommends that the Developer be required to pay to the City all of the City's costs in preparing and negotiating the Development Agreement Amendment, including all staff time for the Planning Department and the City Attorneys' Office.

16. WHEREAS, The Director has scheduled and the Commission has held a public hearing on March 26, 2009, as required by Administrative Code Section 56.4(c). The Planning Department gave notice as required by Planning Code Section 306.3 and mailed such notice on February 26, 2009, which is at least 10 days before the hearing to local public agencies as required by Administrative Code Section 56.8(b).

17. WHEREAS, The Planning Department file on this matter was available for public review at least 20 days before the first public hearing on the development agreement as required by Administrative Code Section 56.10(b). The file continues to be available for review at the Planning Department at 1650 Mission Street, San Francisco.

NOW THEREFORE BE IT RESOLVED that the Commission hereby approves the First Amendment to the Development Agreement, in substantially the form attached hereto as Exhibit
A, with the deletion of the proposed change to Section 1.2.20 ("Material Change") and the proposed addition of Sections 4.3.1 and 4.3.2 ("BMR Units"); and, be it

FURTHER RESOLVED, that the Planning Commission recommends approval of the Development Agreement Amendment to the Board of Supervisors, with the deletion of the proposed change to Section 1.2.20 ("Material Change") and the proposed addition of Sections 4.3.1 and 4.3.2 ("BMR Units"); and, be it

FURTHER RESOLVED, that on or before the date the Development Agreement Amendment becomes effective, and pursuant to Administrative Code Section 56.20(b), the Developer shall pay the City an amount equal to all of the City's costs in preparing and negotiating the Development Agreement, including all staff time for the Planning Department and the City Attorneys' Office, as invoiced by the Planning Director.

I hereby certify that the foregoing Resolution was ADOPTED by the Planning Commission on March 26, 2009.

Linda D. Avery
Commission Secretary

AYES:
NAYS:
ABSENT:
ADOPTED: March 26, 2009

Exhibits:

A. Draft Development Agreement Amendment, as proposed by the Developer
December 22, 2008

VIA MESSENGER AND EMAIL

Mr. John Rahaim
Planning Director
San Francisco Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Re: Development Agreement Amendment Application
Trinity Plaza Development Project at 1177 Market Street
(S.F. Admin. Code §56.15)
Our File No.: 3882.03

Dear Mr. Rahaim,

Please accept this letter as an official application to the Planning Department pursuant to Administrative Code §§56.15 and 56.4 on behalf of our client 1169 Market Street, L.P., to request for the amendment of a Development Agreement between the City and County of San Francisco (“City”) and 1169 Market Street, L.P. (“Developer”) relative to the development known as the Trinity Plaza development project¹, dated June 15, 2007 (“Development Agreement”). The Development Agreement was entered into by Mr. Dean Macris on behalf of the City in accordance with Board of Supervisors’ approval of Ordinance No. 92-07 (File No. 061217) on April 17, 2007.

Amendment Request

The process for proposing and adopting an amendment to a development agreement is the same as the process for entering into the original development agreement. (S.F. Admin. Code §56.15(c).) The amendment requested herewith constitutes a material modification of the Development Agreement pursuant to Administrative Code §56.3(h)(1), change to the duration of the agreement; and thus requires a hearing before the Planning Commission and the Board of Supervisors. The development authorized by the Development Agreement was commenced in November 2007, and is currently in progress with the construction of Phase 1.

¹ The property subject to the Development Agreement and this amendment request is real property at 1167 Market Street (Block 3702, Lot 051), 693 Stevenson Street (Block 3702, Lot 052), 1164 Mission Street (Block 3702, Lot 039), and a portion of former Jessie Street between Seventh and Eighth Streets, on Assessor’s Block 3702 (“Project Site”).

One Bush Street, Suite 600 San Francisco, CA 94104
(415) 561-1188 F (415) 561-1199 W www.reubenlaw.com
The amendments requested by this application provide for the following:

- Addition of five (5) years to the Agreement’s base term (Dev. Agmt. § 1.4);
- Correction of the “Existing Tenant” definition to reference temporary certificate of occupancy instead of final certificate of occupancy (Dev. Agmt. § 4.2);
- Identification and designation of the on-site below-market-rate units for Building “A” (Dev. Agmt. §§ 4.3.1, 4.3.2);
- Broader identification of the Replacement Unit locations and provision of a more detailed and efficient process for the selection of the Replacement Units by the Existing Tenants (Dev. Agmt. §§ 4.5.1, 4.5.2, 4.5.4);
- Implementation of a comprehensive and consistent project-wide artworks program under Planning Code Section 149 (Dev. Agmt. § 6.12); and
- Modifications to address the pending phased construction of the development project on a practical and feasible level (Dev. Agmt. §§ 1.2.20, 3.3.2).

**Anticipated Public Benefits That Would Exceed Those Required by Existing Ordinances and Regulations**

Administrative Code § 56.4 requires a development agreement application, or an amendment thereof, to list the anticipated public benefits that exceed those required by existing ordinances and regulations. As a result of the development of the Project Site in accordance with the Development Agreement and the proposed amendments thereto, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations and policies. The proposed amendment of the Development Agreement further facilitates the provision of these public benefits, including, without limitation:

- One-for-one replacement of the 360 rent-controlled dwelling units currently existing on the Project Site with new units that are comparable in amenities, style, function and design (“Replacement Units”);
- The waiver by the Developer of its rights under the Costa-Hawkins Rental Housing act as it applies to the Replacement Units;
- On-site provision of affordable housing dwelling units, not including the Replacement Units;
- Relocation by the Developer of all Existing Tenants from their existing units to the Replacement Units; availability of lifetime leases to each existing tenant that elects to occupy a Replacement Unit;
- Redevelopment of an over four-acre, underdeveloped parcel; and
- On-site provision of approximately 21,000 sq. ft. of public open space, including a pedestrian walkway through the Project Site, continuing along the line of Stevenson Street.
Completion of the Application

With the filing of this application for the amendment of the Development Agreement, pursuant to the process prescribed in the Administrative Code, the Director should (1) accept the application for filing, (2) publish notice in the official newspaper of acceptance of said application, (3) make the application publicly available, and (4) schedule a public hearing before the Commission within 30 days following receipt of a completed application. (S.F. Admin. Code §56.4(c).)

No application fee check has been enclosed; the Administrative Code provides that at the public hearing on the development agreement amendment application, the Planning Director will make a recommendation with respect to the fee to be paid by the applicant for this application. (S.F. Admin. Code §56.4(c), citing §56.20(b).)

Please let us know if you have any questions or need anything additional. We appreciate your attention to this matter.

Very truly yours,

REUBEN & JUNIUS, LLP

[Signature]

Tuija I. Catalano

Enclosures:
Exhibit A – (Draft) First Amendment of the Development Agreement
Exhibit B – Recorded copy of the Development Agreement

cc: Dean Macris, Planning Dept. (via email; w/encls.)
    Larry Badiner, Planning Dept. (via email; w/encls.)
    Craig Nikitas, Planning Dept. (via email; w/encls.)
    Kevin Guy, Planning Dept. (via email; w/encls.)
    Charles Sullivan, City Attorney’s Office (via email; w/encls.)
    Walter Schmidt, Trinity Properties, Inc. (via email; w/encls.)
    Jim Reuben, Esq.
RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

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

AND WHEN RECORDED MAIL TO:

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

FIRST AMENDMENT TO THE
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND
1169 MARKET STREET, LP
RELATING TO THE DEVELOPMENT KNOWN AS
THE TRINITY PLAZA DEVELOPMENT PROJECT
March 11, 2009

VIA MESSENGER

Mr. Ron Miguel, President
San Francisco Planning Commission
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Re: Trinity Plaza (Block 3702, Lots 039, and 051 through 053)
Planning Department Case No. 2009.0109W
Development Agreement Amendment
Hearing Date: March 19, 2009
Our File No.: 3882.03

Dear President Miguel and Commissioners:

Our office represents Trinity Properties, Inc. ("Developer") the owner of real property located at 1167 Market Street (Assessor’s Block 3702, Lot 053), 670 Stevenson Street (Assessor’s Block 3702, Lot 051), 693 Stevenson Street (Assessor’s Block 3702, Lot 052), 1164 Mission Street (Assessor’s Block 3702, Lot 039), and a portion of former Jessie Street between Seventh and Eighth Streets, altogether consisting of approximately 177,295 square feet (4.07 acres) and commonly known as Trinity Plaza ("Project Site").

We respectfully request that the Commission adopt a resolution recommending to the Board of Supervisors approval of an Amendment to the Trinity Plaza Development Agreement as proposed by the Developer (see proposed First Amendment to the Development Agreement attached as Exhibit A to the Developer’s December 22, 2008 application provided separately in your packets). This amendment request has already been negotiated and vetted with Supervisor Chris Daly’s office, the Existing Tenants, and Randy Shaw, the attorney for the tenants. Angelo Sangiacomo, the Developer, has done all the things he said he would do, and has proved the doubters wrong. He has earned the good will that should result in perfunctory approval of the requested relatively minor amendments.

A. Background – Largest Residential Project Since 1940’s

The Trinity Plaza project is the largest residential project in San Francisco since the 1940’s. The Trinity Plaza project is an extensive multi-phase project containing up to 1,900 residential units, including 360 rent-controlled units and 15% on-site BMR units, approx. 60,000 sf of ground-level retail area, and approx.
1,425 off-street parking spaces within three new buildings ranging from 18 stories to 26 stories in height, as well as extensive open space areas and amenities on a 4.07-acre centrally located parcel fronting Market, Mission and Eighth Streets.

Phase I of the Trinity Plaza project was commenced in November 2007, and is currently fully under construction despite the current economic crisis. Phase I includes construction of Building “A” with 440 residential units, including 360 Rent-Controlled units and 12 BMR units, within a 24-story building facing Mission Street. The on-going construction provides a considerable contribution to the City’s economic activity with the employment of a large number of on-site construction workers. The past, current and anticipated future on-site construction job employment averages are as follows:

- Since Oct. 2008, average of 90 people/day, with average peak of 120/day.
- Since start of 2009, average of 128 people/day, with average peak of 142/day.
- By June 2009, average per day anticipated at 200 people until November 2009.

Photographs of the pending construction activities for Phase I are attached in Exhibit A.

Phase II of the project includes construction of Building “B” with 545 units and approximately 30,000 sf ground floor commercial use. The economic activity contribution and construction job employment from Phase II is much greater than that produced by Phase I, and is anticipated to result in an on-site construction employment of approximately 171 people per day with a peak of 320 people per day for a period of 3 years. The timing of the commencement of Phase II is dependent on this development agreement amendment, and we request that the Commission forward the amendment request to the Board with an approval recommendation in order to avoid any delays to the start of Phase II.

In addition to the above-referenced construction employment, the project also has provided and continues to provide significant employment for the project’s architects, engineers, and consultants, as well as for the in-shop/factory labor for the production of the construction materials and for transportation of the materials to the project site.

B. Development Agreement – First For Planning Department

The Trinity Plaza project is the first project within the Planning Department’s jurisdiction for which a development agreement between a developer and the City was executed. All prior similar private agreements with the City involved properties and projects within Redevelopment Agency’s jurisdiction. After Planning Commission approval on August 3, 2006 (Resolution 17298), and Board of Supervisor’s (“BOS”) approval on April 17, 2007 (Ordinance 92-07), the City and the Developer executed a development agreement on or about July 17, 2007 (“Development Agreement” or “DA”).

The original Development Agreement covers 35 pages of relevant requirements, obligations, rights and processes for the construction of the Trinity Plaza project. Although the Development Agreement was created with input from all concerned parties,
it was nearly impossible to capture all procedural and construction-specific details at such an early stage. After commencement of Phase I construction, few items were identified that necessitate revision in order to provide for greater efficiency and/or to ensure that the project can deliver the projected benefits.

C. Requested Development Agreement Amendments

1) Modification to allow changes and flexibility to the architectural character of the building elevations without it being considered a material change (DA §1.2.20)
   - Provision of flexibility to the Developer regarding the architectural character of the building elevations to ensure an efficient and timely process for the review of the building permit plans in the event some modification from the existing proposal is deemed necessary or appropriate.

2) Addition of five (5) years to the Agreement’s 15-year base term (DA §1.4)
   - Due to the project’s large scope, it is impossible to construct the project in a single phase, and the project is unlikely to be constructed within one economic cycle. The additional 5 years provide security to the Developer to allow the completion of the entire project during unpredictable future market conditions which will inevitably occur during the project’s multi-phase construction timeline.

3) Modification to allow construction of the entire parking component in connection with phase two in order to effectuate the pending phased construction on a practical and feasible level (DA §3.3.2)
   - After detailed construction phasing analysis, it became clear from that analysis which was not available when the original DA was executed, that the entire parking/foundation component would need to be constructed at once, and not separately for Building B and C.
   - Construction of the entire podium/parking component during Phase II (Building “B”) will result in a $20M investment by the Developer towards the construction of Building “C” (foundation work), and is effectively commencement of Phase III.
   - It would be impractical and unnecessary to physically barricade the use of the built-out garage to secure temporary phasing of the delivery of the parking spaces.

4) Correction of the “Existing Tenant” definition to reference temporary certificate of occupancy instead of final certificate of occupancy (DA §4.2)
   - Correction of a typographical error in the original DA; the term was always intended to refer to those tenants occupying the existing Trinity Plaza apartments as of the day when Building “A” is ready for occupancy and relocation to the new units by tenants; and all parties, including the tenants are in agreement.

5) Designation of the (12) on-site below-market-rate units for Building “A” (DA §§4.3.1, 4.3.2)
   - BMR units must be designated for all projects; details of this level of specificity were not available during the time the original DA was executed.
- Identification of the BMR units in the DA provides transparency to the public by providing record notice on the identity of BMR units, Replacement Units and market-rate units in Building “A”.
- Building A’s 360 Replacement Units are subject to specific requirements with respect to unit size and type as compared to the units currently occupied by the Existing Tenants; any change in the designation of the 12 BMR units impacts the selection of the 360 Replacement Units. Designation of the BMR units in the DA further ensures that the Replacement Unit requirements can be satisfied.
- Developer proposes 10 x studio (83%) and 2 x 1BR units (17%), corresponding with the overall Building “A” unit mix of 352 x studio (80%) and 88 x 1BR (20%).

6) Broader identification of the Replacement Unit locations and provision of a more detailed, efficient and practical process for the selection of the Replacement Units by the Existing Tenants (DA §§4.5.1, 4.5.2, 4.5.4)
- The requested changes are necessary to ensure a detailed selection process that is orderly, efficient and achievable for all Existing Tenants and the Developer.
- Pursuant to revised process each Existing Tenant is guaranteed to be provided a unit that satisfies the DA requirements.
- The amended sections clearly identify the location of the available Replacement Units reducing the likelihood of potential conflicts during unit selection process.
- There have been many meetings with the Existing Tenants after the original DA execution regarding the more refined selection process proposed in the DA Amendment.

7) Implementation of a comprehensive and consistent project-wide artworks program under Planning Code Section 149 (DA §6.12)
- Provides for the implementation of Pl. Code §149 requirements for large multi-phase projects to allow for more appropriate project-wide artworks program instead of design and delivery tied to each building permit; this amendment request is unique to this project.
- The amendment also addresses practical difficulties in installing art works on a site that is partially ready for occupancy and partially under construction.

D. Conclusion

The Trinity Plaza project is a unique one-of-a-kind project developed by one-of-a-kind sponsor. Its contribution to the City is varied and significant ranging from the current and future construction job employment to many permanent benefits provided by the creation of approximately 1,900 residential units to the City’s housing supply including 360 Rent-Controlled units and 231 (15%) on-site BMR units in a central location close to transit services.
The Developer remains committed and dedicated to the project and has exceeded many of the early commitments and conceptions. The Developer has fulfilled his promises to start construction, well ahead of the timing goals noted in the Development Agreement for the first building, and notably did so in the most difficult economic and financial environment that this City has seen in decades. The Developer has far exceeded anyone’s expectations in terms of unit fit and finish for ALL 440 of the units in Building “A”; including installation of stone counter tops (versus laminate) in the kitchens and baths, and custom faux wood floors (versus carpet). These are just few examples of the many upgrades that are being installed at the Developer’s own volition for the benefit of all tenants, and illustrate the Developer’s commitment to the project and the ways in which expectations and requirements are being exceeded.

We ask for the Planning Commission’s cooperation and support in recommending approval of the Development Agreement Amendment to the Board of Supervisors in order to guarantee and ensure that the City is able to receive all of the public benefits provided by the entire project, and that the construction of Phase II and the delivery of a large number of Phase II construction jobs can commence as soon as possible.

Very truly yours,

REUBEN & JUNIUS, LLP

James A. Reuben

Encls.

cc: Commissioner Michael Antonini
Commissioner Gwen Borden
Commissioner William Lee
Commissioner Kathrin Moore
Commissioner Christina Olague
Commissioner Hisashi Sugaya
John Rahaim, Planning Director
Larry Badiner, Zoning Administrator
Linda Avery, Commission Secretary
Ms. Kelley Amdur, Director of Neighborhood Planning
Mr. Kevin Guy, NE Planner
Angelo Sangiacomo, Trinity Properties, Inc.
Walter Schmidt, Trinity Properties, Inc.
Tuija Catalano, Esq.