



Office of the City Manager

PUBLIC HEARING

January 28, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Zach Cowan, City Attorney

Subject: 2133 Parker Street - Determination Re: Public Nuisance

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution amending Resolution No. 65,596-N.S. to incorporate the terms of Settlement Agreement executed by the City and the property owner.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On November 1, 2013, the Superior Court issued a Peremptory Writ of Mandate (Writ) remanding Resolution No. 65,596-N.S. to the City for consideration of whether to amend the Resolution to incorporate Sections 1.1 and 1.2 of the Settlement Agreement approved by the City Council on October 3, 2013 and entered into by the City and the property owner on October 15, 2013.

The City must hold a public hearing to consider whether to amend the Resolution within 90 days of issuance of the Writ. Therefore, the City must hold a public hearing on or before January 30, 2014.

BACKGROUND

On January 31, 2012, the City Council considered the recommendation of the Zoning Adjustments Board (ZAB) to declare the property at 2133 Parker Street (the property) a public nuisance. The ZAB's recommendation was based on its determination that, although the physical improvements to the property (*i.e.*, addition of bedrooms) were legal, the number of bedrooms and the internal arrangement of the three units would lend the property to being used as a Group Living Accommodation, in violation of the Zoning Ordinance.

The City Attorney's Office advised Council that there were legal risks associated with upholding the ZAB's determination. Nonetheless, at the conclusion of its hearing, the Council adopted Resolution No. 65,596-N.S. declaring the property a public nuisance. That Resolution adopted the ZAB's theory and articulated a separate and independent basis that the building was inconsistent with the R2-A zoning regulations due to its

density. The Resolution required elimination of 10 bedrooms from the property to abate the nuisance.

The property owner filed a petition for writ of administrative mandamus challenging the City's determination on May 7, 2012 seeking a peremptory writ of mandamus, prohibition or other appropriate writ to vacate and set aside the Resolution and prohibit the City from enforcing the Resolution, damages, attorneys' fees and costs of suit (the Petition). Settlement negotiations ensued. During this period, the City has not received any complaints regarding the use of the property.

Staff negotiated a Settlement Agreement with the owner and the Council approved it on October 3, 2013. Fundamentally, the Agreement addresses the impacts of the actual use of the property rather than its physical characteristics. Under the Agreement, the owner would be obligated to perform certain pro-active measures to avoid nuisance conditions through the end of 2014, in return for certain modifications to the Resolution by the City Council after public hearing. If the Resolution is so modified, then the owner would dismiss his suit and the City would retain full authority to address any future nuisance conditions or Zoning Ordinance violations at the property. The structure of the settlement follows.

- The City stipulated to a Peremptory Writ of Mandate that remanded the Resolution to the City to consider whether to amend it to include the following operating requirements which would remain in place until December 31, 2014:
 - When any new lease is executed for any of the units at the property, the owner will appoint one tenant responsible for: 1) ensuring all refuse from the property is managed and collected appropriately and that all refuse and recycling containers are returned to their appropriate locations within a reasonable amount of time after collection; and 2) responding to all complaints regarding the property within 24 hours.
 - When any new lease is executed, the owner will provide notice of the tenant's and the owner's contact information to the occupants of properties within 100 feet. The notice will indicate that complaints regarding the property should be made to the contact tenant and, if he or she does not respond within 24 hours, then the owner should be notified and he will promptly respond.
 - Any time a new lease or sublease is executed, the owner will provide copies of the leases to the City.
 - The owner will provide annual reports to the City indicating any vacancy or any new tenancy of the units.
 - The owner will include a provision in all new leases that a tenant's responsibility for any public nuisance as defined in BMC Section 13.48.020 (the Second Response Ordinance) shall constitute good cause for lease termination and eviction.

- If the owner complies with the operating restrictions continuously through December 31, 2014, then the Resolution will automatically be rescinded.
- If the owner does *not* comply with the operating restrictions through December 31, 2014, then, after the City gives notice and a reasonable opportunity to cure the violation, it can consider whether a violation(s) of the operating restrictions constitutes a public nuisance at a hearing before the Council.
- If the Council amends the Resolution to include these terms, then the City will file a return to the writ and the Petition will be dismissed. Both parties would bear their own costs and fees.

RATIONALE FOR RECOMMENDATION

See "Background."

ALTERNATIVE ACTIONS CONSIDERED

None.

Update on Mini-Dorm Regulations

As a result of consideration of the issues related to this property and other similar properties, the City adopted legislation to regulate mini-dorms. For example, in 2012 BMC Chapter 13.42 was adopted and it sets forth operating standards applicable to "mini-dorms". In addition, in 2013 the Zoning Ordinance was amended to control the addition of bedrooms to existing parcels.

On July 13, 2013, the City Council referred a request to modify Chapter 13.42 to both the Planning Commission and the City Manager. The Council referral requested that Chapter 13.42 be modified to apply to R-1 through R-3 Zoning Districts and to incorporate definitional provisions similar to those in a San Luis Obispo ordinance. The referral also requested that the Planning Commission consider development of a possible overlay district.

Staff intends to provide proposed amendments to Chapter 13.42 for Council's consideration at its March 11, 2014 meeting. The Planning Commission will consider the other portion of Council's referral in the spring.

CONTACT PERSONS

Zach Cowan, City Attorney, 981-6998

Attachments:

- 1: Resolution
- 2: Peremptory Writ of Mandate
- 3: Public Hearing Notice

RESOLUTION NO. ##,###-N.S.

AMENDING RESOLUTION NO. 65,596-N.S. DECLARING 2133 PARKER STREET A
PUBLIC NUISANCE AND IMPOSING REMEDIES

WHEREAS, on January 31, 2012, the City Council adopted Resolution No. 65,596-N.S. declaring 2133 Parker Street (the Property) a public nuisance and imposing remedies; and

WHEREAS, on May 7, 2012, the property owner filed a petition for writ of administrative mandamus challenging the City's determination seeking a peremptory writ of mandamus, prohibition or other appropriate writ to vacate and set aside the Resolution and prohibit the City from enforcing the Resolution, damages, attorneys' fees and costs of suit (the Petition); and

WHEREAS, the City received no complaints regarding the use of the property while the litigation was pending and staff entered into settlement negotiations with the property owner; and

WHEREAS, the Council approved a proposed Settlement Agreement on October 3, 2013; and

WHEREAS, pursuant to the terms of the Settlement Agreement, on November 1, 2013 the Superior Court issued a Peremptory Writ of Mandate (Writ) remanding Resolution No. 65,596-N.S. to the City for consideration of whether to amend it to incorporate Sections 1.1 and 1.2 of the Settlement Agreement; and

WHEREAS, the City Council held a duly noticed public hearing on January 28, 2014 in compliance with the Writ and considered whether to amend the Resolution to incorporate Sections 1.1 and 1.2 of the Settlement Agreement; and

WHEREAS, the Council has considered the written evidence and oral testimony presented to it and has evaluated the credibility of witnesses who appeared before it as well as the probative value of the evidence.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the building at 2133 Parker Street is a public nuisance, on two separate and independent grounds: 1) that it is inconsistent with the R2-A zoning regulations due to its density and; 2) that it is a Group Living Accommodation ("GLA") that is not permitted in the R-2A zoning district. The City Council makes this determination on the basis of the findings set forth below.

1. Excessive Density.

The property is located in the R2-A zoning district. The R2-A zone is designed to “[p]ermit only that intensity of use which will be compatible with existing low density residential structures and will not be detrimental to the immediate neighborhood.” BMC 23D.32.020.D. The property has seventeen bedrooms spread across three units. This far exceeds the density allowable in the R2-A district and is incompatible with its low density residential character and is detrimental to the neighborhood.

a. Incompatibility with Low Density Residential Neighborhood. The use of this property by nineteen persons in seventeen bedrooms spread across three units violates the density restrictions in the R2-A district because it is inconsistent with low-density residential use. The property’s seventeen bedrooms allow for an occupancy well above that which is contemplated by the R2-A zoning district. The Land Use Element of the City’s General Plan provides for a recommended density range of 44-88 persons per acre in Medium Density residential areas, such as R2-A zoned areas.

The Land Use Element states:

These areas of Berkeley are generally characterized by a mix of single family homes and small to medium sized multi-family structures. The same uses appropriate in Low Density Residential are appropriate in Medium Density Residential areas. Building intensity will range from 20 to 40 dwelling units per net acre, and the population density will generally range from 44 to 88 persons per acre.

Although the General Plan clearly states that its density ranges are not intended to be applied on a parcel by parcel basis, and the City does not do so, it is nevertheless instructive to note that, in this fully-developed neighborhood, applying the General Plan’s density range to 2133 Parker Street, which has a lot area of 5400 square feet, yields a density of 7-14 persons, which at the high end, is less than the current occupancy of nineteen.

b. Detriment to the Neighborhood.

The property contains seventeen bedrooms, currently occupied by nineteen residents. The number of bedrooms, and the number of residents it allows for, exceeds the allowable density in R2-A zoned areas because this intensity of use is detrimental to the neighborhood. Unlike a house rented to three separate households, here, the property is rented to two sets of residents and has been used extensively for loud, unruly parties. Although it has only been occupied since August, the property has been the subject of numerous noise complaints from neighborhood residents related to loud, unruly parties. Two of these parties in recent months resulted in calls for service to BPD, on August 20, 2011 and September 16-17, 2011. In responding to the party on the night of September 16, 2011, BPD and UC Berkeley Police shut down the party as a public nuisance pursuant to BMC Section 13.48.020 of the Second Response Ordinance.

In the course of shutting down the party, the officers posted an “Exhibit A” Notice pursuant to the Second Response Ordinance on the property because more than 30 people were in attendance and loud shouting and music could be heard 50 feet away

from the property. The police report stated that an intoxicated person answered the door of Unit #2 and Mr. Nicolas Hu who was 20 years old at the time, and who also appeared intoxicated, stated he was having a birthday party for a friend. The report further indicated that many of the party attendees appeared to be exhibiting signs of alcohol intoxication and that they observed a Jack Daniels bottle in the Unit.

Further, neighbors of the property testified to numerous other loud and unruly parties at the property, including instances where all units and even the roof were being used for loud and unruly parties. In addition to the noise, the neighbors testified that these parties have resulted in trash being strewn about the property and on the front yard, and even trash and litter on surrounding properties.

The property is a detriment to the neighborhood because it has been used as the site for a number of loud parties, including one which was itself declared to be a public nuisance under BMC 13.48.020. The density at which the property is occupied and for which it is built, with seventeen bedrooms, is the source of the detriment to the neighborhood, as this level of use by so many persons leads to a level of noise beyond that which is in character with a residential low density property.

Stated differently, the property is zoned for low density residential use and frequent loud parties are not consistent with that level of use; instead loud parties of this sort, and the related problems with trash they create for the neighborhood, are the result of the fact that the property has an excessive density and therefore excessive level of use. Further, the numerous complaints by the neighbors about the trash strewn about the property and spilling over onto neighboring properties, indicates that as a result of its excessive density, the property is used in a manner that is detrimental to the neighborhood.

The property is also a detriment to the neighborhood at the current density and resulting level of use because the number of residents combined with the lack of adequate offstreet parking reduces relatively scarce on-street parking. The standards for R2-A zoning areas require at least one parking space per unit. Here, there is only a single parking space, which is insufficient to ensure that the residents' demand for parking does not adversely affect the neighborhood. This is particularly true given the testimony by residents as to the already severely limited availability of parking in the neighborhood.

Further, the lease for Units 2 and 3 provides that no parking spaces are included with the apartment, forcing the fourteen residents of those units to park only on the street. A lower density use of the property would result in a reduced demand for parking, allowing the property to be used within the neighborhood's character and consistent with low density residential use.

2. Group Living Accommodation.
 - a. Use as GLA.

The Zoning Ordinance defines a Group Living Accommodation (GLA) as "A building or portion of a building designed for or accommodating Residential Use by persons not

living together as a Household, but excluding Hospitals, Nursing Homes and Tourist Hotels.” BMC 23F.04.010. The Zoning Ordinance defines Household as “One or more persons, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the Household and other similar characteristics indicative of a single Household.” BMC 23F.04.010.

The building at 2133 Parker Street contains three units with a total of seventeen bedrooms. Unit 1 has five bedrooms and two bathrooms. Unit 2 has five bedrooms and two bathrooms. Unit 3 has seven bedrooms and three bathrooms. Each unit has only a single room that serves as a combined kitchen, living room, and dining room. Under a Notice of Limitation filed by the property owner of 2133 Parker Street, each unit may only be occupied by a single Household.

Unit 1 of the property is rented by five tenants. Section 2 of the lease signed by the Unit 1 tenants provides that the tenants must share the common areas with the tenants of the other units.

Units 2 and 3 are rented by a combined 14 tenants. Section 2 of the lease for these two units, signed by ten persons, provides that the tenants are to share the top two units (#2 and #3) and to also share the common areas with the tenants of Unit 1.

The leasing of the top two units as a single unit violates the Notice of Limitation on the property because the property owner is not renting each of Units 2 and 3 to a single Household, but instead, is renting both units to one group of tenants. Were the property owner complying with the Notice of Limitation and the Zoning Ordinance, each of the three units would be separately rented, each to a single Household.

Further, the fact that the two upper units are connected by an internal, unlocked staircase indicates that the units, rather than being occupied by two separate Households as required under the Zoning Ordinance and Notice of Limitation, are actually being used as a GLA, where the tenants all have access to the common areas and freely move among the common areas, instead of each Household living within its separate unit.

The provision in each of the two leases which requires that the tenants share and make available the common areas in each unit for use by the tenants of the other units is characteristic of a GLA rather than three separate dwelling units, in that each alleged “Household” is required to make its common space available to the other tenants, even though they are not members of the same “Household”. Were the property being used by Households and not as a GLA, each Household would be using its unit as a separate residence, and not be subject to intrusions by other residents of the building into their Household space.

In addition, the disturbances discussed in 1(b) above are more typical of GLAs than individual Households, and indicate that the property is being used as a GLA. In particular, the testimony that all of the units were being used for a party, even though they are allegedly occupied by separate "Households", further indicates that the entire building is used in common as a single GLA, consistent with the lease terms discussed above that require all common areas to be shared among all residents of the building.

b. Prior Determination by Zoning Adjustments Board (ZAB).

In January 2011, the ZAB denied the owner's application for an AUP for certain physical modifications:

Alter the roofline at the southeast corner of the building above the front entry stair;

- Expand a deck and access stair to the third floor; and
- Relocate the parking to the front yard.

In doing so, the ZAB made the following findings (emphasis supplied):

Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the above-described project, under the circumstances of the particular case existing at the time at which the application is granted, would be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City, for the following reasons:

A. That the alterations to the structure to create 19 bedrooms, with little common living space within the three apartments, constitutes a de facto group living accommodation, a use that is not allowed in the R-2A District unless such housing is for Senior Congregate Housing;

B. That when a group living accommodation is permissible, the 5,400 sq. ft. of parcel area for this property would only support 7 group living accommodations, not the 19 that are proposed;

C. That the alterations to the structure to create 19 bedrooms where only 6 existed previously would violate the R-2A District Purposes by creating an intensity of use which is not compatible with existing low density residential structures and would be detrimental to the immediate neighborhood by creating a scarcity of parking;

D. The alteration to the front roofline would be detrimental because the revised roofline would not be architecturally compatible with the existing building;

E. That the rear deck and stair accessed from the third floor would be detrimental because the height above grade and the large size would create a privacy and noise impact to adjacent residential properties; and

F. That parking within the front yard would be crowded, unworkable, and unattractive. Thus, a replacement parking space, within the building, is required. (Emphasis supplied.)

In other words, in support of the basic finding supporting the denial, the ZAB determined as a factual matter that the proposed alterations would constitute a “de facto” GLA. The subsequent modification of the proposal to eliminate 2 bedrooms does not change this determination or the rationale on which it was based. The owner did not appeal this action by the ZAB and it is therefore final and binding,

The Council therefore determines that the owner may not now dispute the ZAB’s factual determination in this subsequent proceeding. Moreover, even if the owner were entitled to contest this conclusion, the Council finds that his failure to contest it in a timely manner by appealing the ZAB’s January decision is an implicit acknowledgment of its correctness and his lack of any basis for contesting it, and thus supports the Council’s determination that 2133 Parker Street is a GLA.

BE IT FURTHER RESOLVED that:

1.1 Operating Requirements.

a. When any new lease or rental agreement is signed for any of the units at the Property, A. Ali Eslami (“Eslami”) shall appoint one tenant (the “Contact Tenant”) who will be responsible for: (1) Ensuring that all refuse and materials to be recycled are reasonably managed and collected, and that all refuse and recycling containers are returned to their appropriate locations within a reasonable amount of time after collection; and (2) Responding to all complaints regarding the Property within twenty four (24) hours of receipt of any such complaints or within a reasonable amount of time if a response within twenty four (24) hours is not reasonable.

b. When any new lease or rental agreement is signed for any of the units at the Property, Eslami shall provide a written notice to the occupants of each address within one hundred (100) feet of the Property of the Contact Tenant’s name and contact information, including at least one telephone number. The notice shall also include Eslami’s contact information, including at least one telephone number. The notice shall request that any such occupant contact Eslami concerning any complaints and that if the Contact Tenant does not respond to any such complaint within twenty four (24) hours, then Eslami should be notified that the Contact Tenant has not responded and Eslami will promptly respond to the complaint. The City shall provide Eslami with a list of all addresses within one hundred (100) feet of the Property. Eslami shall mail the notices via First Class U.S. Mail or cause the notices to be hand delivered whenever the Contact Tenant is established and any time the Contact Tenant changes. Eslami shall have the option of either providing a letter to a person designated by the City confirming when written notices are transmitted and that they were sent to all addresses indicated by the City, or sending copies of each of the transmitted written notices to a person designated by the City.

c. At the time any new lease or rental agreement is signed for any of the units at the Property or another tenant or subtenant is added to an existing lease for any of the units at the Property, Eslami shall provide a copy of such leases, rental agreements, and amendments thereto for the Property to the City within thirty (30) calendar days of the date any lease or amendment is fully executed by all parties thereto. The City shall designate a person to whom these copies shall be provided.

d. Eslami shall provide annual reports to the City which indicates any vacancy and any new tenancy of the units on the Property. The City shall designate a person to whom these reports shall be provided.

e. Eslami shall include in all new leases and rental agreements for the Property a provision that in addition to the provisions of California Code of Civil Procedure § 1161, subdivision 4, and other applicable law, a tenant's responsibility, either in whole or in part, for any public nuisance as defined in Chapter 13.48.020 of the City of Berkeley's Municipal Code shall constitute good cause for lease termination and eviction.

1.2 Terms for Incorporation From the Settlement Agreement

a. Unless there is substantial evidence presented that Eslami has not complied with the Operating Requirements set forth in Section 1.1 above continuously through December 31, 2014, then the Resolution shall automatically be rescinded on January 1, 2015.

b. In the event that the City contends there is substantial evidence that Eslami has not complied with the Operating Requirements at any time prior to December 31, 2014, then the City and Eslami shall meet and confer in good faith to attempt to informally resolve, and permit Eslami a reasonable opportunity to cure, any claim by the City that Eslami has not complied with the Operating Requirements.

c. Provided that the Parties have fulfilled their respective obligations set forth in Section 1.2.b but the Parties cannot resolve the City's claim that Eslami has not complied with the Operating Requirements, then the City Council may notice and hold a public hearing to make a determination as to whether Eslami has not complied with the Operating Requirements and, if any such failure constitutes a public nuisance. In any such public hearing, the City Council may not refer or rely upon the Resolution, including any facts or evidence relied upon in the Resolution, to support a finding that the Property is a public nuisance.

In the event that the City Council holds a public hearing in accordance with this subsection on or before to December 31, 2014 and determines that Eslami's non-compliance constitutes a public nuisance, then the Resolution shall be rescinded and superseded by any resolution adopted by the City Council as a result of such public hearing.

Nothing in this Resolution limits the City's discretion, authority or ability to initiate new nuisance abatement proceedings for any potential nuisance activity at the Property that is unrelated to Eslami's compliance or non-compliance with the Operating Requirements set forth in Section 1.1 above and nothing in this Resolution limits Eslami's ability to legally challenge any such new nuisance abatement proceedings on any grounds.

d. If the City Council holds a public hearing pursuant to Section 1.2.c, it shall consider whether Eslami and the Contact Tenant have been informed of the alleged non-compliance with the Operating Requirements and have had a reasonable opportunity to address or cure the alleged non-compliance and whether they have done so.

e. Unless the City Council notices a public hearing pursuant to Section 1.2.c on or before December 31, 2014, the Resolution shall automatically be rescinded on January 1, 2015.

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Received
NOV 07 2013
City Attorney

COPY

Attorneys for Respondents CITY OF BERKELEY,
CITY COUNCIL OF THE CITY OF
BERKELEY, ZONING ADJUSTMENTS
BOARD OF THE CITY OF BERKELEY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
RENE C. DAVIDSON COURTHOUSE

A. ALI ESLAMI, an individual;

No. RG12628979

Petitioner,

ASSIGNED FOR ALL PURPOSES TO
JUDGE Evelio Grillo
Department 31

vs.

CITY OF BERKELEY, a Municipal
Corporation and a Chartered California City;
CITY COUNCIL OF THE CITY OF
BERKELEY, an elected body of the City of
Berkeley; ZONING ADJUSTMENTS
BOARD OF THE CITY OF BERKELEY; an
appointed body of the City of Berkeley; and
DOES 1-50, inclusive;

~~PROPOSED~~
PEREMPTORY WRIT OF MANDATE

Respondents.

To RESPONDENTS:

Pursuant to the parties' Stipulation, the Court hereby issues a Peremptory Writ of
Mandate remanding Resolution No. 65,596-N.S. (the "Resolution") to Respondents for
consideration of whether to amend the Resolution to incorporate Sections 1.1 and 1.2 of the
parties' Settlement Agreement attached hereto and incorporated herein as Exhibit 1 (the
"Settlement Agreement"). Respondents shall:

1. Consider amending Resolution No. 65,596-N.S to incorporate Sections 1.1 and
1.2 of the Settlement Agreement within 90 days from the issuance of this Writ.

EXHIBIT

1

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("Agreement") is entered into by and between A. Ali Eslami, an individual ("Eslami") and the City of Berkeley, a Municipal Corporation and charter city, the City Council of the City of Berkeley, an elected body of the City of Berkeley, and the Zoning Adjustments Board of the City of Berkeley, an appointed body of the City of Berkeley (collectively the "City"). Eslami and the City are hereinafter collectively referred to as the "Parties."

RECITALS

A. This dispute arises out of the City's adoption of Resolution No. 65,596-N.S. (the "Resolution"), which declared the real property and improvements thereon commonly known as 2133 Parker Street, Berkeley, California (the "Property") a public nuisance and specified remedies intended to abate the nuisance. Eslami is an owner of the Property. Eslami asserts, in part, the following: the City adopted the Resolution without, or in excess of, its jurisdiction; the City failed to provide him with a fair hearing; the City failed to proceed in a manner required by law; the Resolution is not supported by findings and the findings are not supported by evidence; the City acted arbitrarily and capriciously in conducting the hearing and adopting the Resolution; and the City deprived him of his procedural Due Process rights and equal protection rights. The City denies these claims and any liability.

B. Eslami filed a Verified Petition for Writ of Administrative Mandamus, or in the Alternative for Writ of Traditional Mandamus or Prohibition, and Damages (the "Petition") in the Alameda County Superior Court (Case Number RG12628979) on May 7, 2012 seeking a peremptory writ of mandamus, prohibition or other appropriate writ to vacate and set aside the Resolution and prohibit the City from enforcing the Resolution, damages, attorneys' fees and costs of suit (the "Action").

C. The Parties wish to settle their dispute and resolve the Action.

In consideration of the above recitals and agreements contained herein and for other valuable consideration, the Parties agree as follows:

AGREEMENT

1.0 Stipulated Peremptory Writ of Mandate for Remand to Amend Resolution; Dismissal.

a. The Parties hereby stipulate to the issuance of a Peremptory Writ of Mandate, as set forth in the Stipulation for Issuance of Writ of Administrative Mandamus to Remand Resolution 65,596-N.S. for Amendment Pursuant to Settlement Agreement and Upon Such Amendment Dismissal, a copy of which is attached as "Exhibit A" hereto, which shall remand the Resolution to the City for the purpose of considering whether to amend the Resolution to incorporate the terms set forth in Sections 1.1 and 1.2 of this Agreement. The Parties further stipulate that, if the City amends the Resolution to incorporate the terms set forth in Sections 1.1 and 1.2 of this Agreement, the Petition shall be dismissed by the Court.

b. Sections 1.1 through 9 below shall not become operative and have force and effect unless and until the City amends the Resolution to incorporate the terms as set forth in Sections 1.1 and 1.2 below.

1.1 Terms for incorporation into the Resolution.

a. Unless there is substantial evidence presented that Eslami has not complied with the Operating Requirements set forth in Section 1.2 below continuously through December 31, 2014, then the Resolution shall automatically be rescinded on January 1, 2015.

b. In the event that the City contends there is substantial evidence that Eslami has not complied with the Operating Requirements at any time prior to December 31, 2014, then the City and Eslami shall meet and confer in good faith to attempt to informally resolve, and permit Eslami a reasonable opportunity to cure, any claim by the City that Eslami has not complied with the Operating Requirements.

c. Provided that the Parties have fulfilled their respective obligations set forth in Section 1.1.b but the Parties cannot resolve the City's claim that Eslami has not complied with the Operating Requirements, then the City Council may notice and hold a public hearing to make a determination as to whether Eslami has not complied with the Operating Requirements and, if any such failure constitutes a public nuisance. In any such public hearing, the City Council may not refer or rely upon the Resolution, including any facts or evidence relied upon in the Resolution, to support a finding that the Property is a public nuisance.

In the event that the City Council holds a public hearing in accordance with this subsection on or before to December 31, 2014 and determines that Eslami's non-compliance constitutes a public nuisance, then the Resolution shall be rescinded and superseded by any resolution adopted by the City Council as a result of such public hearing.

Nothing in this Agreement limits the City's discretion, authority or ability to initiate new nuisance abatement proceedings for any potential nuisance activity at the Property that is unrelated to Eslami's compliance or non-compliance with the Operating Requirements set forth in Section 1.2 below and nothing in this Agreement limits Eslami's ability to legally challenge any such new nuisance abatement proceedings on any grounds.

d. If the City Council holds a public hearing pursuant to Section 1.1.c, it shall consider whether Eslami and the Contact Tenant have been informed of the alleged non-compliance with the Operating Requirements and have had a reasonable opportunity to address or cure the alleged non-compliance and whether they have done so.

e. Unless the City Council notices a public hearing pursuant to Section 1.1.c on or before December 31, 2014, the Resolution shall automatically be rescinded on January 1, 2015.

1.2 Operating Requirements.

a. When any new lease or rental agreement is signed for any of the units at the Property, Eslami shall appoint one tenant (the "Contact Tenant") who will be responsible for: (1) Ensuring that all refuse and materials to be recycled are reasonably managed and collected, and that all refuse and recycling containers are returned to their appropriate locations within a reasonable amount of time after

collection; and (2) Responding to all complaints regarding the Property within twenty four (24) hours of receipt of any such complaints or within a reasonable amount of time if a response within twenty four (24) hours is not reasonable.

b. When any new lease or rental agreement is signed for any of the units at the Property, Eslami shall provide a written notice to the occupants of each address within one hundred (100) feet of the Property of the Contact Tenant's name and contact information, including at least one telephone number. The notice shall also include Eslami's contact information, including at least one telephone number. The notice shall request that any such occupant contact Eslami concerning any complaints and that if the Contact Tenant does not respond to any such complaint within twenty four (24) hours, then Eslami should be notified that the Contact Tenant has not responded and Eslami will promptly respond to the complaint. The City shall provide Eslami with a list of all addresses within one hundred (100) feet of the Property. Eslami shall mail the notices via First Class U.S. Mail or cause the notices to be hand delivered whenever the Contact Tenant is established and any time the Contact Tenant changes. Eslami shall have the option of either providing a letter to a person designated by the City confirming when written notices are transmitted and that they were sent to all addresses indicated by the City, or sending copies of each of the transmitted written notices to a person designated by the City.

c. At the time any new lease or rental agreement is signed for any of the units at the Property or another tenant or subtenant is added to an existing lease for any of the units at the Property, Eslami shall provide a copy of such leases, rental agreements, and amendments thereto for the Property to the City within thirty (30) calendar days of the date any lease or amendment is fully executed by all parties thereto. The City shall designate a person to whom these copies shall be provided.

d. Eslami shall provide annual reports to the City which indicates any vacancy and any new tenancy of the units on the Property. The City shall designate a person to whom these reports shall be provided.

e. Eslami shall include in all new leases and rental agreements for the Property a provision that in addition to the provisions of California Code of Civil Procedure § 1161, subdivision 4, and other applicable law, a tenant's responsibility, either in whole or in part, for any public nuisance as defined in Chapter 13.48.020 of the City of Berkeley's Municipal Code shall constitute good cause for lease termination and eviction.

2. Settlement as Full Satisfaction.

Eslami agrees to accept the settlement set forth in this Agreement as full satisfaction of all litigation and/or claims that were made or could have been made against the City in the Action.

3. Agreement Not to File Suit.

If the City amends the Resolution to incorporate the terms set forth in Sections 1.1 and 1.2 above, then Eslami agrees not to file any lawsuit to challenge the amended Resolution other than a lawsuit to enforce the terms of the settlement set forth in this Agreement and exhibits hereto.

4. Release by Eslami

With the exception of the obligations created by this Agreement, Eslami releases and forever discharges the City, and its officers, agents, employees, and the heirs, executors, or assigns of any of the foregoing, from any and all claims, demands, and causes of action of every kind, known or unknown, whether based on tort, contract, indemnification, estoppel, negligence or other legal theory of recovery, and whether for general, special, compensatory, or punitive damages, arising out of or in any way related to the Action, and all other claims or causes of action which are, have been, or could have been asserted in the Action.

5. Release by the City

With the exception of the obligations created by this Agreement, the City releases and forever discharges Eslami, and his agents, employees, tenants in common, partners, joint venturers, investors, lenders, tenants, accountants, attorneys, and the heirs, executors, or assigns of any of the foregoing, from any and all claims, demands, and causes of action of every kind, known or unknown, whether based on tort, contract, indemnification, estoppel, negligence or other legal theory of recovery, and whether for general, special, compensatory, or punitive damages, arising out of or in any way related to the facts and circumstances underlying the Resolution.

6. Settlement as a Compromise

The Parties acknowledge and agree that the execution of this Agreement is the result of a compromise of disputed claims. This Agreement is not to be construed or deemed as, and is not, an admission of liability concerning any of the matters set forth in the Petition. No past or present wrongdoing or liability upon the part of any of those released in this Agreement shall be implied by any of the agreements herein.

7. Attorneys' Fees and Costs

The Parties agree that each party shall bear and pay their own attorney's fees and costs in connection with the matters set forth in the Petition, the Action, and the preparation of this Agreement and documents related thereto.

8. Waiver of Claims For Unknown Damages by Eslami

Eslami expressly waives and assumes the risk of any and all claims that exist concerning the Action as of this date, but which it does not know of or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, might materially affect its decision to enter into this Agreement. Eslami waives such claims concerning the Action under section 1542 of the Civil Code of California, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.

9. Waiver of Claims For Unknown Damages by the City

The City expressly waives and assumes the risk of any and all claims that exist concerning the facts and circumstances underlying the Resolution as of this date, but which it does not know of or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, might materially affect its decision to enter into this Agreement. The City waives such claims concerning the facts and circumstances underlying the Resolution under section 1542 of the Civil Code of California, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.

10. Authority

Each person signing this Agreement on behalf of a party hereto warrants and represents that she or he has authority to sign on behalf of said party and that this Agreement has been validly authorized and constitutes a legally binding and enforceable obligation of said party.

11. Representations Regarding Comprehension and Preparation of Document

Each party represents that in entering into this Agreement, it has relied upon the legal advice of its attorneys, who are the attorneys of the party's own choice. Each party further represents that the terms of this Agreement have been completely read by the parties, and that these terms are fully understood and voluntarily accepted by both their attorneys and themselves.

Each party and counsel for each party has reviewed and revised, or had the opportunity to revise this Agreement, and accordingly the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party is not applicable and therefore shall not be employed in the interpretation of this Agreement or any amendment of it.

12. Entire Agreement

This Agreement contains the entire agreement of the Parties with regard to the matters set forth herein and may not be amended except by a writing executed by all of the Parties.

13. Governing Law and Venue

This Agreement is made and entered into in the State of California and shall, in all respects, be interpreted, enforced, and governed under California law. Any lawsuit arising out of, relating to, or in connection with this Agreement, including, but not limited to, any lawsuit to interpret or enforce the terms of this Agreement, shall exclusively be filed in the Superior Court of California, County of Alameda.

14. Admissibility

The Parties intend that this Agreement is binding and fully admissible for purposes of its enforcement pursuant to California Code of Civil Procedure § 664.6 or otherwise.

15. Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective agents, heirs, successors, and assigns.

16. Notices

Any notices permitted by, required by, arising out of or relating to this Agreement, including, but not limited to, enforcement of this Agreement, shall be effective three calendar days after mailing via First Class U.S. Mail to the follow address of each party:

[for Eslami] –

A. Ali Eslami
P.O. Box 4623
Berkeley, CA 94704

[for the City] –

Zachary D. Cowan
Laura N. McKinney
Office of the City of Attorney
City of Berkeley
2180 Milvia Street, 4th Floor
Berkeley, CA 94704

Either of the Parties may change their address by a written notice delivered to the other.

18. Severability

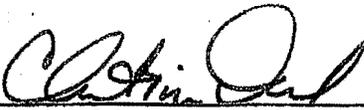
In the event that any portion of this Agreement is held by a court of competent jurisdiction to be unenforceable or invalid, the validity and enforceability of the remaining portions shall not be adversely affected.

19. Counterparts

This Agreement may be executed in any number of counterparts, each of which may be deemed an original and all of which collectively shall constitute a single instrument.

[signatures appear on following page]

Dated: 10/15/13

By: 
Christine Daniel
City Manager for the City of Berkeley

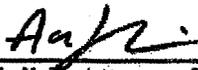
Dated: 10/7/2013

By: 
A. Ali Eslami

AS THE ATTORNEY FOR ESLAMI, I hereby represent and declare that I have fully explained the contents and legal effect of this Agreement to the above signed.

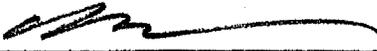
BERDING| WEIL Attorneys at Law

Dated: 10/7/2013

By: 
Aaron Ehrlich, Attorney for Eslami

AS THE ATTORNEY FOR THE CITY, I hereby represent and declare that I have fully explained the contents and legal effect of this Agreement to the above signed.

Dated: 10/15/13

By: 
Zach Cowan, City Attorney for the City of Berkeley

**NOTICE OF PUBLIC HEARING-BERKELEY CITY COUNCIL
CITY COUNCIL CHAMBERS, 2134 MARTIN LUTHER KING JR. WAY
2133 Parker Street - Public Nuisance**

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, JANUARY 28, 2014 at 7:00 PM**, a public hearing will be conducted pursuant to Berkeley Municipal Code section 23B.64.020 pursuant to the Peremptory Writ of Mandate issued by the Alameda Superior Court to consider whether to amend Resolution No. 65,596-N.S. to incorporate the terms set forth in a Settlement Agreement between the City and the property owner including removing the requirement that 10 bedrooms be eliminated from the property, adding operating requirements and requiring that the Resolution terminate at the end of 2014 if the property owner has complied with the operating requirements.

A copy of the agenda material for this hearing will be available at the City Clerk's Office and on the City's website at www.CityofBerkeley.info as of **January 16, 2014**.

For further information, please contact: Zach Cowan, City Attorney, (510) 981-6998

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: The Berkeley Voice – 1/17/14

Mailed: January 13, 2014, pursuant to Berkeley Municipal Code Section 23B.32.020

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 16, 2014.

  
\_\_\_\_\_  
Mark Numainville, CMC, City Clerk

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6 , no lawsuit challenging a City decision may be filed and served on the City more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*