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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

49HOPKINS, LLC, a California Limited
Liability Company,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, PLANNING COMMISSION
OF THE CITY AND COUNTY OF SAN
FRANCISCO, SAN FRANCISCO
PLANNING DEPARTMENT;
SAN FRANCISCO DEPARTMENT OF
BUILDING INSPECTION; SAN
FRANCISCO BOARD OF SUPERVISORS
and DOES 1-10,

Defendants.

Case Number:

COMPLAINT FOR DAMAGES

[42 U.S.C § 1983]

DEMAND FOR JURY TRIAL

1 **JURISDICTION**

2 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, in that
3 the controversy arises under the United States Constitution and laws and under 42 U.S.C. § 1983,
4 as hereinafter more fully appears.

5 **VENUE**

6 2. Venue is proper pursuant to 28 U.S.C. § 1391(a) in that all defendants reside in
7 this judicial district and the events giving rise to the claims occurred in this district.

8 **PARTIES**

9 3. Plaintiff is a California limited liability company with its principle place of
10 business in San Francisco, California. Plaintiff is the owner of the real property commonly
11 known as, and situated at, 49 Hopkins Avenue, San Francisco, California (the “Property”). The
12 Property is located within San Francisco County and Judicial District.

13 4. Defendant City and County of San Francisco (the “City”) is an incorporated
14 municipality of the State of California.

15 5. Defendant San Francisco Planning Commission (“Planning Commission”) is a
16 policy making and supervisory body, which provides policy direction to the Planning
17 Department.

18 6. Defendant San Francisco Planning Department (“Planning Department”) is an
19 executive agency and enforces the City Planning Code.

20 7. Defendant San Francisco Department of Building Inspection (“DBI”) is an
21 executive agency, which issues permits and enforces the San Francisco Building Code.

22 8. Defendant San Francisco Board of Supervisors (“BOS”) is a policy making,
23 legislative, and quasi-judicial municipal body, with the authority to hear appeals of Planning
24 Commission decisions on conditional use authorization applications.

25 9. Plaintiff is not aware of the identities of defendants DOES 1-10, who are
26 responsible for the acts and omissions alleged herein and that caused damage to Plaintiff;
27 therefore, Plaintiff will amend this Complaint when the true identities of DOES 1-10 are
28 ascertained.

1 14. As part of the 2014 permit application process for renovation of the Property, the
 2 then-owner was required by the Planning Department to engage an architectural historian to
 3 conduct a historic evaluation of the Property. The historic evaluation was conducted by
 4 architectural historian William Kostura and his report was submitted to the Planning Department.
 5 In September 2014, Kostura determined the Property was not a historic resource given the
 6 multiple alterations and renovations that had taken place since Neutra’s original 1935
 7 construction of the Property. In its review of Kostura’s evaluation, the Planning Department’s
 8 Historic Preservation Team noted:

9 Due to the substantial additions to the rear and primary elevations, as well as
 10 removal of most original exterior and interior building fabric, the subject property
 11 no longer reads as an International Style house designed by one of California’s
 12 most important Modern architects. Alterations and additions have compromised
 13 the integrity of the [Property’s] workmanship, design, materials, feeling, and
 14 association Therefore the subject property is not eligible for listing in the
 15 California Register under any criteria individually or as part of a historic district.

16 15. On July 25, 2014, the then-owner of the Property, through the Architect, began the
 17 permit approval process with the City of San Francisco for re-development of the Property by
 18 submitting the initial architectural plans, called a “site plan,” to DBI. Upon in-take of the site
 19 plan, DBI assigned the project a permit number 201407252157. The site plan and subsequently
 20 submitted addendum (including structural engineering plans) are part of the plans that were
 21 approved under the assigned permit number (“2014 Permit”).

22 16. As is customary practice, DBI first routed the site plan to the Planning Department
 23 for review and approval of the physical mass of the building at it related to the Property site. On
 24 or about August 10, 2015 the Planning Department approved the site plan, which authorized:
 25 “REMOVAL EXISTING SUNROOM, INTERIOR REMODEL & VERTICAL ADDITION.
 26 WORK TO INCL: VERTICAL ADDITION ABOVE THE 2ND FLOOR, INTERIOR
 27 REMODEL OF 1ST & 2ND FLOOR. FRONT YARD TO REMOVE EXISTING WALL
 28 ENCLOSURE & PROPOSE LANDSCAPE.” Owners of San Francisco property commonly
 understand that approval of a site plan by the San Francisco Planning Department conveys a
 “property entitlement.” The site plan was thereafter approved by DBI on or about September 4,

1 2015.

2 17. After the Planning Department's and DBI's approval of the site plan, on or about
3 December 3, 2015, the then-Property owner submitted a structural engineering plan addendum
4 to DBI as part of DBI's process for approving the 2014 Permit. In May of 2016, DBI approved
5 and stamped the 2014 Permit for the proposed three-story, four-bedroom/four bath single-family
6 redevelopment, meaning ground could now be broken for construction.

7 18. Petitioner purchased the Property and 2014 Permit from the then-owner in January
8 2017. In August 2017, after construction financing from a construction lender had been secured,
9 Petitioner's general contractor, a licensed general contractor and engineer who has worked in
10 San Francisco for over 15 years (the "General Contractor"), commenced initial demolition work
11 on the project under the 2014 Permit. The complexity of the initial demolition work required
12 that the vast majority of it be done by hand in a manner that effectively "reverse-engineered" the
13 original construction. Highly-skilled professionals required more than six weeks of precise work
14 to remove the steel pool house frame, pool house glass panels, sheet glass walls, and concrete
15 masonry walls given the heights involved and integrated structural components. To safely
16 remove the large sheet glass windows/walls of the 27' tall pool house, platforms had to be erected
17 to lower the glass down, piece-by-piece, once detached from the steel structure. Removal of the
18 pool house frame required the torching of the steel structure, one structural member at a time.
19 Given the complexity and multitude of diverse building techniques used in the prior renovations,
20 the dangers of removing heavy sheet glass panels suspended 27' in the air, and the irregularly-
21 shaped, sloped corner lot location of the Property, the demolition work was performed by hand
22 and without heavy machinery in a methodical, meticulous manner to ensure the safety of
23 construction workers, neighbors, and pedestrians.

24 19. During the approved demolition work at the Property, the General Contractor
25 exposed various portions of the existing building structure that were previously hidden behind
26 walls. Upon exposure, the General Contractor discovered that several of the structural elements
27 expected to remain in place by the 2014 Permit were, in fact, structurally compromised.

28 20. The 2014 Permit called for maintaining the following structural elements of the

1 existing building: (1) portions of the east side CMU wall; (2) portions of the existing second
2 story kitchen floor; (3) portions of the existing framing above the garage; (4) portions of the
3 westside wall at the bottom of stairs leading to the front entrance and (5) the underlying structure
4 supporting the east side windows.

5 21. The east side CMU wall was not solid concrete as assumed in the 2014 Permit, but
6 instead was constructed of individual cinderblocks with long strands of steel rebar running
7 throughout. The portion of the east side CMU wall that was to have remained per the 2014
8 Permit was not strong enough to support the three-story home in the 2014 Permit for several
9 reasons. First, it was not solid concrete. Second, the remaining portion of the wall lost much of
10 its original structural integrity when the adjoining portion of the wall was removed given the
11 integrated manner in which the entire east side wall was first constructed.

12 22. The second level floor was constructed of three inseparable layers: (1) heavy
13 granite tile on top; (2) a large slab of solid concrete underneath the granite tile; and (3) plywood
14 subflooring attached to the concrete with chicken wire. Extensive dry rot and water damage to
15 the plywood subfloor and the framing underneath the subfloor meant it was structurally unsound
16 to hold the solid slab of concrete suspended 11' in the air.

17 23. The 2014 Permit called for retaining portions of the existing structural framing
18 above the garage. The 2014 Permit assumed the existing framing was constructed with 2x10
19 joists that could be incorporated into new 2x10 framing detailed in the 2014 Permit. Upon
20 exposing the existing framing during demolition, the General Contractor saw that the existing
21 joists were actually 2x4s and 2x6s, neither of which met today's Building Code requirements.
22 Furthermore, the existing framing was badly charred, the likely remnants of a documented fire
23 at the Property in the 1960s. The garage framing supported the second floor's layering of granite
24 tile, slab of solid concrete, and subfloor. As a result of the charred framing and its non-code
25 compliant size, the General Contractor recognized that leaving the existing garage framing in
26 place posed a potential safety hazard to construction workers, particularly because a large slab
27 of solid concrete was suspended 11' in the air with little structural support and with construction
28 crew working underneath.

1 24. Portions of the westside wall at the bottom of the stairs leading to the front entrance
2 were to remain in place pursuant to the 2014 Permit. Upon commencement of demolition work,
3 the General Contractor discovered that the westside wall at the base of the steps to the westside
4 entrance had no foundation. The studs of that westside wall went straight into the ground.
5 Because there was no foundation and the studs were directly exposed to the weather, the studs
6 were severely compromised with dry rot. The General Contractor understood that unsupported,
7 dry-rotted studs could not remain in place given the three-story home in the 2014 Permit.

8 25. Upon exposing the underlying structure supporting the east side windows,
9 structure that ran vertically from the floor to the bottom of the windows and then horizontally
10 across almost 18' of windows, the General Contractor discovered dry rot throughout. Because
11 the windows could not be safely supported by the compromised structure, both were removed.

12 26. Given the General Contractor's professional experience and knowledge as a
13 licensed engineer and general contractor, the General Contractor understood that the
14 compromised structural elements uncovered during demolition would need to be removed one
15 way or the other because they could not structurally support the three-story home in the 2014
16 Permit AND because they posed life-safety hazards for workers. The General Contractor
17 understood that the compromised structural conditions would necessarily require submission of
18 revised structural engineering plans prior to commencement of any construction. As a
19 conscientious construction professional, the General Contractor made a judgment call in the field
20 to immediately remove the compromised structure even though the 2014 Permit called for
21 maintaining those structural elements as part of the new home. Simply put, the General
22 Contractor made prudent onsite decisions in the field for the safety of its crew and practical
23 decisions for the efficient removal of structurally compromised Property components that would
24 necessarily require removal to safely support the new home and its future occupants.

25 27. On October 4, 2017, as a result of a neighbor's complaint, DBI issued a notice of
26 violation for the portion of demolition work that had occurred beyond the scope of the 2014
27 Permit. In response to the notice of violation, a meeting was held on October 11, 2017 at DBI
28 offices with Petitioner's representatives, the Architect, the General Contractor and senior DBI

1 inspectors. At the meeting, DBI instructed Petitioner’s representatives to submit new plans to
2 the Planning Department incorporating the portions of the demolition that had exceeded the
3 scope of the 2014 Permit. A notice of enforcement from the Planning Department followed on
4 November 7, 2017, which requested the same items as had DBI.

5 28. Thereafter, on or about November 17, 2017, DBI erroneously instructed the
6 Architect that the 2014 Permit would need to be cancelled in order to submit new plans, even
7 though work had already commenced under the 2014 Permit.¹ Relying on DBI to know its own
8 procedures and after receiving written confirmation from the Planning Department that DBI’s
9 instructions must be followed, the Architect submitted new plans as instructed.

10 29. On December 7, 2017, in accordance with DBI’s instructions, the Architect
11 submitted new plans and a conditional use application (“CUA”) to the Planning Department to
12 seek approval for the portion of demolition that had exceeded the scope of the 2014 Permit and
13 approval for a three-story single-family home similar to the one previously approved by the
14 Planning Department in the 2014 Permit.

15 30. Shortly thereafter, on December 13, 2017, DBI “cancelled” the 2014 Permit,
16 despite the fact that work had already been commenced under that permit. Because DBI
17 erroneously “cancelled” the 2014 Permit, Petitioner was not given an opportunity to appeal this
18 action, as it would have been if the 2014 Permit had been revoked.

19 31. On January 17, 2018, in an apparent response to a variety of negative press-
20 releases, senior DBI inspectors made a presentation to the Building Inspection Commission on
21 various City construction projects where the scope of a permit had been exceeded. The Property
22 was included in this presentation. Inspectors noted that the majority of the demolition of the
23 Property had been authorized under the 2014 Permit. The Inspectors also noted that demolition
24 beyond the scope of a permit is often well-intended and performed as a result of unsafe or
25 unsound conditions uncovered in the field (such as the case here). Furthermore, the Inspectors

26
27 ¹ In fact, the 2014 Permit could not have been “cancelled” by Petitioner or DBI because
28 Petitioner had already commenced work under the 2014 Permit. Instead, had DBI intended to
prevent further work from being performed, DBI was required to *revoke* the 2014 Permit. At
no point did DBI revoke the 2014 Permit.

1 indicated that discrepancies between the architectural drawings and structural drawings in an
2 approved permit set can cause further uncertainty for even the most well-intentioned general
3 contractors who have to make judgments in the field. Following the Inspectors' presentation,
4 however, a member of the public made a series of inflammatory and false allegations about the
5 project at the Property, including falsely alleging that the project had been demolished by an
6 (unrelated) developer that was a "serial demolisher."

7 32. Over the next eight months, the Property was the hyper-focus of various negative
8 press releases, which not only misleadingly overstated the amount in which the scope of the
9 permit was exceeded, but falsely described the Property as a historic San Francisco resource,
10 when the City had already determined that it was not. The Property was also a reoccurring topic
11 at a series of DBI and Planning Commission hearings over this same period of time, where
12 similar inflammatory and misleading public comments, none of which were under oath, were
13 made about the Property.

14 33. During this same time, the Planning Department staff began demanding Petitioner
15 modify its plan for the Property, which included the removal of the proposed third floor of the
16 project, even though this vertical addition had already been authorized under the 2014 Permit,
17 and Petitioner had already begun the work under the 2014 Permit. No plausible reason was given
18 for the requested removal of the third story, and no change in the revised drawings necessitated
19 this removal. The Planning Department also indicated to Petitioner that its recommendation to
20 the Planning Commission would be to approve the CUA, with the modification that the third
21 story be removed.

22 34. On October 10, 2018, Petitioner learned that the CUA was scheduled to be heard
23 before the Planning Commission on December 6, 2018. On November 14, 2018, given the
24 issues with Planning Department's objection to the third floor (which had already been
25 authorized under the 2014 Permit), and because Petitioner had just recently secured legal
26 counsel, Petitioner requested a continuance of the December 6, 2018 hearing to a January 2019
27 date. The Planning Department indicated it did not object to a continuance, but that Petitioner
28 was required to present the request to the Planning Commission at the December 6, 2018 hearing.

1 The Planning Department also informed Petitioner that there was availability for such a
2 continuance on January 24, 2019 and that it would support the continuance request for that date.

3 35. On December 6, 2018 at approximately 1:00 pm, Petitioner presented its request
4 for a continuance of the CUA hearing to January 24, 2019. After a barrage of public objection
5 to the continuance, where the same misleading testimony about the project and the Property was
6 presented, the Planning Commission at approximately 1:30 pm only granted a week continuance,
7 and scheduled the CUA hearing for December 13, 2018. The materials to be submitted in
8 advance to the Planning Commission for the December 13th hearing were due within 90 minutes
9 of the Planning Commission's one-week continuance decision given the 3pm deadline for
10 submitting such materials. The Notice for the December 13th hearing on the CUA stated:

11 49 HOPKINS AVENUE – . . . Request for Conditional Use Authorization, pursuant
12 to Planning Code Sections 303 and 317 to legalize the tantamount to demolition of
13 a single-family home within a RH-1 (Residential House, One-Family) Zoning and
14 40-X Height and Bulk District. This action constitutes the Approval Action for the
15 project for the purposes of CEQA, pursuant to San Francisco Administrative Code
Section 31.04(h). **Preliminary Recommendation: Approve with Conditions and
Modifications.**

16 36. On December 10, 2018 – three days before the hearing on the CUA – Supervisor
17 Aaron Peskin announced proposed City legislation that would punish property owners who
18 exceeded the scope of their permits.

19 37. On December 13, 2018, the CUA was presented to five members of the Planning
20 Commission: Dennis Richards, Kathrin Moore, Richard Hillis, Myrna Melgar, and Joel Koppel.
21 A sixth member of the Planning Commission, Rodney Fong, excused himself just prior to the
22 start of the CUA testimony despite having participated in the fifteen prior agenda items over the
23 previous seven hours. The Planning Department spoke first. The Planning Department
24 explained that the CUA requested legalization of the excess demolition of the Property and
25 permit the construction of a three-story four-bedroom/four bath single-family home similar to
26 the 2014 Permit. As expected, the Planning Department recommended that the project be
27 modified to two stories instead of the three stories previously approved in the 2014 Permit. The
28 Planning Department reiterated that the Property was not a historic resource and further found

1 that the proposed project was consistent with the City’s Objectives and Policies of the General
2 Plan, in that it was necessary, desirable, and compatible with the surrounding neighborhood and
3 that the proposed redevelopment would add additional open space and living space to the
4 structure, suitable for a family.

5 38. After Planning Department staff made its presentation, the Planning Commission
6 heard testimony from the Architect that summarized the history of the renovations at the
7 Property, described the 2014 Permit in the context of the then-existing building on the Property,
8 clarified the areas in which the negligible excess demolition occurred, and presented renderings
9 of the proposed three-story building that was not only similar in size and scale to the 2014 Permit,
10 but more compliant with the SF Planning Code as a result of removing non-conforming features
11 that had been previously approved by the Planning Department in the 2014 Permit. The Planning
12 Commission also received in advance of the hearing a legal affidavit under penalty of perjury
13 from the General Contractor that described in detail the field conditions that were encountered
14 during demolition.

15 39. During the public comments portion of the hearing, the Planning Commission
16 once again heard misleading, factually incorrect, and false public testimony none of which was
17 presented under oath by substantially the same players at prior hearings.

18 40. After public comment had closed, and without warning and under the guise of an
19 “approval” of the CUA, the Planning Commission, led by Commissioner Richards, determined
20 in a 5-0 vote that rather than allow construction of the proposed four-bedroom/four bath home
21 that had already been permitted by the City under the 2014 Permit, Petitioner would instead be
22 required to (1) rebuild a replica of the original, 1935, 927 sq. foot, one-bedroom structure, and
23 (2) install an “interpretative plaque” on that rebuilt structure, stating the property was a replica
24 of a Neutra design, and had been “accidentally demolished” and rebuilt per the decision of the
25 Planning Commission (“CUA Decision”). The CUA Decision, which had plainly been
26 predetermined prior to the hearing, was then quickly adopted by the five voting commissioners,
27 Dennis Richards, Kathrin Moore, Richard Hillis, Myrna Melgar, and Joel Koppel. Further, the
28 CUA Decision was made and adopted without consulting City counsel. Because public

1 comment had been closed, and there had been no indication on the Notice of hearing that the
2 Planning Commission was contemplating that Petitioner build a wholly *different* project as was
3 already permitted under the 2014 Permit – i.e. a one-bedroom/one bath 927 sq. ft home vs. a
4 four-bedroom/four bath 3,665 sq. ft home – Petitioner had no opportunity to object. And,
5 because the grant or denial of a CUA is determined by the Planning Commission, who does not
6 have enforcement powers under the City Charter (See, San Francisco Charter section 4.105; San
7 Francisco Planning Code section 176(b)), Petitioner had no automatic appellate rights to
8 challenge the decision, despite the fact that the decision, which was clearly implemented to
9 “punish” Petitioner, was commensurate with an enforcement proceeding.

10 41. Indeed, recognizing the Planning Commission does not have authority to
11 “enforce” the CUA decision, the Planning Department, in a series of emails, questioned how to
12 go about enforcement of the CUA Decision, and acknowledged that there was no Planning Code
13 provision that required such enforcement. Nonetheless, after pondering the situation the
14 Planning Commission had created, the Planning Department came up with the following plan to
15 enforce the CUA decision:

16 . . . prepare a notice once the [CUA Decision] becomes final and give the owner 30
17 days to respond. This includes revision to the building permit to reflect the
18 conditions of approval adopted by the Planning Commission. If there is no
19 response, we will initiate cancellation of the permit. Once the permit is cancelled,
we can proceed with enforcement action.

20 This enforcement plan was later confirmed by the Planning Department’s Historic Preservation
21 Team at the December 19, 2018 Historic Preservation Commission hearing. The Historic
22 Preservation Commission is a seven-member body that makes recommendations directly to the
23 BOS, bypassing the Planning Commission, on the designation of historic buildings, resources,
24 and districts under the Planning Code. Ironically, after the Planning Department’s Historic
25 Preservation Team informed the Historic Preservation Commission of the Planning Department’s
26 enforcement plan, Historic Preservation Commissioner Jonathan Pearlman clarified that the
27 Property *was not* a historic resource/building, had never been categorized as such, and thus was
28 not within the realm of the Historic Preservation Commission. Pearlman also stated that by

1 issuing the CUA Decision, “the Planning Commission did a very provocative thing – and to make
2 a point”

3 42. On January 16, 2019, Planning Commissioner Dennis Richards, who was the
4 ringleader of the CUA Decision, was quoted in the San Francisco Chronicle as stating that the
5 Planning Commission never claimed that building on the Property was historic. Rather, Richards
6 stated, the CUA decision was aimed at speculators who buy modest homes only to knock them
7 down illegally and replace them with much larger, more valuable houses. In response to
8 Petitioner challenging the CUA Decision, Richards replied flippantly:

9 Good luck to him — he is within his right to appeal, but I don’t know what he thinks
10 he is going to get out of it. He is not going to get permission to build a 4,000-
11 square-foot replacement structure. I would bet my house on it.

12 **FIRST CLAIM**
13 **(Violation of Fundamental Vested Rights (42 U.S.C. § 1983))**

14 43. Plaintiff incorporates here by reference the allegations contained in Paragraphs 1
15 through 42 of this Complaint.

16 44. Defendants’ cancellation of the 2014 Permit and imposition of the CUA Decision
17 violates Plaintiff’s fundamental vested rights protected by the U.S. Constitution. The site plan
18 was approved by Defendants in 2015, and the 2014 Permit was thereafter approved and stamped
19 in May of 2016. Thereafter, Plaintiff purchased the Property and the 2014 Permit, with the
20 expectation it could proceed under the 2014 Permit. In good faith reliance on the 2014 Permit
21 issued by Defendants, Plaintiff performed substantial work and incurred substantial liabilities by
22 commencing construction under the 2014 Permit in August 2017. Thereafter, despite the fact
23 that construction had commenced, DBI purportedly and unlawfully “cancelled” the 2014 Permit
24 in December of 2017, depriving Plaintiff of due process of law, and the Planning Commission
25 thereafter issued its CUA Decision in December of 2018, which unlawfully precludes Plaintiff
26 from proceeding under the 2014 Permit. However, because Plaintiff has already commenced
27 work under the 2014 Permit, the rights under that Permit are vested and protected. Defendants’
28 actions to restrict Plaintiff from proceeding under the scope of that Permit unlawfully deprives

1 Plaintiff of its vested rights under the 2014 Permit, without adequate amortization and/or
2 compensation.

3 45. As a result of Defendants' actions, Plaintiff has suffered out of pocket expenses,
4 loss of property value, and loss of opportunity value in the amount of approximately
5 \$10,000,000.00 as to be further determined at trial. Plaintiff is also entitled to recover its
6 attorneys' fees under 42 U.S.C. § 1983.

7 **SECOND CLAIM**
8 **(Violation of Due Process (42 U.S.C. § 1983))**

9 46. Plaintiff incorporates here by reference the allegations contained in Paragraphs 1
10 through 45 of this Complaint.

11 47. Defendants' CUA Decision and cancellation of the 2014 Permit deprived Plaintiff
12 of due process as required by law in that such decision and cancellation was made without notice,
13 and/or after public comment had closed, and/or without allowing Plaintiff an opportunity to
14 object or appeal. Further, the CUA Decision and the cancellation of the 2014 Permit were
15 imposed without legal basis and were not reasonably related to furthering a legitimate public
16 purpose, but instead imposed purely to penalize Petitioner for exceeding the scope of the 2014
17 Permit. As such, the CUA Decision and cancellation of the 2014 Permit arbitrarily, capriciously,
18 improperly, and unreasonably deprives Plaintiff of its vested rights in the 2014 Permit, and
19 imposes an unreasonable and unlawful requirement that Plaintiff construct a replica of the
20 original 1935 structure – a wholly separate project than what was issued and permitted under the
21 2014 Permit – without due process of law.

22 48. For the foregoing reasons, the cancellation of the 2014 Permit and the imposition
23 of the CUA Decision violates Plaintiff's right to substantive and procedural due process of law.
24 Defendants' actions damaged Plaintiff by depriving Plaintiff of the benefit of its vested rights in
25 its 2014 Permit and imposing an unlawful requirement on Plaintiff that it construct a completely
26 different, and less valuable project than was previously approved.

27 49. As a result of Defendants' actions, Plaintiff has suffered out of pocket expenses,
28 loss of property value, and loss of opportunity value in the amount of approximately

1 \$10,000,000.00 as to be further determined at trial. Plaintiff is also entitled to recover its
2 attorneys' fees under 42 U.S.C. § 1983.

3
4 **THIRD CLAIM**

5 **(Inverse Condemnation – Against All Defendants)**

6 50. Plaintiff incorporates here by reference the allegations contained in Paragraphs 1
7 through 49 of this Complaint.

8 51. In invalidating Plaintiff's rights under the 2014 Permit, and in imposing an
9 unlawful requirement that Plaintiff construct a replica of the original 1935 structure, Defendants
10 violated the Fifth Amendment of the United States Constitution, which prohibits the taking of
11 private property for public use without just compensation. Plaintiffs purchased the Property with
12 the expectation that they would proceed under the 2014 Permit, which allowed for the
13 construction of a 3,665 sq. ft., three-story, four-bedroom/four bath single family home. Then,
14 Plaintiff did proceed under that Permit when it commenced construction in August of 2017.
15 Thereafter, Defendants erroneously and unlawfully instructed Plaintiff to request "cancellation"
16 of the 2014 Permit and then issued the CUA Decision, which purportedly precludes Plaintiff
17 from further proceeding under the 2014 Permit, and instead requires Plaintiff to construct a 927
18 sq. ft, one-bedroom single family home – a much smaller, and ultimately, much less valuable
19 structure. In doing so, Defendants have deprived Plaintiff of any viable economically productive
20 use of the Property, all without adequate compensation.

21 52. For the foregoing reasons, the CUA Decision constitutes a taking without just
22 compensation, and thus violates Plaintiff's rights protected by the United States Constitution.
23 As a result of Defendants' actions, Plaintiff has suffered out of pocket expenses, loss of property
24 value, and loss of opportunity value in the amount of approximately \$10,000,000.00 as to be
25 further determined at trial. Plaintiff is also entitled to recover its attorneys' fees under 42 U.S.C.
26 § 1983.

27 **FOURTH CLAIM**

28 **(Violation of Equal Protection (42 U.S.C. § 1983))**

53. Plaintiff incorporates here by reference the allegations contained in Paragraphs 1
through 52 of this Complaint.

ZACKS, FREDMAN & PATTERSON, PC
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 SAN FRANCISCO, CALIFORNIA 94104

1 54. By arbitrarily “cancelling” the 2014 Permit and thereafter issuing the CUA
 2 Decision, Defendants violated Plaintiff’s right to equal protection of the laws by intentionally
 3 singling out and treating Plaintiff differently than similarly situated properties. As reflected by
 4 the record, Defendants unlawfully singled out and targeted Plaintiff via the CUA Decision and
 5 prevented Plaintiff from lawfully exercising its vested rights under the 2014 Permit. Given the
 6 public objection and the City’s intent to enact legislation punishing developers for exceeding the
 7 scope of a permit during the time in which Plaintiff sought to remedy its action, it’s apparent that
 8 the cancellation of the 2014 Permit and CUA Decision was made specifically to discriminate
 9 against and punish Plaintiff. Additionally, such decision was intentionally unequal in that
 10 similarly situated properties were not treated in the same manner; indeed, such a decision has
 11 never been imposed prior to the CUA Decision. The actual purpose of both the cancellation of
 12 the 2014 Permit and the CUA Decision is to unlawfully single out, penalize, and target Petitioner
 13 and prevent Petitioner from lawfully exercising its vested rights under the 2014 Permit. Thus,
 14 any stated rational government purpose to the contrary is pretext.

15 55. For the foregoing reasons, the cancellation of the 2014 Permit and the CUA
 16 Decision violates Plaintiff’s right to equal protection of the law, and as a result, Plaintiff has
 17 suffered out of pocket expenses, loss of property value, and loss of opportunity value in the
 18 amount of approximately \$10,000,000.00 as to be further determined at trial. Plaintiff is also
 19 entitled to recover its attorneys’ fees under 42 U.S.C. § 1983.

FIFTH CLAIM

(Violation of Excessive Fines Clause (42 U.S.C. § 1983))

22 56. Plaintiff incorporates here by reference the allegations contained in Paragraphs 1
 23 through 55 of this Complaint.

24 57. The Eighth Amendment of the U.S. Constitution prohibits fines that are so grossly
 25 excessive as to amount to a deprivation of property without due process of law.

26 58. Defendants violated the excessive fines clause when they, as punishment for
 27 Plaintiff exceeding the scope of the 2014 Permit, invalidated Plaintiff’s vested rights under the
 28 Permit and imposed an unlawful requirement on Plaintiff that it instead construct a replica of the

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1 original 1935 structure. Such fine imposed a requirement on Plaintiff that deprived Plaintiff of
2 any viable economically productive use of the Property. Defendants imposed this arbitrary,
3 unlawful and excessive fine on Plaintiff all without notice, opportunity to object or appeal, and
4 thus without due process of law.

5 59. For the foregoing reasons, the CUA Decision imposes an excessive fine on
6 Plaintiff in violation of its constitutional rights, and as a result, Plaintiff has suffered out of pocket
7 expenses, loss of property value, and loss of opportunity value in the amount of approximately
8 \$10,000,000.00 as to be further determined at trial. Plaintiff is also entitled to recover its
9 attorneys' fees under 42 U.S.C. § 1983.

10 **SIXTH CLAIM**
(Violation of Freedom of Speech (42 U.S.C. § 1983))

11 60. Plaintiff incorporates here by reference the allegations contained in Paragraphs 1
12 through 59 of this Complaint.

13 61. The constitutional right to freedom of speech includes the right to refrain from
14 speaking and deliberate retaliation by state actors against an individual's exercise of this right is
15 actionable under the first amendment of the U.S. Constitution. Speech is unlawfully compelled
16 when the government tells a person what they must say or punishes a person for refusing to
17 articulate the government's approved message.

18 62. Defendants violated Plaintiff's right to freedom of speech when, without
19 Plaintiff's authorization and against Plaintiff's will, they mandated via the CUA Decision that
20 Plaintiff install an "interpretative plaque" on that rebuilt structure, stating the Property was a
21 replica of a Neutra design, and had been "accidentally demolished" and rebuilt per the decision of
22 the Planning Commission.

23 63. For the foregoing reasons, the CUA Decision violates Plaintiff's constitutional
24 right to freedom of speech, and as a result of Defendants' actions, Plaintiff has suffered damages
25 in an amount to be determined at trial. Plaintiff is also entitled to recover its attorneys' fees under
26 42 U.S.C. § 1983.

27
28 WHEREFORE, Plaintiff demands judgment against Defendants for the following:

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1. For special damages for out of pocket expenses, loss of property value, and loss of opportunity costs of at least \$10,000,000.00;
2. For general damages according to proof, in an amount that is yet to be ascertained;
3. For an award of attorneys’ fees and costs as allowed by law; and
4. For any other relief that the Court deems just and proper.

Dated: February 14, 2019

ZACKS, FREEDMAN & PATTERSON, PC

/s/ Andrew M. Zacks
 By: Andrew M. Zacks
 Emily L. Brough
 Attorneys for Plaintiff
 49HOPKINS, LLC.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury for all claims as stated herein.

Dated: February 14, 2019

ZACKS, FREEDMAN & PATTERSON, PC

/s/ Andrew M. Zacks
By: Andrew M. Zacks
Emily L. Brough
Attorneys for Plaintiff
49HOPKINS, LLC.

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