



AGENDA
BERKELEY CITY COUNCIL MEETING
Thursday, September 29, 2022
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL: <https://us02web.zoom.us/j/89476550043>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: 894 7655 0043. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@cityofberkeley.info.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

Ceremonial Matters: *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

1. Presentation by Leilani Farha, former Special Rapporteur on the right to adequate housing for the United Nations

City Manager Comments: *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

Public Comment on Non-Agenda Matters: *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

Consent Calendar

The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Three members of the City Council must agree to pull an item from the Consent Calendar for it to move to Action. Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.

No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.

Consent Calendar

- 1. Lease Agreement: 80 (North Building), 82/84 & 90 Bolivar Drive in Aquatic Park with Waterside Workshops**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,831-N.S. authorizing the City Manager to execute a lease agreement with Waterside Workshops to use the 80 (North Building), 82/84 & 90 Bolivar Drive in Aquatic Park for a lease term anticipated to begin November 1, 2022 and ending November 1, 2031.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 2. Ordinance Amendment: Correction to the COVID-19 Emergency Response Ordinance, BMC Chapter 13.110.**
From: Mayor Arreguin (Author), Councilmember Hahn (Co-Sponsor), Councilmember Harrison
Recommendation: Adopt second reading of Ordinance No. 7,832-N.S. correcting BMC Chapter 13.110, the COVID-19 Emergency Response Ordinance, to clarify the effect of Ordinance No. 7,762-N.S. upon tenant protections that were inadvertently omitted during the last update of BMC Chapter 13.110.
First Reading Vote: All Ayes.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 3. An Ordinance Repealing Chapter 12.76 of the Berkeley Municipal Code and Repealing Ordinance No. 7,643-NS.**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,833-N.S. repealing Chapter 12.76 of the Berkeley Municipal Code and repealing Ordinance No. 7,643-NS.
First Reading Vote: All Ayes.
Financial Implications: None
Contact: Farimah Brown, City Attorney, (510) 981-6950, Dee Williams-Ridley, City Manager, (510) 981-7000, Paul Buddenhagen, City Manager's Office, (510) 981-7000
- 4. Urgency Ordinance Extending the Lease for Real Property at 742 Grayson Street**
From: City Manager
Recommendation: Adopt an Urgency Ordinance to extend an existing lease for the real property located at 742 Grayson Street, Berkeley, CA for an additional month, through October 31, 2022.
Financial Implications: Measure P Funds - \$26,379
Contact: Peter Radu, City Manager's Office, (510) 981-7000

Consent Calendar

5. **Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 29, 2022**

From: City Manager

Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

Financial Implications: Various Funds - \$15,891,000

Contact: Henry Oyekanmi, Finance, (510) 981-7300

6. **Contract - Gaumard Scientific Company, Inc. for High Fidelity Training Equipment**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to issue purchase orders with Gaumard Scientific Company, Inc. using the General Services Agency's (GSA) Contract No. 47QSEA21D002V for high fidelity training equipment in an amount not to exceed \$375,000 through June 30, 2024.

Financial Implications: Measure FF - \$375,000

Contact: David Sprague, Fire, (510) 981-3473

Action Calendar

The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

The Presiding Officer will request that persons wishing to speak use the "raise hand" function to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action items may be reordered at the discretion of the Chair with the consent of Council.

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak use the "raise hand" function to be recognized and to determine the number of persons interested in speaking at that time.

Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

Each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.

Consent Calendar

7. **ZAB Appeal: 1201-1205 San Pablo Avenue, Use Permit #ZP2021-0070**
From: City Manager
Recommendation: Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units (including five Very-Low-Income units), 1,680 square feet of commercial space, 2,514 square feet of usable open space, and 17 to 28 ground-level parking spaces, and dismiss the appeal.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Information Reports

8. **Audit Recommendation Status - Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities**
From: City Manager
Contact: Jennifer Louis, Police, (510) 981-5900
9. **New Audit Recommendation Dashboard**
From: Auditor
Contact: Jenny Wong, Auditor, (510) 981-6750

Public Comment – Items Not Listed on the Agenda

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed 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 to approve or deny a use permit or variance, 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.*

Archived indexed video streams are available at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the 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 to the City Clerk Department at 2180 Milvia Street. 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 Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <https://berkeleyca.gov/>.

Agendas and agenda reports may be accessed via the Internet at:
<https://berkeleyca.gov/your-government/city-council/city-council-agendas>
and may be read at reference desks at the following locations:

City Clerk Department - 2180 Milvia Street, First Floor
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901
Email: clerk@cityofberkeley.info

Libraries: Main – 2090 Kittredge Street,
Claremont Branch – 2940 Benvenue, West Branch – 1125 University,
North Branch – 1170 The Alameda, South Branch – 1901 Russell

COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.



Captioning services are provided at the meeting, on B-TV, and on the Internet.

I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 15, 2022.

A handwritten signature in black ink that reads "Mark Numainville".

Mark Numainville, City Clerk

Communications – September 29, 2022

Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record.

Item #4: ZAB Appeal: 1201-1205 San Pablo Avenue, Use Permit #ZP2021-0070

1. Dan Hayes
2. Margaret Pritt (5)
3. Yvette Bozzini
4. Melissa and Carlos Blanco
5. Jean Molesky-Poz (2)
6. Eric Danysh
7. Matt Culliname
8. Diana Wood

Missed Refuse Pickup

9. Barbara Gilbert

Parking Tickets

10. Michael Wright

11. Tony Benado

Tree Problem at Indian Rock Park

12. Richard Behrs

13. Tony Benado

**Police Accountability Board and Office of the Director of Police Accountability
Year-End Report**

14. Maritza Martinez, on behalf of the Office of the Director of Police Accountability

Toxic Pesticide Federal Bill

15. Maya Cohen

Supportive Housing at 1367 University Avenue

16. Homeless Services Panel of Experts

Opposition to Measure L

17. Margots999@

Wildfire Prevention

18. Bruce Feingold

Supplemental Communications and Reports

Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.

- **Supplemental Communications and Reports 1**
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**
Available by 5:00 p.m. two days following the meeting.

ORDINANCE NO. 7,831-N.S.

LEASE AGREEMENT WITH WATERSIDE WORKSHOPS TO USE CITY PROPERTIES LOCATED AT 80, 82/84, & 90 BOLIVAR DRIVE IN AQUATIC PARK

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The City Manager, or his designee, is hereby authorized to execute a lease agreement with Waterside Workshops for the property location at 80 (North Building), 82/84 and 90 Bolivar Drive in Aquatic Park with a lease term beginning on November 1, 2022, ending November 1, 2031. The estimated revenue is \$24,750. The lease shall be substantially in the form attached hereto as Exhibit "A".

Section 2. All revenue from said lease shall be deposited in the Park Tax Fund in a specific revenue account (Budget Code 450-5801-363.10-04) and used to maintain public facilities in Aquatic Park.

Section 3. Copies of this bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen calendar days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on September 13, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

Exhibit A: Lease Agreement

CITY OF BERKELEY
IMPROVED PROPERTY LEASE

Between

THE CITY OF BERKELEY, A CHARTER CITY
ORGANIZED AND EXISTING UNDER THE LAWS
OF THE STATE OF CALIFORNIA

as Landlord,

and

WATERSIDE WORKSHOPS

as Tenant.

For the Properties at
80 (North Building), 82, 84 & 90 Bolivar Drive
Berkeley, CA

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PROPERTY LEASE

BASIC LEASE INFORMATION

- 1. **Landlord:** City of Berkeley, a California municipal corporation
2180 Milvia Street
Berkeley, CA 94704
Attention: Director, Parks, Recreation & Waterfront
Telephone: (510) 981-6437
Email: parks@cityofberkeley.info
- 2. **Tenant:** Waterside Workshops
- 3. **Tenant Trade Name:** Waterside Workshops
- 4. **Effective Date:** November 1, 2022
- 5. **Premises:** Four buildings (as depicted in Exhibit “A”) located at the northeast side of Aquatic Park Approx. ½ an acre, including 4 buildings that together are approx. 5,265 square feet, plus outdoor space between the buildings. Public dock and garden area shared with BORP.
- 6. **Permitted Uses:** The premises shall be used for public bicycle rentals and sales, community bicycle repair space, boat building space, storage area, and a small café.
- 7. **Initial Term:** Ten (10) year(s), commencing as of November 1, 2022 (“**Commencement Date**”).
- 8. **Option Period:** Five (5) years.
- 9. **Base Rent:** \$1,800 per year with \$150 increase annually
- 10. **Improvements** Tenant will invest approx. \$166,200 in capital improvements. This includes ADA bathroom renovations, dry rot repairs, window and door repairs and replacements, painting, siding repairs, and ADA repairs and improvements throughout the premises.
- 11. **Maintenance** Tenant will invest approx. \$50,000 in ongoing maintenance, including landscaping, graffiti abatement, pest control, and maintenance of plumbing, electrical and building systems.
- 12. **Services** Landlord pays for water and sewer. Tenant pays for all other utilities including electricity, gas, garbage, and telephone. Tenant pays electrical services associated with Dreamland bathrooms.

The Basic Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. In the event of any conflict between the Basic Lease Information and terms of the Lease, the terms of the Lease shall control.

LANDLORD’S INITIALS

TENANT’S INITIALS

LEASE

THIS LEASE is made by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("Landlord or City") and WATERSIDE WORKSHOPS, a non-profit organization doing business at 80, 82, 84 & 90 Bolivar Drive, in Berkeley, CA ("Tenant").

WITNESSETH:

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the term and subject to the terms, covenants, agreements and conditions set forth below, to each and all of which Landlord and Tenant hereby mutually agree.

1. DEFINITIONS

Unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

A. "Affiliate," as to any person, shall mean such person's partners, members, commissioners, officers, employees, volunteers and agents.

B. "Building" shall mean a building on the Premises as shown on Exhibit A.

C. "Lease Year" shall mean each twelve-month period during the term of the Lease commencing upon the effective date of the Lease.

D. "Aquatic Park" shall mean the Aquatic Park as defined in Chapter 6.04 of the Berkeley Municipal Code ("B.M.C.") (attached hereto as Exhibit "B"), as amended or succeeded, and any buildings and other improvements constructed or to be constructed therein. Without limiting the provisions of Section 36 of this Lease, Tenant acknowledges it is not relying on any representations or warranties made by Landlord, Landlord's agents or anyone else in regard to the size or configuration of Aquatic Park or in regard to the nature, location, or appearance of any buildings, improvements, or unimproved property therein.

E. "Main Lagoon" or "Aquatic Park Lake" shall mean that body of water lying between West Bolivar Drive on the west, Addison Street on the north, the Southern Pacific railroad tracks on the east, and the service road on the south.

F. "Premises" are depicted in Exhibit A and shall mean the following portions of 80, 82, 84, and 90 Bolivar Drive:

1. At 80 Bolivar Drive, the North Building as described on Exhibit "A", bounded to the north by the lagoon and bounded to the east by the pathway. The areas to the south and west of the building are shared spaces with BORP, the tenant at Main Building A at 82 Bolivar Drive.

2. At 82 Bolivar Drive, the southern portion of the main building, called Main Building B and depicted in Exhibit "A". This also includes shared use of the common area, public dock, and the garden area shown on Exhibit "A".

3. At 84 Bolivar Drive, the building, bounded to the south by the southern edge of the

building, to the east by the pathway, to the west by the lagoon. This also includes the outdoor area between 82 and 84 Bolivar Drive, which is bounded by the buildings to the north and south, lagoon to the west, and the pathway to the east.

4. At 90 Bolivar Drive, the exterior area of five feet around the perimeter of the building, provided the Premises are setback a minimum of eight feet from any structures or objects including but not limited to the pathways. Where the setback requirements cannot be met, the boundary line of the Premises will be the building itself. On the east side of the building, the property boundary is up to the street. The Premises include the unimproved foundation to the West of the building. The Premises does not include any portion of the lagoon, or any docks or other appurtenances that expend into the lagoon. It does not include exclusive use of any of the surrounding Aquatic Park land beyond that mentioned above.

G. "Facilities Condition Assessments" shall mean the comprehensive review and report of maintenance and repair needs of City-owned buildings conducted by Kitchell Capital Expenditure Managers, Inc., during 2013 and 2014 (dated 2/20/2015). The section of the report pertaining to Building (pages 45) is attached hereto as Exhibit "D", which lists the recommended capital improvements by building system class along with the estimated cost to repair or replace each specified building element or system (Table: CIP Cost Summary, page 45). This list of recommended capital improvements informs the List of Required Improvements set forth in Exhibit "C".

I. "Public Dock" shall mean the public boat launching dock serving the Main Lagoon and located adjacent to the parking area of the Premises (as depicted in the aerial view of the Premises appearing in Exhibit "A").

2. TERM

A. Initial Term and Term of Renewal. The initial term is for a period of approximately ten years. Tenant has the option, under certain terms and conditions as described below, to renew this lease for an additional five-year term. This Lease shall take effect once duly approved by the Berkeley City Council and executed by both Landlord and Tenant ("the Effective Date"). The Initial Lease Term will expire at midnight October 30, 2032 ("the Termination Date").

B. Procedure for Renewal. If Tenant wishes to renew the Lease beyond the Initial Lease Term, Tenant must provide written notice of such intent to Landlord at least one hundred and twenty (120) days prior to the expiration of the Initial Term. If Landlord, in its sole discretion, determines that Tenant has complied with all terms and conditions of the Lease, at least sixty (60) days prior to expiration of the Lease, Landlord shall provide written notice to Tenant of any additional improvements that will be required to be completed by Tenant or increase in rent for a single five-year renewal term and shall provide notice of its determination to grant renewal of the lease upon condition that Tenant agrees to the additional improvements and increase in rent, if any, at least thirty (30) days prior to the expiration of the Initial Term.

3. RENT

A. Rent. Tenant shall pay to Landlord as a minimum rental for its use and occupancy of the Premises an annual rent of **ONE THOUSAND AND EIGHT HUNDRED DOLLARS**

(\$1800.00) for the first year of the Lease. For purposes of determining Rent, the first year of the Lease is the period up to October 31, 2023 and will be pro-rated for a partial year. In each subsequent Lease Year during the Term, the Rent shall increase by **ONE HUNDRED AND FIFTY DOLLARS (\$150.00)** per year.

B. Percentage of Gross Income from Special Events.

1. In the event that Tenant operates a concession or a revenue-generating special event on the Premises or on the Main Lagoon, then Tenant agrees to pay Landlord, in addition to any fees levied by the City, an amount equal to FIVE PERCENT (5%) of the gross income realized by each such concession or special event during the term of the Lease. A special event is defined as any event in which the participants (groups or individuals) pay an entry fee to the Tenant. Tenant shall make this payment to the Landlord within thirty (30) calendar days from the last day of each special event, together with a financial statement of the gross income from said event. Tenant shall keep true and accurate books and records of each special event. Said books and records shall be retained for at least two (2) years after occurrence of the events to which they relate. Landlord, and/or its designee, shall have the right at reasonable periods and at all reasonable times, and upon at least five (5) days' advance notice to Tenant to inspect such books and records. Income from special events does not include any grants or donations Tenant receives.

2. If any special event is likely to preclude some or all users of Aquatic Park from exercising a different use, and/or is a regatta, race, or pageant in Aquatic Park and/or on the Main Lagoon, Tenant shall first obtain a permit from the City, as required by Resolution No. 58,644-N.S. and Section 6.04.060 of the Berkeley Municipal Code. The fees for such permits shall be set by the City Council. Water use permits (by definition, for an event lasting no more than two weeks), may be issued by the Parks Recreation and Waterfront Department. Tenant understands that this Lease does not guarantee that the City, in its regulatory capacity, will grant any particular request for a permit. Tenant understands that the City may grant or deny such permit in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion.

C. Manner of Payment. All rent and other payments due from Tenant shall be made to Landlord in lawful money of the United States of America at Landlord's address for notice hereunder, or to such other person or at such other place as Landlord may from time to time designate in writing.

D. Delinquency and Late Charges; Interest.

1. Tenant hereby acknowledges that its late payment of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult or impracticable to ascertain. Such costs include, without limitation, processing and accounting charges and overtime wages. Accordingly, any payment of rent or other sum due hereunder that remains due and unpaid for a period of ten (10) days after it becomes due and payable shall be subject to a delinquency charge of ten percent (10%) of the delinquent amount. The parties agree that such charge represents a fair and

reasonable estimate of the costs Landlord shall incur by reason of Tenant's late payment. Landlord shall apply any monies received from Tenant first to any accrued delinquency charges and then to any rent then due. Acceptance of such delinquency charges by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount. The delinquency charge is in addition to all other remedies that Landlord may have under this Lease or at law.

2. Any amount due to Landlord, if not paid when due, shall bear interest from the date due until paid at the rate of the twelve percent (12%) per annum. Interest shall not be payable on delinquency or late charges nor on any amounts upon which such charges are paid by Tenant, to the extent such interest would cause the total interest to exceed that legally permitted. Payment of interest shall not excuse nor cure any default hereunder by Tenant.

E. Accord and Satisfaction. Landlord's acceptance of a lesser amount of rent or other sum due hereunder shall not be deemed to be other than on account of the earliest rent or payment due and shall be applied by Landlord as provided in subsection D. 1. No endorsement or statement on any check or letter accompanying any such check or payment shall be deemed an accord and satisfaction, and Landlord may accept such check or payment and pursue any other remedy available under this Lease or at law. Landlord may accept any partial payment from Tenant without invalidation of any contractual notice required hereunder (if required) and without invalidation of any notice required pursuant to California Code of Civil Procedure Section 1161, et seq., or any successor statute.

4. PROPERTY AND OTHER TAXES

A. Possessory Interest Taxes. The property interests created by this Lease may be subject to property taxation and Tenant, in whom the possessory interest is vested, will be responsible for the timely payment of any property taxes levied on such possessory interest. Tenant agrees to pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the state, county, city or any tax or assessment levying body against the transfer of the leasehold interest hereunder upon recordation or otherwise, or upon any activity carried on under this Lease, any interest in this Lease or any possessory right which Tenant may have in or to the Property or the Premises by reason of its use or occupancy thereof or otherwise.

B. City of Berkeley Assessments. Tenant also shall be responsible for and shall pay prior to delinquency all assessments imposed against the Property and/or the Premises by the City. Tenant acknowledges that City has established certain assessment districts within the City of Berkeley and that all properties within the assessment districts are subject to annual assessments. The City reserves the right to create additional districts and to terminate any such district(s). Tenant shall be billed for each such assessment in the same manner as other property owners and lessees in the City.

C. Personal Property and Other Taxes. In addition to all other sums to be paid by Tenant hereunder, Tenant shall pay, before delinquency, any and all taxes levied or assessed during the term of the Lease on Tenant's equipment, furniture, fixtures, merchandise, and other

personal property located in the Premises, and shall pay, or shall reimburse Landlord for, any and all assessments (including, without limitation, all assessments for public improvements, services or benefits, irrespective of when commenced or completed), excises, levies, business taxes, Lease, permit, inspection and other authorization fees, transit fees, service payments in lieu of taxes and any other fees or charges of any kind, which are levied, assessed, or imposed by any public authority: (i) upon or measured by rental payable hereunder, including without limitation, any gross income tax or excise tax levied by the City of Berkeley, Alameda County, the State of California, the Federal Government or any other government body with respect to the receipt of such rental; (ii) upon or with respect to the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the or any portion thereof; (iii) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures, merchandise, and other personal property located at or in the Premises or by the cost or value of any improvements made by Tenant to the Premises, regardless of whether title to such improvements shall be in Tenant or Landlord; or (iv) upon this Lease or any document to which Tenant is a party creating or transferring an interest in the Premises.

D. Tenant's Right to Contest. Tenant may, at no cost to Landlord, reasonably contest the legal validity or amount of any taxes, assessments, or charges for which Tenant is responsible under this Lease, and institute such proceedings as Tenant considers necessary; provided, however, that Tenant shall at all times protect Landlord from foreclosure of any lien, and that Landlord shall not be required to join in any proceeding or contest brought by Tenant.

5. USE OF PREMISES AND THE AQUATIC PARK MAIN LAGOON

A. The Premises shall be used for public bicycle rentals and sales, community bicycle repair space, public boat rentals, boat building space, storage area, and a small café.

B. Tenant shall operate its business on and about the Premises in a manner consistent with the use permitted herein and the standards promulgated by Landlord.

C. Tenant understands that motorboats may be used on the Main Lagoon at Aquatic Park only from May 1st through September of each Lease Year on a schedule to be approved by the City of Berkeley's Director of Parks, Recreation, and Waterfront. For safety and instructional purposes while using the Main Lagoon, Tenant may use three motorboats, power by four-stroke outboard motors, provided the speed of said boats does not exceed 11 MPH, except in case of emergencies. At all times, Tenant agrees to provide adequate personnel to ensure the safe and efficient management of its use of the Premises and the Main Lagoon. Tenant must comply with all applicable regulations governing the use of the Main Lagoon and Aquatic Park. Tenant may not use motorboats on any portion of the Main Lagoon from October 1st through April 30th, due to the fact that environmental studies show use during those months would impact migratory birds. Any such use of the Main Lagoon during this period is subject to approval of the City Council and other affected regulatory agency.

D. At all times, Tenant agrees to provide adequate personnel to ensure the safe and efficient management of its use of the Premises and the Main Lagoon. Tenant must comply with all applicable regulations governing the use of the Main Lagoon and Aquatic Park. Tenant

acknowledges that the City may alter the permitted scope of usage of the Main Lagoon and Aquatic Park in its sole discretion, and the City's regulations shall take precedence over any agreements between Lagoon users.

E. Prior to entering and using the Main Lagoon, Tenant shall have complied with Section 15 - Insurance, of this Lease. In addition, Tenant, and any of its participants or guests of guests of its participants entering and using the Main Lagoon shall sign a waiver and release form to be provided by the Tenant that holds the City of Berkeley harmless in case of any accidents or loss of any type. Such release shall include, but not be limited to, the following:

“Participant releases and forever discharges the City of Berkeley, its divisions, subsidiaries, affiliates, 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 in tort, contract, breach of warranty, strict liability, negligence or any other legal theory of recovery, and whether for general, special, compensatory or punitive damages, arising out of or in any way related to use of the Main Lagoon at Aquatic Park.”

In the event Tenant fails to obtain a signed waiver and release form from any member or guest of its participants who uses the Main Lagoon or is in any way connected to the use of the Main Lagoon, Tenant at all times will still be bound by Section 14 of this Agreement.

F. Tenant will comply with all applicable safety standards in effect at any given time, and take all necessary steps to ensure that its participants and guests of its participants are properly supervised and trained to prevent injury to themselves and others. Tenant will provide adequate supervision and training of its participants and guests of in their use of the Premises and/or Main Lagoon.

G. Landlord shall have no responsibility for Tenant's equipment, vehicles or personal property that may be lost, stolen, or damaged.

H. With the exception of Tenant's equipment stored within the Premises, no items will be allowed to be stored in the exterior Premises without written approval by Landlord. In no circumstances shall items not related to the Tenant's programs be allowed to be stored on the Premises, either inside or outside.

I. Tenant agrees to require its participants and guests of participants who use the Premises and/or Main Lagoon to respect other Aquatic Park lessees, licensees and visitors and to abide by standards of behavior common to the sport of rowing, bike riding, and general park use.

J. Business may be conducted with the public on the Premises during park hours, provided that Tenant shall have obtained all required permits and provided Tenant shall comply with all rules applicable to Aquatic Park.

K. Tenant agrees to cooperate with the City in promoting community participation in Tenant's programs and activities held on the Premises.

L. Tenant shall not, without the written consent of Landlord:

1. place, construct or maintain in, on, or about the Premises or within Aquatic Park any advertisement media, including without limitation, searchlights, flashing lights, loudspeakers, or other similar media or device;
2. place or permit the use in or on the Premises of any video games, pinball machines or other devices or equipment for amusement or recreation, or any vending machines, newspaper racks or other coin operated devices (excepting pay telephones).
3. warehouse or stock on the Premises any goods, wares or merchandise other than that which is directly related to the Tenant's use of the Premises;
4. store, display or sell goods or merchandise on the Premises or place or permit portable signs or other devices to be stored or to remain on the Premises;
5. use or permit any portion of the Premises to be used as living or sleeping quarters; and
6. sell, distribute, display, or offer for sale any item, which, in Landlord's good faith judgment, may tend to detract from the image of Aquatic Park.

M. Tenant shall not do or permit to be done in, on, or about the Premises anything which is prohibited by or may conflict with any law, statute, ordinance or governmental rule or regulation now in force or hereafter enacted or promulgated, which is prohibited by the standard forms of special form or commercial general liability insurance or which may cause a cancellation of any insurance policy covering Aquatic Park or the Premises or any of its contents, or (except with the prior written consent of Landlord) which may increase the existing rate of or affect any special form or commercial general liability insurance or other insurance upon Aquatic Park or the Premises, or any of its contents. In the event Tenant does or permits to be done anything or keeps or permits to be kept anything on or about the Premises or the Aquatic Park which increases the existing rate of such insurance upon Aquatic Park or the Premises or any of its contents, Tenant shall pay the amount of any such increase promptly upon Landlord's demand. Tenant shall not do or permit anything to be done which will in any way obstruct or interfere with the rights of other lawful users of Aquatic Park, including, without limitation, tenants, their employees or invitees, disturb or annoy them, or use or allow the Premises to be used for any improper, unlawful or objectionable purpose. Tenant shall not maintain or permit any nuisance in or about the Premises or commit or suffer to be committed any waste in or upon the Premises.

N. No auction, fire, bankruptcy, distress, clearance, or going-out-of-business sale shall be conducted on the Premises nor shall any sign or advertisement regarding such activity be posted in or about the Premises.

O. Tenant shall not use or permit the Premises to be used in any manner or permit anything to be brought into or kept therein which would (i) violate the certificate of occupancy

for the Premises; (ii) make it impossible or extraordinarily difficult to obtain special form coverage, commercial general liability or other insurance required to be furnished by Tenant under this Lease; (iii) cause structural injury to any part of the Premises or the Building; (iv) impair or interfere with the proper operation and maintenance of the Premises and/or Aquatic Park; or (v) violate any of Tenant's other obligations under this Lease.

P. If any governmental license or permit, other than a certificate of occupancy, shall be required for the proper and lawful conduct of Tenant's business, Tenant shall procure and maintain such license or permit and submit the same for inspection by Landlord. Tenant at all times shall comply with the terms and conditions of each such license or permit.

Q. Nothing shall be done in or about the Premises by Tenant or anyone having a contractual relationship with Tenant that will result in substantial interference, by themselves or third parties, with normal operation and use of Aquatic Park or the means of ingress and egress thereto ("Substantial Interference"). Tenant shall use every effort to eliminate Substantial Interference, including legal action. If Tenant fails to bring an immediate halt to any Substantial Interference, Landlord shall have the right (i) to take action and require Tenant to undertake and eliminate such Substantial Interference and (ii) to commence any legal action to eliminate such Substantial Interference. Any agreement entered into by Tenant with regard to use of the Premises shall contain a provision reserving to Tenant all of the necessary rights and remedies to permit Tenant to comply with its obligations under this provision and authorizing Landlord to enforce the terms of such provision if Tenant fails to do so.

R. Tenant acknowledges that West Bolivar Drive is closed to vehicular traffic and that Landlord has installed a gate to prohibit such traffic. Landlord agrees that Tenant and its Affiliates may use West Bolivar Drive to access the Premises, provided that Tenant and its Affiliates shall close the gate after each entry and exit.

S. Tenant agrees to submit to the Landlord, by June 1st of each Lease Year, an annual report that describes the Tenant's community activities in the prior year, including:

1. List tenant's community activities in the previous year, with the number of participants volunteering and the total hours at each day of community activity.
2. List number of participants, number of participants from Berkeley, number of participants who are under 18 or other member subgroups the organization believes is appropriate to mention.
3. Tenant shall identify the fee structure utilized during the previous year, including dues for Berkeley residents, non-Berkeley residents, and different sub-groups if applicable.
4. Approximate level of usage, such as number of people per day, number of person-hours per day, or comparable information. If there is variation from one time of year to another, then this information shall be reported by season.
5. Tenant shall discuss any Aquatic Park lagoon use scheduling or issues with other park users. If there are no issues, a statement to that effect is required.

T. Tenant agrees to post on the Premises references to the Organization's website for

information concerning the Organization's programs and goals, events, and contacts to discuss and facilitate participation.

6. USE OF AQUATIC PARK PROPERTY

A. The parties acknowledge that Tenant has, as a member of the general public, the non-exclusive right, in common with others duly authorized by Landlord, and subject to all generally applicable laws and regulations, to use Aquatic Park, including the Main Lagoon.

B. Tenant agrees that except as otherwise provided in this Lease, it is not a covenant or condition of this Lease or of any other agreement with Tenant that Landlord undertake or cause to be undertaken any development or redevelopment of the Premises or Aquatic Park, and Landlord shall incur no liability whatsoever to Tenant for failure to undertake such development or redevelopment.

C. Landlord at all times shall have the right and privilege of making such changes in and to Aquatic Park (other than to the Premises) from time to time which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, utilities and all other facilities; provided, however, that the foregoing is not intended to entitle Landlord to unreasonably effect changes that would materially and adversely affect access to or visibility of the Premises, except temporarily during periods of construction. Landlord shall have the right to establish, promulgate, and enforce such reasonable rules and regulations concerning Aquatic Park, as it may deem necessary or advisable for the proper and efficient management, operation, maintenance and use thereof, and Tenant shall comply with the same.

D. Landlord at all times shall have the sole and exclusive management and control of Aquatic Park, including without limitation, the right to lease, license or permit the use of space within Aquatic Park to persons for the sale of merchandise and/or services and the right to permit advertising displays, educational displays, displays of art, and promotional activities and entertainment.

E. Nothing contained herein shall be deemed to create any liability to Landlord for any personal injury, or any damage to motor vehicles, vessels, or other Premises of Tenant's participants, employees or others, unless caused by the gross negligence or willful misconduct of Landlord, its agents, servants or employees. Tenant is solely responsible for the security of the Premises, and for the safety of its participants and guests using the Premises and/or the Main Lagoon pursuant to this Lease or any permits or licenses from the City. Tenant acknowledges that if Landlord provides security guards or police patrols for Aquatic Park or any portion thereof, Landlord does not represent, guarantee or assume responsibility that Tenant or any person or entity will be secure from losses or injury caused by the acts of third parties and does not assume responsibility for any such illegal acts. Tenant hereby waives any present or future claims Tenant may have against Landlord, whether known or unknown, for bodily injury or property damage arising from the performance of such security agents. City shall not be obligated to provide any public liability or property damage or loss insurance for the benefit of

Tenant or any other person or entity.

F. Tenant will use its best efforts to maintain effective relations with other users of Aquatic Park and with neighbors. Tenant shall park vehicles only in legal and/or designated parking areas and only for the legal period of time; shall deposit all trash in legal containers; shall not deposit food or material of any kind on adjacent Premises; and shall respect the sensitive environment of Aquatic Park. Landlord has the right at any time to revise the traffic flow on Bolivar Drive, provided Tenant continues to have vehicular access to the Premises.

G. Tenant shall not interfere with the free and unobstructed access by the public to Aquatic Park. Tenant shall not preclude other users of Aquatic Park from exercising a different use without first obtaining any and all appropriate permits. Tenant shall be obligated to permit such access to Aquatic Park as required for consistency with applicable laws of the State of California, and/or City's plans adopted from time to time; however, this sentence is not intended to, and shall not be construed to, confer any right of action upon any third party.

H. Landlord reserves to itself the right to grant to others in the future nonexclusive utility easements over, under, through, across, in or on the Premises in locations that will not unreasonably interfere with Tenant's access to or use of the Premises. Any interference shall be temporary, and all work on the Premises shall proceed expeditiously. Tenant shall be given reasonable notice before commencement of any work on the Premises. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises, or any portion thereof, or to the Building, or other facilities located upon the Premises, including but not limited to pavement, curbs and sidewalks, the same shall be repaired by Landlord at its expense, if not so repaired by the party installing and maintaining the line. Landlord shall hold harmless and indemnify Tenant from all claims arising out of the grant or use of such a utility easement, except to the extent they result from the negligence or willful misconduct of Tenant or its sub-lessees or sub-tenants.

7. SERVICES

A. Landlord shall provide and maintain water and sewer service to the Premises. Tenant shall maintain the water and sewer lines within the Building. Landlord shall pay the costs of the water and sewer service. Tenant shall pay for and be responsible for all other utilities and services, including electric, gas, garbage and telephone, and all fees and periodic charges related thereto. Tenant agrees to pay electrical services associated with Dreamland bathrooms, as they share a meter with 90 Bolivar Drive.

B. Landlord makes no representation or warranty that the supply of any utility or service to the Premises and/or the Building will not be interrupted, delayed or reduced.

C. Landlord shall not be liable for damages to either person or property; nor shall Landlord be deemed to have evicted Tenant; nor shall there be any abatement of any rent; nor shall Tenant be relieved from performance of any covenant on its part to be performed hereunder by reason of any (i) breakdown of equipment or machinery utilized in supplying utilities or services; (ii) interruption of or failure to supply or delay in supplying any such utilities or services; (iii) the limitation or restriction on use of water, electricity gas, or telecommunications

service serving the Premises or Aquatic Park; or (iv) failure to repair or cure any of the foregoing, except in the case of Landlord's gross negligence or willful misconduct.

8. OBLIGATION OF TENANT TO REMOVE PERSONAL PROPERTY

Upon the expiration of this Agreement, Tenant is obligated to remove any personal property placed in the Premises by the Tenant. If any personal property does remain on the Premises upon the expiration of the Agreement it will be considered abandoned personal property, which will be removed, by the City and the Tenant will be responsible for all costs associated with removing the personal property from the Premises.

9. ALTERATIONS AND IMPROVEMENTS

A. Tenant acknowledges that Landlord owns the Premises. Tenant accepts the Premises from Landlord in its "as is" condition, the conditions that exist as of the Effective Date of this Lease. Tenant acknowledges that Landlord makes no representation or warranty concerning (i) the physical condition of the Premises; (ii) the Premises suitability for Tenant's proposed use; or (iii) the presence of any Hazardous Substance in or about the Premises, except as otherwise expressly set forth in this Lease. Landlord has encouraged Tenant to make its own physical inspection of all aspects of the Premises and to conduct its own investigation as to the suitability of the Property and the Premises for Tenant's use.

B. Upon the execution of this Lease, Landlord approves and requires the improvements to the Premises listed on Exhibit "C" that shall be completed by Tenant. Tenant shall complete the improvements within the timeframe as stated in Exhibit "C" (Tenant's Work). Tenant shall not make any alterations, additions or improvements to the Premises (i) costing in excess of \$5,000 for any single instance or \$15,000 in the aggregate for any twelve (12) consecutive months or (ii) affecting the Building structure or utility systems, or attach any fixture or item of equipment thereto without Landlord's prior written consent except for the Fence and the improvements listed in Exhibit "C". All such alterations, additions, or improvements shall be made at Tenant's sole expense in accordance with Landlord's General Design Requirements (if any) and the plans and specifications (including specifications for materials to be used in connection therewith) and a statement of the estimated cost of such work submitted to and approved by Landlord (collectively the "Plans and Specifications"). If the cost thereof exceeds \$5,000 for any single instance, or if such Tenant's Work involves the Building structure or utility systems, any contractor or person selected by Tenant must be a licensed contractor. Landlord, in its sole discretion, shall approve or disapprove Tenant's request and may disapprove Tenant's use of any materials or substances, including but not limited to asbestos and fiberglass, which Landlord, in its sole discretion, deems potentially hazardous, toxic or threatening to health. To the extent that Tenant's Work shall require a building permit or other permits from the City of Berkeley, Bay Conservation and Development Commission ("BCDC") and/or any other governmental agency, Tenant shall not perform any of Tenant's Work until Tenant has obtained all requisite permits. Tenant further shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq., to the extent such requirements are applicable to Tenant's work.

C. Except as otherwise expressly provided in this Lease, Tenant shall not repair,

replace or modify any utility system located within the Building without the Landlord's prior written consent. Tenant is responsible for the repair of any damage to any utility system, structural element of the Building(s), facilities of Landlord or any other facilities arising out of Tenant's construction activities or Tenant's negligence or willful misconduct; provided, however, such provision is not intended to and shall not be interpreted to make any other person or entity a third party beneficiary thereof.

D. This Lease specifically prohibits Tenant, or any other party, from expanding uses or structures allowed on the Premises beyond those designated in use permits approved by the City of Berkeley. Notwithstanding approval of any new Use Permit allowing expansion, or any future expansion of the uses in existing buildings, or additions to existing buildings or docks, or construction of any new buildings or docks, or moving existing buildings onto the Premises, are all subject to the prior written approval of the Landlord (with the exception of the Exhibit "C" Improvements) and all improvements (including Exhibit "C" Improvements) are subject to the environmental review and permit regulations and approvals of same by all applicable local, state, and federal agencies.

E. If Tenant proposes to make or construct any alterations, improvements, additions or fixtures (other than Exhibit "C" Improvements) that affect any portion of the Premises or any structures located on the Premises that are allowed under an existing use permit, Tenant shall first provide the Landlord with thirty (30) days prior written notice. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits.

F. Except for Exhibit "C" Improvements, Tenant shall not substantially deface or change any floors, walls, ceilings, roofs, or partition any of the structures or improvements on the Premises without first providing thirty (30) days written notice to Landlord. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits. Except as may be specifically approved in writing by Landlord, Tenant shall require all contractors to provide a labor and materials bond for the full amount of any contract for improvements that exceed \$50,000, including any applicable Exhibit "C" Improvements. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant in, at, upon or about the Premises and which may be secured by any mechanic's, material men's or other lien against the Premises or Landlord's interest therein.

All alterations, improvements or additions that are now or in the future attached permanently to the Premises shall be the Property of Landlord and shall remain with the Property at the termination of this Lease, except that Landlord can elect within thirty (30) days of the termination of the Lease to require Tenant, at its cost, to remove any equipment that Tenant has affixed to the Premises.

G. 1. Tenant hereby agrees in accordance with the schedule set forth in Exhibit "C" to undertake and complete all of the recommended capital improvements.

2. Tenant understands the Premises were inspected by the City's Certified Access Specialist CAsp. The Lessee acknowledges receipt of their findings and many of these are

incorporated into planned improvements in Exhibit C. City makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to comply with the ADA or similar legislation, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense. City shall have no responsibility to make any repairs or modifications to the premises in order to comply with accessibility standards, except as set forth in other provisions of this Lease.

3. The parties acknowledge and agree that one of the principles underlying the terms and conditions of this Lease is Tenant's agreement to perform specified capital improvements on the Premises in exchange for abated rent and a 10-year term of occupancy. The parties have thoroughly inspected the Building and Premises and have entered into this Lease on the assumption that the capital improvements set forth in Exhibit C represents a reasonable estimate of the improvements necessary to preserve, enhance and improve the condition of the Building through the term of this Lease. However, the parties also acknowledge and agree that certain events (for example, latent or unanticipated defects or damage to the Premises, accessibility requirements, etc.) may give rise to substantial, unavoidable expenses that materially and adversely affect Tenant's ability to perform its obligations under this Lease. In such event, upon Tenant's written notice to Landlord, Landlord shall temporarily defer declaring default pursuant to Section 19 of this Lease, and the parties, in good faith, shall employ their best efforts to negotiate amendments to the Lease that recognize Tenant's financial hardship while preserving to the extent possible the original terms and intent of the Lease. In the event the parties are unable to reach agreement on such amendments, either party may terminate this lease upon 30 days' written notice to the other. Upon such termination, Tenant shall vacate the Premises in accordance with Section 2.B. and shall be relieved of all other obligations under this Lease.

H. 1. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of Landlord's first approval of a building permit or other approval of the work. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. Tenant, as a penalty to Landlord, shall forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

2. Tenant agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on Tenant's Work covered by this subsection H showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section

1776 of the California Labor Code. In the event of noncompliance with the foregoing requirements concerning payroll records which continues for more than ten (10) days after Landlord gives Tenant written notice specifying in what respects Tenant must comply, Tenant shall forfeit, as a penalty to Landlord, for each worker Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, until strict compliance is effectuated. Tenant shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprenticeable occupations, with respect to all work covered by that section. For purposes of the prevailing wage requirements of this subsection, Tenant shall be deemed to be a "contractor" as that term is used in Sections 1720 et seq., of the California Labor Code. Except where the context otherwise requires, the definitions of terms and phrases contained in the State prevailing wage law, Sections 1720 et seq., of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the prevailing wage requirements of this subsection H.

10. LIENS

Tenant shall keep the Premises, the Building, and Aquatic Park free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. In the event that Tenant shall not cause any such liens to be released of record, Landlord shall have, in addition to all other remedies provided herein or by law, the right (but not the obligation) to cause the same to be released by such means as Landlord shall deem proper, including payment of the claim giving rise to such lien. All sums paid and all expenses incurred by Landlord in connection therewith shall be reimbursed by Tenant promptly on demand. Landlord shall have the right to post and keep posted on the Premises any notices (including, without limitation, notices of non-responsibility pursuant to California Civil Code Section 3094) that Landlord may deem proper for protection of Landlord and the Premises. Tenant shall give Landlord at least ten (10) business days' prior notice of the date of commencement of any Tenant's work on or in the Premises to allow Landlord to post such notices.

11. TENANT AND LANDLORD MAINTENANCE OBLIGATIONS

A. Tenant agrees that during the entire term of this Lease, at its own cost and expense, it shall keep and maintain the Building on the Premises, and all leasehold improvements, fixtures, furniture, and other improvements located on the Premises in good-quality order, repair and condition. Except as otherwise provided in this Lease, Tenant shall perform, at its own cost and expense, any and all maintenance, removal of graffiti, repairs, or rehabilitation to the Building, Public Dock, or other area in the Premises, whether required by deterioration or by operations of Tenant or otherwise. This obligation includes any repairs to the roof or building structure.

B. To the extent applicable, Tenant hereby waives the provisions of Civil Code Sections 1941 and 1942, and any other provision of law now or hereafter in effect, with regard to the habitability of the Property and the Premises.

C. "Good-quality order, repair and condition", as used herein, shall mean the maintenance, repair, or renovation of the Building, equipment, furniture, fixtures, outdoor

lighting, signage, and appurtenances necessary to keep and maintain the Building in efficient and attractive condition, given the nature and age of the Building, at any time during the term of this Lease.

D. Tenant shall provide its own janitorial service for the Premises, and all of Tenant's rubbish shall be removed by Tenant to such location(s) on the Premises or within Aquatic Park as may be designated by Landlord for pick-up and disposal by the Landlord.

E. Tenant shall maintain or cause to be maintained, at Tenant's expense, the Public Dock adjacent to the Premises.

F. In the event of a dispute that Landlord and Tenant cannot informally resolve, Tenant's only remedy against Landlord shall be the right to terminate this Lease, effective thirty (30) days from the delivery of written notice to Landlord.

G. Nothing in this Section 11 shall be deemed to affect or impair Landlord's rights under Section 9 of this Lease. Tenant acknowledges that Landlord has no obligation and has made no promises to alter, remodel, improve, repair, decorate or paint the Building or to improve the Premises, or any part thereof. Other than as set forth in the Facilities Condition Assessments, Landlord has made no representations respecting the condition of the Building, the Premises, or Aquatic Park, except as specifically set forth in this Lease.

12. ENVIRONMENTAL

A. Tenant shall follow all environmental rules and regulations as they apply to City agencies. Specifically, Tenant shall minimize waste and recycle and compost. Tenant must participate in a recycling service provided by the City or provide an acceptable alternative with the approval of the City's Recycling Supervisor. To that end, Tenant shall:

1. Assign someone to be in charge of its recycling programs, and to communicate needs and questions to the City's Zero Waste Division.
2. Recycle corrugated cardboard, office papers and beverage containers (glass bottles, plastic bottles, and cans)
3. Place collection containers for paper at convenient locations.
4. Educate employees and program participants about recycling procedures.
5. Recycle batteries and office equipment (contact the City's Zero Waste Division for information about vendors).
6. Tenant shall recycle construction waste from tenant improvements.
7. Tenant shall conserve energy.

13. DAMAGE OR DESTRUCTION

A. In the event the Premises are damaged by fire, flood, earthquake, act of God, the elements, or other casualty, then (unless this Lease is terminated pursuant to this Section 13) Tenant shall forthwith repair the same, at its sole expense. In this event, Tenant shall be solely responsible for the loss, repair, and replacement of its equipment and leasehold improvements.

B. Anything in subsection A to the contrary notwithstanding, neither Tenant nor Landlord shall have any obligation to repair or rebuild the Premises or the Buildings following damage or destruction thereto if the damage or destruction is due to any cause or casualty other than one against which the responsible party is required to carry insurance or actually does carry insurance and such party reasonably estimates that the cost of repair or rebuilding exceeds ten percent (10%) of the replacement cost of the Premises or Buildings, as the case may be. If the responsible party elects not to repair any damage or destruction pursuant to this provision, such party shall give the other party notice of such election within sixty (60) days after the date of such damage or destruction; and this Lease shall terminate as of the date of such damage or destruction.

C. Tenant hereby waives the provisions of California Civil Code Sections 1932 and 1933 and any other statutes now or hereafter in effect which relate to termination of a lease when leased Premises is damaged or destroyed and agrees that such event shall be governed by the terms of this Lease.

14. INDEMNIFICATION

A. To the fullest extent permitted by law, Tenant shall (1) immediately defend and (2) indemnify Landlord, and its directors, officers, and employees from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with the Lease. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Tenant's obligation to indemnify applies regardless of whether a liability is a result of the negligence of any other person, unless it is adjudicated that the liability is caused by the sole active negligence or sole willful misconduct of an indemnified party.

B. The duty to defend is a separate and distinct obligation from the Tenant's duty to indemnify. The Tenant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Landlord, the Landlord and its directors, officers, and employees, immediately upon submittal to the Tenant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Tenant from its separate and distinct obligation to defend Landlord. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Tenant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Tenant may submit a claim to the Landlord for reimbursement of reasonable attorneys' fees and defense costs.

C. The review, acceptance or approval of any of Tenant's work or work product by any indemnified party shall not affect, relieve or reduce the Tenant's indemnification or defense

obligations. This Section survives the termination of this Lease. The provisions of this Section are not limited by and do not affect the provisions of this Lease relating to insurance.

D. Liabilities subject to this Section include any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Tenant or any of the Tenant's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Tenant or its subcontractors, the Tenant shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor.

15. INSURANCE

A. Tenant, at its sole expense, shall procure and maintain the following insurance:

1. Commercial general liability insurance insuring Tenant against any liability arising out of its use, occupancy, repair or maintenance of the Premises, the Building, Aquatic Park or the Main Lagoon, with a combined single limit of not less than \$2,000,000 for injury to or death of one or more persons in any one accident or occurrence and Property damage in any one accident or occurrence. Such comprehensive general liability insurance shall include fire liability coverage and public liability and Property damage insurance, including personal injury, broad form Property damage, blanket contractual, and other coverage as may be reasonably required by Landlord. Landlord shall have the right, from time to time, to require Tenant to increase the amount of its comprehensive general liability insurance coverage if, in Landlord's reasonable opinion, the amount of such coverage is not sufficient in light of the risks insured and Tenant's use of the Premises or Aquatic Park.

2. Special Form Property insurance for cost of damage to the Premises, including, without limitation, during any term of construction of Tenant's Work, builders' All-Risk Insurance. Such insurance shall include coverage for vandalism and malicious mischief and cost of demolition and increased cost of construction by reason of changes in applicable ordinances/laws and shall not contain a co-insurance clause.

B. All policies of insurance and all renewals thereof shall be approved as to form and sufficiency by Landlord's Risk Manager and shall be issued by good and responsible companies qualified to do and doing business in California and rated A+: XIII or better in the most recent version of Best's Insurance Guide. Each of the required insurance coverages except for workers compensation (i) shall name Landlord and each of its Affiliates as additional insureds and, with respect to casualty insurance, as their respective interests may appear and (ii) shall provide that it may not be canceled or altered by the insurer in such manner as to adversely affect the coverage unless sixty (60) days' prior notice is given by certified mail to Landlord at the address set forth in Section 35 below, or to such place as Landlord may from time to time designate in a notice to Tenant.

C. An original certificate of each policy of insurance shall be delivered to Landlord prior to the date the Premises is delivered to Tenant and from time to time during the Term. If

Tenant shall fail to procure or maintain any insurance required hereunder or shall fail to furnish to Landlord any duplicate policy or certificate, Landlord may obtain such insurance; and any premium or cost paid by Landlord for such insurance shall be reimbursed by Tenant promptly upon Landlord's demand. Tenant shall make good faith efforts to ensure that at least sixty (60) days prior to the expiration of any such policy, an extension endorsement showing that such insurance coverage has been or will be renewed or extended shall be delivered to Landlord and if, despite such good faith efforts, such extension endorsement cannot be timely delivered, Tenant shall cause to be delivered to Landlord within said time other reasonable documentary evidence of renewal of coverage and shall continue exercising diligent efforts to deliver to Landlord the required extension endorsement. If such coverage is canceled or reduced, Tenant, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage but in no event later than the effective date of cancellation or reduction, shall deliver to Landlord a certificate showing that the required insurance has been reinstated or provided through another insurance company(ies). Upon Tenant's failure to so deliver such certificate, Landlord may, without further notice and at its option, (1) exercise Landlord's rights as provided in this Lease or (2) procure such insurance coverage at Tenant's expense and Tenant shall promptly reimburse Landlord for such expense.

D. If any of the insurance required in this Section 15 is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of not less than five (5) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

E. Each of Tenant's Property insurance policies insuring the Premises and Tenant's Property in the Premises shall include a waiver of the insurer's right of subrogation against Landlord, or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the assured waives, before the casualty, the right of recovery against any party responsible for a casualty covered by the policy or (ii) any other form of permission concerning the assured's right to waive its right of recovery. If such waiver, agreement or permission shall not be, or shall cease to be, obtainable, Tenant shall so notify Landlord promptly after learning thereof.

F. Tenant hereby releases Landlord with respect to any claim (including a claim for negligence) which Tenant might otherwise have against Landlord for loss, damage or destruction of Tenant's Property occurring during the Term to the extent to which Tenant is insured under a policy (ies) containing a waiver of subrogation or agreement or permission to release liability, as provided in E. above. If, notwithstanding the recovery of insurance proceeds by Tenant for such loss, damage or destruction, Landlord is liable to Tenant with respect thereto or is obligated under this Lease to make replacement, repair, restoration or payment, then (provided Tenant's right of full recovery under its insurance policies is not thereby prejudiced or otherwise adversely affected) the amount of the net proceeds of the Tenant's insurance against such loss, damage or destruction shall be offset against Landlord's liability to Tenant therefore or shall be made available to Landlord to pay for replacement, repair or restoration, as the case may be. Nothing contained herein shall relieve either party of any duty to repair, restore or rebuild imposed elsewhere in this Lease or shall nullify any abatement of rent provided for elsewhere in this Lease.

G. If Tenant employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the Landlord; **provide for a waiver of any right of subrogation against Landlord to the extent permitted by law**; and be approved as to form and sufficiency by the Landlord's Risk Manager.

H. If a death, serious personal injury, or substantial Property damage occurs in connection with the performance of this Lease, Tenant shall immediately notify the Landlord's Risk Manager. If any accident occurs in connection with this Lease, Tenant shall promptly submit a written report to Landlord, in such form as the Landlord may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Tenant's subtenant, if any; 3) name and address of Tenant's liability insurance carrier; and 4) a detailed description of the accident, including whether any of Landlord's equipment, tools or materials were involved.

I. Tenant shall forward all insurance documents to:

Parks, Recreation & Waterfront
City of Berkeley
2180 Milvia St., 3rd Floor
Berkeley, CA 94704

16. COMPLIANCE WITH LAWS

A. Tenant, at its sole expense, shall promptly comply with all applicable laws, ordinances, rules, regulations, permits or requirements now or hereafter in effect (whether foreseen or unforeseen by Landlord or Tenant), with the requirements of any board of fire underwriters or similar body now or hereafter constituted; with any occupancy certificate issued by any public officer and with the provisions of all recorded documents affecting the Premises, insofar as any of the foregoing relate to or affect the condition, use or occupancy of the Premises or the Building. Such compliance by Tenant shall include, without limitation, compliance with all obligations to alter, maintain, or restore the Premises (and, as applicable, the Building), or construct improvements in or to the Premises, regardless of cost and regardless of when during the term of the Lease the work is required.

B. Tenant acknowledges that conducting its operations at the Premises and making certain alterations and improvements may require an authorization, approval or permit (collectively, "Regulatory Approval") from a governmental authority having jurisdiction over the Premises, including but not limited to the Bay Conservation and Development Commission. Tenant shall be solely responsible for obtaining any such Regulatory Approval, and Tenant shall not seek any Regulatory Approval without first obtaining the approval of Landlord, except for the Fence and items listed on Exhibit "C". All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be solely responsible

for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; however, Landlord shall not take any action that would materially interfere or prevent Tenant from complying with all such conditions. Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be paid and discharged by Tenant, and Landlord shall have no liability, monetary or otherwise, for said fines and penalties, except to the extent that such fines or penalties were caused by the willful acts or omissions of Landlord. To the fullest extent permitted by law, Tenant agrees to indemnify and hold Landlord and its officers, agents and employees harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which Landlord may incur as a result of Tenant's failure to timely obtain or comply with the terms and conditions of any Regulatory Approval. Landlord agrees to cooperate (but only to the same extent and in the same manner as a non-public entity could so cooperate, and not as an exercise of Landlord's police or regulatory power) with Tenant in filing, processing and obtaining all Regulatory Approvals, and upon request of Tenant, to join with Tenant as co-applicant in filing, processing and obtaining all Regulatory Approvals; provided, however, that Landlord may refuse to file, process or obtain Regulatory Approvals or to join Tenant as a co-applicant if Landlord determines in its sole and absolute discretion that it is not in Landlord's best interest to do so. Nothing contained herein shall be deemed to limit or otherwise constrain Landlord's discretion, powers, and duties as a regulatory agency with certain police powers.

C. Tenant understands and agrees that Landlord is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency of the City of Berkeley with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards, or commissions that have jurisdiction over the Premises. By Landlord's entering into this Lease, neither Landlord nor any of City Council, boards, commissions, agencies, departments, or Affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises or Aquatic Park. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises or Aquatic Park. By entering into this Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises to be used and occupied in accordance with all laws.

17. ASSIGNMENT AND SUBLEASE

A. Any provision of this Lease to the contrary notwithstanding, Tenant shall not directly or indirectly, by operation of law or otherwise, transfer, assign, pledge, encumber or hypothecate this Lease or all or any portion of the Premises or Tenant's interest in and to the Premises (collectively, an "Assignment") or sublet the Premises or any portion thereof or permit the Premises or any portion thereof to be used, occupied or managed by anyone other than Tenant pursuant to any Lease, use or concession agreement or otherwise (collectively, a "Sublease") without first obtaining Landlord's written consent. Any assignment, encumbrance, or sublease without Landlord's written consent shall be voidable and, at Landlord's election, shall constitute a default. City has the sole discretion to determine whether to agree to any sublease or

assignment. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this subsection.

B. Neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Tenant, in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of law. Possession of the Premises shall not be divested from Tenant in such proceedings or by any process of law without the prior written consent of Landlord.

C. Tenant expressly waives any rights that it might otherwise be deemed to possess pursuant to applicable law, including without limitation, Section 1997.040 of the California Civil Code, to limit any remedy of Landlord pursuant to Section 1951.2 or 1951.4 of the Code by means of proof that enforcement of a restriction on use of the Premises would be unreasonable.

18. INSPECTION

Landlord may enter the Premises at all reasonable times (with reasonable advance notice except in case of emergency) (i) to inspect the same; (ii) to exhibit the same to prospective purchasers, mortgagees or tenants; (iii) to conduct tests, inspections and surveys to determine whether Tenant is complying with all of its obligations hereunder; (iv) to post notices of nonresponsibility or other notices that may be permitted hereunder; (v) to post "to Lease" signs of reasonable size upon the Premises during the last ninety (90) days of the Term; and (vi) to make repairs required or permitted to be made by Landlord or repairs to any adjoining space or any utility systems or to make repairs, alterations or additions to any other portion of the Building or Aquatic Park; provided, however, that all such work shall be done as promptly and with as little interference to Tenant as reasonably possible. Tenant hereby waives all claims against Landlord for any injury or inconvenience to or interference with Tenant's business or any loss of occupancy or quiet enjoyment of the Premises resulting from Landlord's entry into the Premises or any work performed therein by Landlord. Landlord shall at all times have a key to all doors in and about the Premises (excluding Tenant's vaults, safes and similar areas designated by Tenant in writing in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency to obtain entry to the Premises. Tenant also shall provide Landlord with written notice of the name, address, telephone number, and Tenant's account number of the burglar alarm company (if any) utilized by Tenant for the Premises. Any entry to the Premises by any of said means or otherwise shall not under any circumstances be deemed a forcible or unlawful entry into or a detainer of the Premises or an eviction (actual or constructive) of Tenant from the Premises.

19. DEFAULT

The occurrence of any one of the following shall constitute an event of default on the part of Tenant:

A. Failure to Use Premises. Failure to use the Premises as specified in Sections 5 and 6.

B. Nonpayment of Rent. Failure to pay any installment of rent or any other sum due and payable hereunder upon the date when such payment is due, such failure continuing for a period of five (5) days after written notice of such failure; provided, however, that Landlord shall not be required to provide such notice more than twice during any consecutive twelve (12) months with respect to non-payment of any portion of rent, the third such non-payment during any consecutive twelve (12) months constituting an event of default without requirement of notice.

C. Other Obligations. Failure to perform any obligation, agreement or covenant under this Lease, such failure having continued for thirty (30) days after notice of such failure from Landlord or such longer period as is reasonably necessary to remedy such default, provided that Tenant has commenced to remedy the default within such thirty (30) day period and shall continuously and diligently pursue such remedy until such default is cured.

D. General Assignment. A general assignment by Tenant for the benefit of creditors.

E. Bankruptcy. The filing of a voluntary petition in bankruptcy by Tenant, or the filing of an involuntary petition by Tenant's creditors, which involuntary petition remains undischarged for a period of thirty (30) days. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and to continue to perform the obligations of Tenant hereunder, such trustee or Tenant, in such time period as may be permitted by the bankruptcy court having jurisdiction, shall cure all defaults of Tenant hereunder outstanding as of the date of affirmance and shall provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations hereunder. Any transferee (by operation of law or otherwise) must provide Landlord with adequate assurance of its future performance under this Lease. In the event of Tenant's bankruptcy, insolvency or reorganization, the parties specifically intend that the actions of the trustee or Tenant in assuming and/or assigning this Lease shall be governed by Section 365 of Title 11 of the United States Code applicable to shopping center leases.

F. Receivership. The employment of a receiver to take possession of all or substantially all of Tenant's assets in the Premises.

G. Insolvency. The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets in or on the Premises; the admission by Tenant in writing of its inability to pay its debts as they become due; the filing by Tenant of a petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation; the filing by Tenant of an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant in any such proceeding or if, within thirty (30) days after the commencement of any proceeding against Tenant seeking reorganization or arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation, such proceeding shall not have been dismissed.

H. Release of Hazardous or Toxic Substances or Materials and Other Environmental Impacts. Any release or discharge in, on, under, around, or from the Premises

and/or Aquatic Park by Tenant, its agents or employees of Hazardous Substances which has not been fully cleaned up within ten (10) days after such release or discharge. Any negative impacts to the natural habitat and environment of Aquatic Park and/or the Main Lagoon caused by Tenant that are documented by a qualified, independent source and for which reasonable remediation measures are not available, or the Tenant fails to cooperate with the Landlord in implementing in a timely manner reasonable measures intended to mitigate any negative impacts.

I. Illegal Drugs. Any release or discharge of chemicals, toxics, solution in connection with the manufacturing and mixing of any illegal substance on the premises.

J. Non-compliance with lease term. Failure to perform any of the obligations and improvements listed on Exhibit "C", such failure continuing for 30 days after notice from the landlord of said default.

20. REMEDIES UPON DEFAULT

A. Termination. In the event of the occurrence of any event of default, Landlord shall have the right immediately to terminate this Lease by written notice and at any time thereafter to recover possession of the Premises or any part thereof and to expel and remove Tenant, any other person or party occupying the same and all Premises located therein, by any lawful means and to reenter the Premises without prejudice to any of the remedies that Landlord may have under this Lease or under law or equity.

B. Continuation after Default. In the event of any default, this Lease shall continue in effect for so long as Landlord does not terminate this Lease under subsection A above. In such case, Landlord may enforce all its rights and remedies under this Lease, including without limitation, the right to recover rent as it becomes due, and all of its rights and remedies under law. Acts of maintenance, preservation, efforts to relet the Premises for Tenant's account or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate this Lease or Tenant's right to possession.

C. Damages upon Termination. Should Landlord terminate this Lease pursuant to subsection A above, in addition to any other rights and remedies to which it may be entitled under applicable law, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of the award of the unpaid rent and other amounts which had been earned at the time of termination; plus (ii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rent loss that Tenant proves reasonably could have been avoided; plus (iii) the worth at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Tenant proves reasonably could be avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would likely result therefrom, including without limitation, the costs and expenses (including brokerage commissions and advertising costs) incurred by Landlord, with or without terminating the Lease, (1) in retaking possession of the Premises; (2)

in cleaning and making repairs and alterations to the Premises reasonably necessary to return the Premises to good condition for the use permitted by this Lease and otherwise to prepare the Premises for reletting;(3) in removing all persons and personal property from the Premises and transporting and storing any of Tenant's personal property left at the Premises, although Landlord shall have no obligation to remove, transport, or store any of such personal property; and (4) in reletting the Premises for such term, at such rent and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; plus (v) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under California law. The "worth at the time of award" of the amounts referred to in (i) and (ii) shall be computed with interest at the maximum rate allowed by law. The "worth at the time of award" of the amount referred to in (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

D. Computation of Rent for Purposes of Default. For purposes of computing unpaid rent which would have accrued and become payable pursuant to subsection C above, unpaid rent shall include the total rent for the balance of the term of the Lease.

E. Remedies Cumulative. All rights, privileges and elections or remedies of the parties are cumulative and not alternative to the extent permitted by law and except as otherwise specifically provided herein.

F. No Waiver. Landlord's waiver of any breach of a covenant or condition hereof, or Landlord's failure to declare any default immediately upon occurrence thereof or a delay in taking any action in connection therewith shall not waive such breach or such covenant or condition or any subsequent breach thereof. The subsequent acceptance of rent or other monies by Landlord shall not be deemed a waiver of any preceding default by Tenant, other than the failure of Tenant to pay the particular rent or other sum so accepted, regardless of Landlord's knowledge of such default at the time of its acceptance of rent.

G. No Right of Redemption. Tenant waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179 or any other present or future law in the event Tenant is evicted or Landlord takes possession of the Premises by reason of Tenant's default.

21. ENVIRONMENTAL OBLIGATIONS

A. Tenant shall not, without Landlord's prior written consent (which consent may be granted or denied in Landlord's sole discretion), install, bring into or release or discharge in, on, under, around, or from the Premises any (i) asbestos-containing materials, (ii) electrical transformers, fluorescent light fixtures with ballasts or other equipment containing PCB's or (iii) materials which constitute hazardous, extremely hazardous or toxic materials under the Resource Conservation and Recovery Act, the California Hazardous Waste Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the California Safe Drinking Water and Toxic Enforcement Act of 1986 or any other applicable law or regulation concerning hazardous or toxic materials, (collectively "Hazardous Substances") and has not done so prior to the effective date of this Lease. Any Hazardous Substances which are used, stored,

treated, disposed of or released from the Premises by Tenant or its representatives, agents, employees or invitees, shall be used, stored, treated, released and disposed of in accordance with all applicable laws and regulations.

B. If Tenant knows or has reasonable cause to believe that any Hazardous Substance has been released on or beneath the Premises, Tenant shall immediately notify the Berkeley Police Department and the Toxic Management Office and promptly give written notice of same to Landlord. If Tenant knows or has reasonable cause to believe that such substance is an imminent and material danger to public health or safety, Tenant shall take all actions necessary to alleviate such danger. Tenant shall provide to Landlord as promptly as possible, and in any event within five business days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof and concerning Hazardous Substances. Tenant shall not negotiate or enter into any settlement agreement, consent decree or other compromise in respect of Hazardous Substances affecting the Premises or the Premises without first giving Landlord prior written notice and full opportunity to appear, intervene or otherwise protect Landlord's rights and interests.

C. Without limitation of the provisions of Section 14 hereof, Tenant shall indemnify, defend and hold Landlord and its affiliates harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the term of this Lease as a result of the handling of Hazardous Substances on the Premises, or Aquatic Park by Tenant, its agents or invitees, including without limitation, all costs of monitoring, investigating, and remediation of the same, damages for diminution in the value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of any such space and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees. This indemnification by Tenant includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by Landlord or required by any federal, state or local governmental agency or political subdivision because of Hazardous Substance present in the soil or groundwater in, on or under the Premises or in any improvements. Without limiting the foregoing, if the presence of any Hazardous Substance in, on, under or about the Premises caused or permitted by Tenant results in any contamination of the Premises or Aquatic Park, Tenant, at its sole expense, promptly shall take all action that is necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Substance in, on, under or about the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions could not potentially have any material adverse effect upon the Premises. Tenant's obligations under this Section 21.C. shall survive the expiration or termination of this Lease.

22. LANDLORD'S RIGHT TO CURE

All covenants to be performed by Tenant shall be performed at Tenant's sole cost and expense and without abatement of rent. Without limiting Landlord's rights under any other provision of this Lease, if Tenant shall fail to pay any sum of money or shall fail to perform any other act and such failure shall have become an event of default under Section 19, Landlord,

without waiving or releasing Tenant from any of its obligations, may make (but shall not be obligated to make) any such payment or perform any such other act. All sums so paid by Landlord and all necessary incidental costs shall be deemed additional rent and shall be payable to Landlord immediately upon Landlord's written demand.

23. EMINENT DOMAIN

A. If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain, this Lease shall terminate as to the part so taken on the earlier of the dates that title vests in the condemning authority or such authority takes possession of the Premises. In the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to the other party within thirty (30) days after such date of taking; provided, however, that Tenant shall have no right to terminate this Lease unless the portion of the Premises taken shall be of such extent and nature as substantially to impede or impair Tenant's use of the balance of the Premises. In the event of any such taking, Landlord shall be entitled to all compensation, damages, income, rent, awards and interest that may be paid or made in connection with such taking. Tenant shall have no claim against Landlord for the value of any unexpired Term; however, Landlord shall cooperate with Tenant if Tenant seeks to recover, at its sole expense, proceeds or awards paid to compensate for damage to the "goodwill" associated with Tenant's business. Any such amounts recovered shall belong to Tenant.

B. If any part of the Premises shall be so taken and this Lease shall not be terminated, then this Lease shall continue in full force and effect, except that the Rent shall be reduced in the same proportion that the rentable area of the Premises taken bears to the original rentable area of the Premises. Landlord, upon receipt of the award, shall make all necessary repairs and alterations (exclusive of Tenant's trade fixtures, furniture, furnishings, personal Premises, decorations, signs and contents) to restore the portion of the Premises remaining to as near its former condition as the circumstances will permit and to restore the Building to the extent necessary to constitute the portion of the Building not so taken a complete architectural unit. Landlord, in any event, shall not be required to spend for such repairs and alterations an amount in excess of the amount received by Landlord as damages for the taking of such part of the Premises and/or Building; and Tenant, at its sole cost and expense, shall make all necessary repairs and alterations to Tenant's trade and lighting fixtures, furniture, furnishings, personal Premises, decorations, signs and contents.

C. As used herein, the "amount received by Landlord" shall mean that portion of the award received by Landlord as damages from the condemning authority which is free and clear of all prior claims or collections by Landlord and less reasonable attorneys' and appraisers' fees and expenses.

24. SUBORDINATION

A. This Lease shall be subject and subordinated to (i) all ground or underlying leases which have been or may hereafter be executed affecting the Premises, (ii) any Declaration of Covenants, Conditions and Restrictions now or hereafter recorded affecting Aquatic Park, all

without the necessity of having further instruments executed on behalf of Tenant to effectuate such subordination.

B. Tenant agrees to execute and deliver upon demand such further instruments or documents as may reasonably be required by Landlord to evidence any such subordination of this Lease. Tenant hereby constitutes and appoints Landlord, as Tenant's attorney-in-fact, coupled with an interest, to execute and deliver any such instrument(s) on behalf of Tenant.

25. NO MERGER

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies or operate as an assignment to it of any or all such subleases or subtenancies.

26. TRANSFER BY LANDLORD

In the event the original Landlord or any successor owner of Aquatic Park shall sell or convey the Premises or the Building, or any portion thereof that includes the Premises, all liabilities and obligations on the part of the original Landlord or such successor owner shall terminate. All such liabilities and obligations thereupon shall be binding only upon the new owner. Tenant agrees to attorn to such new owner.

27. ESTOPPEL CERTIFICATES

From time to time, Tenant shall execute and deliver to Landlord promptly upon request a certificate certifying (i) that this Lease is unmodified and in full force and effect or, if there has been any modification, that this Lease is in full force and effect as modified, and stating the date and nature of each such modification; (ii) the date to which rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in such certificate; (iv) that Landlord is not in default under this Lease and that Tenant has no claims, charges, offsets or defenses against Landlord, or specifying the nature of any such default or claim, charges, offsets or defense; and (v) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, vendee, or other party. If Tenant fails to execute and deliver any such certificate within ten (10) business days after Landlord's written request, such failure, at Landlord's election, shall be conclusive against Tenant that this Lease is in full force and effect, without modification (except as may be represented by Landlord), that there are no uncured defaults in Landlord's performance, and that not more than one month's rent has been paid in advance.

28. HOLDING OVER

If, after the expiration of the Term of the Lease, Tenant remains in possession of the Premises with Landlord's consent all provisions of this Lease shall remain in effect with the following exceptions: (1) Tenant shall become a tenant from month-to-month, such tenancy

terminable on thirty (30) days' notice given at any time by either party; and (2) the Rent shall increase to 120% of the amount of the rent when the Lease expired.

29. CHANGES BY LANDLORD

A. The description of the Premises and the location of any Premises utility system(s), including without limitation electrical, plumbing, shall be subject to such minor changes as Landlord determines to be necessary or desirable in the course of any construction performed by or under the authorization of Landlord. No such changes shall invalidate or affect this Lease. Landlord shall effect such changes using reasonable efforts not to disturb Tenant's business. Tenant shall have no claim against Landlord for abatement of rent or loss of business as a result of any such disturbance.

B. Landlord shall have the right in its sole discretion to, among other things, change permitted land uses, install, maintain and remove public improvements, change the arrangement, character, use or location of entrances or passageways, walkways, streets, sidewalks, parking areas, stairs, landscaping, toilets, and other facilities and portions of Aquatic Park, and to change the name, number or designation by which the Building is commonly known. None of the foregoing shall be deemed an actual or constructive eviction of Tenant, nor shall it entitle Tenant to any reduction of rent hereunder or result in any liability of Landlord to Tenant; provided, however, Landlord shall not unreasonably obstruct or interfere with access to or the lines of sight toward the Premises.

30. GOVERNING LAW

This Lease shall be governed by the laws of the State of California.

31. SECURITY DEPOSIT

As security for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this Lease, Tenant shall deposit with Landlord in an amount of **THREE HUNDRED DOLLARS (\$300)**, unless waived in whole or in part by Landlord. Such security shall be deposited on or before the Effective Date of this Lease.

If Tenant defaults in respect to any of the terms, provisions, covenants and conditions of this Lease, including but not limited to the payment of rent, Landlord may use the security deposit or any portion of it to cure the default or compensate the Landlord for all damage sustained by Landlord resulting from Tenant's default. If Landlord so uses any portion of the security deposit, Tenant will restore the security deposit to its original amount within ten (10) days after written demand from Landlord.

Landlord will not be required to keep the security deposit separate from its own funds and Tenant shall not be entitled to interest on the security deposit. The security deposit will not be a limitation on Landlord's damages or other rights under this Lease, or a payment of liquidated damages or an advance payment of the rent. If Tenant pays the rent and performs all of its other obligations under this Lease, Landlord shall return the unused portion of the security deposit to

Tenant within sixty (60) days after the end of the term. Landlord may deliver the security deposit to a purchaser of the Premises and be discharged from further liability with respect to it.

32. SIGNAGE

The size, design, material and location of any sign, marquee, awning, decoration or other attachment, advertising material or lettering on the Premises or on the exterior of the Building (collectively "signage") shall be subject to Landlord's prior written approval. All such signage shall comply with the criteria outlined in Landlord's General Design Requirements (if any) and shall be subject to the following provisions:

A. Tenant, at its sole expense, shall submit to Landlord a written description of all proposed signage, including dimensions, color, proposed location and other pertinent information ("Signage Proposal"). Landlord shall review the Signage Proposal and shall notify Tenant in writing of its approval, or reason(s) for its disapproval, within thirty (30) business days after Landlord's receipt of the Signage Proposal. If disapproved, Tenant shall make all required modifications to the Signage Proposal and shall resubmit the same to Landlord within seven (7) days after its receipt of Landlord's disapproval.

B. Within ten (10) days after Landlord's approval of the Signage Proposal, Tenant, at its sole expense, shall cause to be prepared and submitted to Landlord two (2) sets of plans ("Sign Plans") reflecting in detail the information contained in the approved Signage Proposal. Landlord shall review the Sign Plans within thirty (30) days after Landlord's receipt of the same.

C. Upon Tenant's receipt of its sign permit from Landlord, Tenant shall construct and/or install all signage shown on the Sign Plans; in any event, however, Tenant shall complete such construction and/or installation not later than thirty (30) days after the sign permit is issued, unless otherwise agreed to by the City in writing.

D. Upon Landlord's request, Tenant immediately shall remove any signage that Tenant has placed or permitted to be placed in, on or about the Premises or Building contrary to the terms of this Section 32. If Tenant fails to do so, Landlord may enter upon the Premises and remove the same at Tenant's expense. Tenant, at its sole expense, shall maintain and replace all approved signage and shall repair, at its sole expense, any damage to the Building caused by the erection, maintenance or removal of any signage, including any damage caused by Tenant's removal of its signage at the expiration or earlier termination of the Lease. Tenant also shall comply with such regulations as may from time to time be promulgated by Landlord governing the signage of all tenants in Aquatic Park.

33. NO PARTNERSHIP

It is expressly understood and agreed that Landlord shall not be deemed in any way or for any purpose a partner, agent or principal of Tenant, in the conduct of its business or otherwise, or a joint venture or member of a joint enterprise with Tenant.

34. NO WAIVER

Landlord's waiver of Tenant's breach of any covenant or condition shall not be deemed a waiver of any subsequent breach of the same or any other covenant or condition, nor shall any custom or practice which may develop between the parties in the administration of the terms hereof be construed to waive or to lessen the right of Landlord to insist upon Tenant's performance in strict accordance with the terms of this Lease.

35. NOTICES

All notices, demands, consents or approvals which may or are required to be given by either party shall be in writing and shall be deemed to have been received when delivered personally or on the earlier of the date of actual receipt or two (2) business days following deposit in the United States mail, registered or certified, postage prepaid, addressed as follows:

To Tenant: Waterside Workshops
84 Bolivar Drive
Berkeley, CA 94710

To Landlord: Parks, Recreation & Waterfront
City of Berkeley
2180 Milvia Street, 3rd Floor
Berkeley, CA 94704

With copies to: City Manager City of Berkeley 2180 Milvia Street, 5th Floor Berkeley, CA 94704
Parks Superintendent City of Berkeley 1325 Bancroft Way Berkeley, CA 94702

Notices to Landlord regarding Hazardous Substances required by Section 21 hereof shall be sent both to the above addresses and to such other place as either party may from time to time designate in a written notice to the other party, or in the case of Tenant, delivered to the Premises.

Tenant will appoint an agent to receive the service of all proceedings, demands, and notices hereunder the person in charge of or occupying the Premises at the time. If no person shall be in charge of or occupying the same, then such service may be made by attaching the same on the main entrance of the Premises

36. COMPLETE AGREEMENT

This Lease is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Lease constitutes the complete and exclusive statement of its terms, and no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding involving this Lease. The language and all parts of this Lease shall be construed as a whole and in accordance with its fair meaning and not

restricted for or against either party. This Lease may be modified or amended only by a written instrument signed by both parties.

37. REQUESTS FOR CONSENT; WAIVER OF CLAIM

Tenant hereby waives any claim for damages against Landlord that it may have based upon any assertion that Landlord unreasonably has withheld or has delayed any consent or approval, and Tenant's sole remedy shall be an action for specific performance of such provision, injunction or declaratory judgment. In the event of a final determination in Tenant's favor, the requested consent or approval shall be deemed to have been granted.

38. INTERPRETATION

The use of masculine, feminine, or neuter genders shall include the other genders, and the singular shall include the plural and vice-versa. Headings are intended for convenience only and shall not be referred to in construing any provision. If there is more than one party as Tenant, the obligations imposed upon Tenant shall be joint and several. If any provision(s) of this Lease shall be found, to any extent, to be invalid or unenforceable the remainder of the Lease shall not be affected thereby.

39. SUCCESSORS AND ASSIGNS

This Lease shall be binding upon and shall inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and shall inure to the benefit of Tenant, its heirs, successors and (to the extent assignment may be permitted hereunder) assigns.

40. AUTHORITY

If Tenant is a corporation or partnership, each of the persons executing this Lease on behalf of Tenant covenants and warrants that Tenant is a duly authorized and existing corporation or partnership, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease and that each person signing on behalf of Tenant is authorized to do so.

41. UNAVOIDABLE DELAYS

A. In the event that Tenant or Landlord is delayed, directly or indirectly, from the performance of any act or thing required to be done or performed under the terms or conditions hereof by acts of the other party to this Lease, acts of God, fire, floods, inclement weather, unavoidable governmental action, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of materials, acts of war, riot and civil commotion, or by any other cause beyond the reasonable control of Tenant or Landlord, as the case may be, such failure shall not be deemed to be a breach of this Lease or a violation of any such covenants or conditions and the time within which Tenant or Landlord must perform any such act shall be extended by a period of time equal to the period of delay arising from any of such causes.

B. Notwithstanding any provision of this Section 41 or any other provision of this Lease to the contrary, it is understood and agreed that there shall be no abatement of, or delay in the commencement of, or payment of any sum due to Landlord under this Lease.

42. TIME OF THE ESSENCE

Time is of the essence of each and every covenant and condition of this Lease.

43. BROKERAGE

Landlord and Tenant hereby represent and warrant, each to the other, that they have not disclosed this Lease or the subject matter hereof to, and have not otherwise dealt with, any broker, finder or any other person, firm, corporation or other legal entity so as to create any legal right or claim of whatsoever kind or nature for a commission or similar fee or compensation with respect to the Premises or this Lease. Landlord and Tenant hereby indemnify each other against, and agree to hold each other harmless from, any liability or claim (and all expenses, including attorneys' fees, incurred in defending any such claim or in enforcing this indemnity) for a real estate brokerage commission or similar fee or compensation arising out of or in any way connected with any claimed dealings with the indemnitor and relating to the Premises or this Lease.

44. CITY NON-DISCRIMINATION ORDINANCE

A. Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("B.M.C."), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Lease, Tenant agrees as follows:

1. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

2. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

B. Tenant understands that this Lease is governed by City Council Resolution No. 58,664 – N.S. This resolution, as may be amended from time, stipulates that Tenant's membership policies may be reviewed by the City for compliance therewith at any time, and that unsatisfactory membership policies may result in non-renewal of this Lease or termination by the City.

45. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

A. If Tenant provides any aid, service or benefit to others on the Landlord's behalf,

Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord.

B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

46. CONFLICT OF INTEREST PROHIBITED

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a board, a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Lease.

B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 *et seq.*) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

C. Interpretation of this subsection shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

47. NUCLEAR FREE BERKELEY

Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

48. OPPRESSIVE STATES

A. In accordance with Resolution No. 59,853 – N.S., Tenant certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations

to provide personal services to, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

B. For purposes of this Lease, the Tibet Autonomous Region and the provinces of ADO, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant's failure to comply with this subsection shall constitute a default of this Lease and Landlord may terminate this Lease pursuant to Section 19. In the event that Landlord terminates this Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five (5) years from the date this Lease is terminated.

49. BERKELEY LIVING WAGE ORDINANCE (LWO)

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance (LWO). If Tenant employs six (6) or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance. If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this subsection shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Section 19 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

D. If Tenant fails to comply with the requirements of this the LWO and this lease, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 19.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay all of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

50. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of Section 19 of this lease.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 20.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

51. BERKELEY SANCTUARY CITY ORDINANCE

Tenant hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Tenant agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein:

a. "Data Broker" means either of the following: (1) The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies; (2) the aggregation of data that was collected for another purpose from that for which it is ultimately used.

b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include: (1) The City's computer-network health and performance tools; (2) Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer-based activity.

52. AUDIT

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial, performance and compliance records maintained in connection with the operations and services performed under this Lease, and with the payments made under this Lease. In the event of such audit, Tenant agrees to make all such financial, performance and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

53. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER

Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes lawfully assessed and due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

54. SURVIVAL

The provisions of this Lease and obligations of Tenant, that by their nature, are to be performed after or are to survive termination of this Lease shall survive such termination.

55. EXHIBITS

Exhibits A, B, C, and D and any other exhibit, addendum or schedule referenced in this Lease are made a part hereof by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Lease at Berkeley, California

effective as of the Effective Date.

LANDLORD:

CITY OF BERKELEY
A municipal corporation

By: _____
City Manager Date

Approved as to form: _____ Registered by: _____
City Attorney Date City Auditor Date

Attest:

City Clerk Date

TENANT:
WATERSIDE WORKSHOPS
A non-profit organization

By: _____
Neil Larsen, Executive Director Date

TENANT INFORMATION

Tax Identification No. _____
Incorporated: Yes No
Certified Woman Business Enterprise: Yes ___ No X
Certified Minority Business Enterprise: Yes ___ No X
Certified Disadvantaged Business Enterprise: Yes No
City Business License No. _____, or Exempt pursuant to B.M.C. Section _____

Exhibit "A"

Exhibit "B": Berkeley Aquatic Park

Section 6.04.010 Definitions.

Chapter 6.04 BERKELEY AQUATIC PARK*

Section 6.04.010 Definitions.

For the purpose of this chapter certain words and phrases are defined and certain provisions shall be construed as herein set out, unless it shall be apparent from the context that a different meaning is intended.

A. "Berkeley Aquatic Park" means that area owned or controlled by the City of Berkeley, bounded by the Eastshore Highway on the west, Third Street on the east, University Avenue on the north and Ashby Avenue on the south, which is used as an aquatic park.

B. "Concessionaire" means the lessee of the boating and other facilities at the Berkeley Aquatic Park.

C. "Lake" means the Berkeley Aquatic Park lake.

D. "Motorboat" means any and all types of motor-driven craft. (Ord. 3650-NS §§ 1, 1.1, 1.2, 1.3, 1.4, 1958)

**Exhibit "C":
Proposed Repair/Renovation Schedule 2023-2031**

ORDINANCE NO. 7,832--N.S.

ORDINANCE AMENDING CHAPTER 13.110 OF THE BERKELEY MUNICIPAL CODE,
THE COVID-19 EMERGENCY RESPONSE ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Berkeley Municipal Code Chapter 13.110 is amended to read as follows:

**Chapter 13.110
COVID-19 EMERGENCY RESPONSE ORDINANCE**

Sections:

- 13.110.010 Findings and Purpose**
- 13.110.020 Prohibited Conduct**
- 13.110.030 Definitions**
- 13.110.040 Collection of Back Rent and Late Fees**
- 13.110.050 Application**
- 13.110.060 Implementing Regulations**
- 13.110.070 Waiver**
- 13.110.080 Remedies**
- 13.110.090 Severability**
- 13.110.100 Liberal Construction**

13.110.010 Findings and Purposes

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the Local Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022, the council ratified an extension of the local emergency. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to

provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. On March 31, 2020 this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

The Order also stated that because homelessness can exacerbate vulnerability to COVID-19, Californians must take measures to preserve and increase housing security for Californians to protect public health and specifically stated that local jurisdictions may take measures to promote housing security beyond what the state law would otherwise allow.

On April 21, 2020, Alameda County enacted an urgency ordinance prohibiting eviction for any reason other than withdrawal of rental property under the Ellis Act or court-ordered eviction for public safety. Although the Alameda County ordinance does not have effect within the incorporated area of Berkeley, it is desirable to ensure that Berkeley residents have at least the same level of protection as the residents of unincorporated Alameda County.

During this State of Emergency, and in the interests of protecting the public health and preventing transmission of the COVID-19, it is essential to avoid unnecessary displacement and homelessness. It is the intent of this Ordinance to fully implement the suspension of the statutory bases for eviction for nonpayment of rent and for default in the payment of a mortgage as authorized by Executive Order N-28-20.

At the same time, the Governor, as well as, the Berkeley Health Officer, and those of other jurisdictions ordered the closure of businesses, except those deemed essential. Many businesses, such as restaurants, are open only for take-out or pick up services and face a critical loss of business.

The City Council is aware that some landlords of commercial properties are seeking significant rent increases during the period when many commercial tenants are closed or are experiencing substantial and catastrophic reductions in their business and income. Such rent increases force tenants who are closed or have substantially reduced revenues face the choice of accepting a significant rent increase, moving at a time when it is virtually impossible, or closing altogether. Accepting a rent increase while closed or in a reduced state of operations means that the commercial tenants face even more debt to the landlord when the emergency is over, and may face a substantially increased rent when the tenant returns to normal operations, if ever.

Landlords of commercial property that unreasonably increases rents on tenants of commercial property during the COVID-19 emergency significantly impacts vulnerable small businesses, nonprofits, and artists who form a large part of the backbone of Berkeley's economy, revenue sources, and employment opportunities. These rent increases are coming at a time when the commercial rents are likely falling due to business closures and potential loss of businesses at the end of the emergency. Thus, these rent increases appear as a way of evading the Governor's and Berkeley's commercial tenant eviction moratorium by forcing tenants to agree to rent increases or leave. Such conduct constitutes constructive evictions in contravention of the eviction moratorium. Furthermore, such rent increases may affect businesses providing goods and essential services, resulting in increases in those costs of essential goods and services contravening the intent of anti-price gouging laws.

On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter 13.110.

13.110.020 Prohibited Conduct

A. During the Covered Period, no Landlord or Lender shall evict or attempt to evict a Resident of real property, or otherwise require a Tenant to vacate, unless necessary to stop an imminent threat to the health and safety of other occupants. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

B. Residential Eviction Moratorium. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the Covered Period.

C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local emergency declared by the Director of Emergency Services. For purposes of this section, rent means all

consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section 13.110.020 C. shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.

D. For the duration of the Covered Period, if a tenant has a Covered reason for delayed payment, the tenant may terminate a lease or rental agreement with 30 days' notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic.

13.110.030 Definitions

A. "Covered Period" means the period of time beginning with March 17, 2020 and concluding upon the expiration of the local emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.

B. "Covered Reason for Delayed Payment" means:

(1) The basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) which reduces the ability of the remaining tenants to pay rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and

(2) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.

C. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.

D. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. "Homeowner" is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.

E. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:

1. whose operation has been shut down due to the COVID-19 emergency, or
2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
3. who suffered a material loss of income.

F. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.

G. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.

H. "Resident" means a Tenant, Homeowner, or their household.

I. "Tenant" includes a tenant, subtenant, lessee, sublessee, lodger or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property.

13.110.040 Collection of Back Rent and Late Fees

A. Nothing in this Chapter shall relieve the tenant of liability for unpaid rent, which the landlord may seek after expiration of the local State of Emergency. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment. The City will develop standards or guidelines for tenants to repay unpaid rent accrued during the Covered Period course of the local State of Emergency. Landlords are encouraged to work with local agencies that will be making rental assistance available for qualifying tenants.

B.

1. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022, or the date adopted by state law, as applicable, to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

2. For rent accrued beginning February 1, 2021, Tenants shall have until twenty-four (24) months after the conclusion of the Covered Period to pay rent that was delayed by a Covered Reason for Delayed Payment, or the period of time adopted by state law, as applicable, unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

3. Notwithstanding any lease provision to the contrary, a landlord may not charge or collect a late fee, fine, or interest for rent that is delayed by a Covered Reason for Delayed Payment.

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the Covered Period, whichever is later. A declaration sworn under penalty of perjury shall constitute documentation for the purpose of this requirement. In the case of nonpayment of rent, the failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure sections 1161(2) *et seq.* does not waive the Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

D. Any medical or financial information provided to the landlord shall be held in confidence, and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant explicitly authorizes the disclosure of the information in writing.

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement.

13.110.050 Application

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire during the Covered Period. It does not apply to commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

B. Except where expressly required by state law (such as Assembly Bill 3088 or any subsequent statewide COVID-19 relief legislation), a landlord may seek rent accrued during the Covered Period as set forth in Section 13.110.040, but may not file an action pursuant to Code of Civil Procedure sections 1161(2) *et seq.* or otherwise seek to recover possession of a rental unit based on the failure to pay rent that accrued during the Covered Period. In any action to evict based on alleged nonpayment of rent, it shall be a complete defense to such action if any part of the rent in dispute accrued at any time during the Covered Period, or if the action otherwise demands any fees or amounts contrary to the provisions of this Chapter. A landlord shall not apply any rent payment towards rent that is delayed by a Covered Reason for Delayed Payment before applying it towards any other Rent owed without the explicit written permission of the Tenant.

C. A Landlord or Lender shall not retaliate against a Resident for exercising their rights under this Ordinance, including but not limited to shutting off any utilities reducing services or amenities, refusing to make or delaying repairs to which the Resident would otherwise be entitled, or taking actions which hurt the Resident's credit rating based on non-

payment of rent during the Covered Period as allowed under this ordinance.

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section 13.76.130(A)(1), it shall be a complete defense that the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party.

13.110.060 Implementing Regulations

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to Residents informing them of this Chapter and the right to seek the benefits of this Chapter.

13.110.070 Waiver.

A. By entering into a Delayed Rent Payment Agreement, Tenants do not waive any rights under this Chapter.

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy.

13.110.080 Remedies

A. In the event of a violation of this Ordinance, any person or entity aggrieved by the violation may institute a civil proceeding for injunctive relief, and money actual damages as specified below, and whatever other relief the court deems appropriate.

1. An award of actual damages may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard for, the provisions of this Chapter.

2. A defendant shall be liable for additional civil penalties of up to five thousand dollars for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926, et seq., or aged sixty-five or over.

3. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees. A prevailing defendant in a civil action under this Chapter shall only be entitled to an award of attorney's fees if it is determined by the Court the action was wholly without merit or frivolous.

4. In addition, this Chapter grants a complete defense to eviction in the event that an eviction notice or unlawful detainer action is commenced, filed, or served in violation of this Chapter.

B. The protections provided by this ordinance shall be available to all Residents, regardless of any agreement wherein a Resident waives or purports to waive their rights under this Ordinance, with any such agreement deemed void as contrary to public policy.

C. A. Violations of Section 13.110.020(C) - (Commercial rent restrictions).

1. Violations of Section 13.110.020(C) may be enforced by an administrative fine of up to \$1,000 pursuant to Chapter 1.28. Each day a commercial property landlord demands rent in excess of the amount permitted pursuant to Section 13.110.020(C) is a separate violation. The City may also charge the costs of investigating and issuing any notices of violations, and any hearings or appeals of such notices.

2. The City Attorney may refer those violators of Section 13.110.020(C) to the Alameda County District Attorney for redress as a violation of Business and Professions Code section 17200, et seq. or, if granted permission by the District Attorney, may bring an action pursuant to Business and Professions Code section 17200, et seq.

D. Nonexclusive Remedies and Penalties. The remedies provided in this subdivision are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

13.110.090 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

13.110.100 Liberal Construction

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants.

Section 2. Effective Date

This ordinance shall go into effect thirty days from the time of its final passage.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on September 13, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

ORDINANCE NO. 7,833-N.S.

REPEALING CHAPTER 12.76 OF THE BERKELEY MUNICIPAL CODE, REPEALING ORDINANCE NO. 7,643-N.S., AND AMENDING SECTION 14.40.120

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 12.76 is hereby repealed.

Section 2. That Ordinance No. 7,643-N.S. is hereby repealed, and Berkeley Municipal Code Section 14.40.120 is amended to read as follows:

14.40.120

A. It is unlawful for any person to park any heavy-duty commercial vehicle on any street between the hours of two a.m. and five a.m. for a greater length of time than one hour.

B. For the purpose of this section, heavy duty commercial vehicle shall mean a single vehicle or combination of vehicles having more than two axles, a single vehicle or combination of vehicles 20 feet or more in length, or a single vehicle or combination of vehicles six feet six inches or more in width, and shall include, but shall not be limited to dump trucks, moving vans, tractors, pole or pipe dollies.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on September 13, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.



Office of the City Manager

CONSENT CALENDAR
September 29, 2022

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Peter Radu, Assistant to the City Manager
 Subject: Urgency Ordinance for Extending the Lease for Real Property at 742 Grayson Street

RECOMMENDATION

Adopt an Urgency Ordinance to extend an existing lease for the real property located at 742 Grayson Street, Berkeley, CA for an additional month, through October 31, 2022.

FISCAL IMPACTS OF RECOMMENDATION

Approving this recommendation will result in a total outlay of \$26,379 (\$16,500 rent + \$4,994 Zero Waste expenses + \$4,885 toilets and hygiene expenses). These funds will be paid for from the Measure P appropriation to the continuation of the Horizon shelter that was approved by Council with the adoption of the FY23-24 Biennial Budget.

CURRENT SITUATION AND ITS EFFECTS

On April 27, 2021, the Council adopted Urgency Ordinance No. 7,759–N.S. to authorize the lease of 742 Grayson St for the purposes of operating interim shelter for persons experiencing homelessness. That lease was originally set to terminate on Sept 30, 2022. The City uses the property at Grayson to operate both the 50-bed Horizon Transitional Village Program shelter as well as the 40-slip SPARK safe RV parking program.

The City continues to evaluate options and explore leads for continuing the Horizon program, including the potential lease of a motel at 1720 San Pablo Ave (the Berkeley Inn). As this process has taken longer than originally anticipated, staff have requested, and the owners of 742 Grayson have agreed, to a one-month extension of the original lease, with all other terms (including rent at \$16,500/month) in full force and effect.

To avoid any gaps in service as staff continue working on a continuation of the program at a new location, staff recommend that Council approves this lease extension by passing an urgency ordinance. The costs of this additional month are already covered by a Measure P allocation to the continuation of the Horizon program as part of the FY23-24 Budget.

BACKGROUND

On April 27, 2021, the Council adopted Urgency Ordinance No. 7,759–N.S. to authorize the lease of 742 Grayson St for the purposes of operating interim shelter for persons experiencing homelessness. Also on April 27, 2021, Council adopted Resolution No. 69,808–N.S., which authorized a contract with Dorothy Day House to operate the Horizon Transitional Village Program, a 50-bed interim shelter, at this site. This lease will terminate on September 30, 2022. On June 28, 2022, Council adopted the FY23-24 Biennial Budget, including \$1,011,900 annually in Measure P funds to continue the Grayson shelter.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Continuing to provide interim housing with no gaps in service for persons experiencing homelessness in Berkeley will help reduce the overall negative impact of encampments on Berkeley’s environment and waterways, including fire and vector hazards, the accumulation of trash/debris, and unmitigated human and animal waste.

RATIONALE FOR RECOMMENDATION

Adopting the agreement by Urgency Ordinance is appropriate in light of the current shelter crisis and imminent loss of the 742 Grayson St site. By adopting this agreement through an Urgency Ordinance on Sept 29, 2022, it will be possible to continue negotiations for the extension of the program at another location, and will eliminate any gaps in service (and the return of shelter guests to the streets) in the interim.

ALTERNATIVE ACTIONS CONSIDERED

None. Allowing the lease to end would result in a gap in service between the Grayson location and a new location identified by staff. This would force shelter guests back to the streets, and would also cause Dorothy Day House serious financial challenges in meeting payroll for staff that would be needed to continue the program at another location.

CONTACT PERSON

Peter Radu, Assistant to the City Manager, 510 981-7045

Attachments:

1: Ordinance

Exhibit A: Lease Amendment for 742 Grayson St

Exhibit B: April 27, 2021 Council report and original lease

ORDINANCE NO. X,XXX N.S.

AUTHORIZING THE CITY MANAGER OR HER DESIGNEE TO EXECUTE A LEASE AND ANY NECESSARY AMENDMENTS WITH 742 GRAYSON OWNER, LLC, FOR REAL PROPERTY LOCATED AT 742 GRAYSON ST, BERKELEY, CA.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The City Council finds as follows:

- a. The City of Berkeley is facing an ongoing crisis of street homelessness: while overall homelessness declined in Berkeley by 5% from 2019 to 2022, unsheltered homelessness stayed roughly the same during this period, declining only 1%.
- b. To help address this crisis, on April 27, 2021, the City Council authorized the lease of 742 Grayson St and a contract with Dorothy Day House to operate the 50-bed Horizon Transitional Village Program; and
- c. Since July 2021, the Horizon Transitional Village Program has served over 125 residents of Berkeley's most impactful and dangerous encampments; and
- d. On September 30, 2022, the City's lease for 742 Grayson Street will terminate, necessitating a new location to continue the Horizon program; and
- e. On June 28, 2022, with the adoption of the FY23-24 Biennial Budget, the City Council authorized \$1,011,900 annually through FY24 for the continuation of the Grayson shelter, signaling its intent to continue this program beyond the current location at Grayson; and
- f. City staff continue to explore other locations to continue this program and avoid any lapse in service to the shelter guests; and
- g. Extending the existing lease for one month will allow the City sufficient time to fully transition the program to another, more permanent location.

Section 2. The City Manager or her designee is hereby authorized to amend the existing lease with 742 Grayson Owner, LLC for real property located at 742 Grayson Street on the same terms as set forth in Exhibit A. The rent will be \$16,500 for the single month of this extended term. Lease costs will be paid for by Measure P funding previously appropriated for this purpose by the City Council.

Section 3. This Ordinance is adopted as an urgency ordinance pursuant to the Charter of the City of Berkeley, Article XIV, Section 93 and shall be effective immediately. The City Council finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Berkeley.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way within fifteen calendar days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

LEASE AMENDMENT FOR 742 GRAYSON STREET

This lease amendment (“**Amendment**”) is made on _____ between 742 GRAYSON OWNER LLC, a Delaware limited liability company (“**Landlord**”) and the CITY OF BERKELEY (“**Landlord**”), a Charter City organized and existing under the laws of the State of California (“**Tenant**”), who agree as follows:

This lease amendment is made with reference to the following facts and objectives:

- A. Landlord is the owner of the real property at 742 Grayson Street, Berkeley, California, (“**Premises**”).
- B. Tenant entered into a lease (“**Lease**”) with Landlord on May 13, 2021. The Lease provides that the Term shall extend no later than September 30, 2022.
- C. Tenant is operating a homeless shelter and safe parking program at the Premises. In order to allow the City to complete negotiations for a new shelter location prior to the expiration of the Lease, Landlord and Tenant agree to extend the Lease’s expiration date by one month, at the current base rent and subject to all other terms of the Lease.

Therefore, Landlord and Tenant agree to amend the Lease as follows:

1. **Section 1.7. Term**, is amended to read as follows:

Term: The “**Term**” is the period of time starting on the Commencement Date and expiring on March 31, 2022, after which the tenancy shall convert to month to month until no later than ~~September 30, 2022~~ **October 31, 2022**, subject to Landlord and Tenant each having the independent right to terminate such month-to-month tenancy on thirty (30) days prior written notice to the other party. The “**Expiration Date**” shall be March 31, 2022, subject to extension for a month-to-month basis as provided above, but in no event shall the Expiration Date be later than ~~September 30, 2022~~ **October 31, 2022**. Notwithstanding the foregoing, Tenant shall have the right to terminate the Term of this Lease at any time after not less than thirty (30) days prior written notice to Landlord. Landlord may not terminate the Term prior to March 31, 2022, except due to Default by Tenant or in connection with any casualty or condemnation.

2. In all other respects, the Lease executed on May 13, 2021 shall remain in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this lease amendment as of the date written on the first paragraph of this lease.

LANDLORD:

Signature: _____

Title: _____

APPROVED AS TO FORM:

City Attorney

TENANT
CITY OF BERKELEY

By: _____

City Manager

REGISTERED BY:

City Auditor

ATTEST:

Deputy City Clerk



Office of the City Manager

CONSENT CALENDAR
April 27, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Darrin Rafferty, Acting Assistant to the City Manager

Subject: Referral Response: Urgency Ordinance for leasing the real property at 742 Grayson

RECOMMENDATION

Adopt an urgency Ordinance to enter into a lease for the real property located at 742 Grayson St., Berkeley for a term of 11 months, after which it becomes a month to month lease through September 30, 2022.

FISCAL IMPACTS OF RECOMMENDATION

Total rent for the subject property will be \$16,500 per month, inclusive of utilities, as described in Exhibit A. Lease will be funded with general fund associated with Measure P.

CURRENT SITUATION AND ITS EFFECTS

This report responds to the referral "Establishing an Outdoor Emergency Shelter," that originally appeared on the agenda of the January 21, 2020 Council meeting and was sponsored by Councilmembers Harrison, Davila, Mayor Arreguin and Councilmember Robinson.

Staff spent more than one year looking for a suitable location for the outdoor emergency shelter, however to date, one had not been identified that would be suitable to the community or logistically feasible for operations. Given the lack of an outdoor location, staff entered into negotiations with the property owner of 742 Grayson St. to lease the property for the purpose of an indoor emergency shelter. This property has approximately 45,000 feet of indoor space that could presently accommodate over 50 individuals, appropriately spaced for ample social distancing. There is also a large paved area on the property that could provide other suitable uses, such as off-street recreational vehicle (RV) parking.

BACKGROUND

As of the 2019 Point in Time count, there were 813 unsheltered homeless individuals living in Berkeley. Though the PIT count was not undertaken this year, these numbers have surely increased since the last count was complete with impacts from the COVID-19 pandemic and the financial and employment instability it has caused in many

different populations. The City has made robust investments in shelter, permanent supportive housing, affordable housing and supportive services, and this effort will support helping more unhoused residents move indoors. In January 2020 the City Council directed the City Manager to establish an outdoor emergency shelter as a short-term solution to address the immediate needs of people living outdoors. This item has been significantly delayed due to the unprecedented efforts endeavored by City staff in response to the COVID-19 crisis.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts associated with this report.

RATIONALE FOR RECOMMENDATION

If adopted, this lease agreement will bring about the opportunity to shelter at least 50 individuals at a time in a location that is not exposed to the outdoor elements. It will also serve as an opportunity to implement an off-street RV parking program, though this aspect of the program is still being developed. This will provide much needed emergency shelter for unsheltered homeless individuals.

This lease agreement is also subject to an Urgency Ordinance pursuant to the Charter of the City of Berkeley, and would be effective immediately for the critical preservation human health and safety.

ALTERNATIVE ACTIONS CONSIDERED

Staff have not identified another location that would have accommodated the emergency shelter.

CONTACT PERSON

Darrin Rafferty, Acting Assistant to the City Manager, 510-981-7000

Attachments:

1: Ordinance

Exhibit A: Lease Agreement

2: Original Referral Report from the January 21, 2020 City Council meeting titled "Establishing an Outdoor Emergency Shelter" sponsored by Councilmembers Harrison, et al

ORDINANCE NO. X,XXX N.S.

AUTHORIZING THE CITY MANAGER OR HER DESIGNEE TO EXECUTE A LEASE AND ANY NECESSARY AMENDMENTS WITH 742 GRAYSON OWNER LLC, FOR REAL PROPERTY LOCATED AT 742 GRAYSON STREET

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The City Council finds as follows:

- a. The 2019 Alameda County Point in Time count identified 813 unsheltered people living in Berkeley; and
- b. This number has almost certainly increased in light of the economic impacts of the COVID-19 crisis; and
- c. While the City has made significant investments in affordable housing and supportive services in recent years, these interventions are not yet sufficient to serve the entire unsheltered population in the City; and
- d. On January 21, 2020 City Council directed the City Manager to establish an outdoor emergency shelter as a short-term solution to address the immediate needs of people living outdoors and exposed to the elements, transportation-related risks, among other dangerous conditions; and
- e. The City Manager's Office has researched a number of potential sites for such a shelter, and identified the large warehouse and outdoor spaces at 742 Grayson Street as an ideal location; and
- f. The property provides over 45,000 square feet of indoor space that can easily accommodate over 50 tents indoors spaced appropriately for social distancing; and
- g. The large off-street parking lot can be used for RV parking for unsheltered individuals living in RVs; and
- h. The property owner, 742 Grayson Owner LLC, has offered to lease the property to the City for purposes of establishing a homeless shelter for 17 months, at a monthly rent of \$16,500, including most utilities.

Section 2. The City Manager or her designee is hereby authorized to enter into a lease and necessary amendments starting May 1, 2021 with 742 Grayson Owner LLC for real property located at 742 Grayson Street on substantially the same terms as set forth in Exhibit A. The rent will be \$16,500 per month, and will be paid from general fund Measure P monies.

Section 3. This Ordinance is adopted as an urgency ordinance pursuant to the Charter of the City of Berkeley, Article XIV, Section 93 and shall be effective immediately. The City Council finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Berkeley. This Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction of the Charter of the City of Berkeley.

LEASE

**742 GRAYSON STREET,
BERKELEY, CALIFORNIA**

LANDLORD:

**742 GRAYSON OWNER LLC,
a Delaware limited liability company**

TENANT:

**City of Berkeley,
a Municipal corporation**

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EXHIBITS:

Exhibit A Site Plan of the Property

Exhibit B Notice of Lease Term Dates

Exhibit C Rules and Regulations

Exhibit D Estoppel Certificate

Exhibit E Technical Memorandum from Terraphase Engineering Inc.

THIS LEASE dated as of March __, 2021 for reference purposes is by and between 742 GRAYSON OWNER LLC, a Delaware limited liability company hereinafter referred to as "**Landlord**", and the CITY OF BERKELEY, a municipal corporation, hereinafter referred to as "**Tenant**".

ARTICLE 1 - LEASE SUMMARY AND PROPERTY SPECIFIC PROVISIONS

1.1 **Landlord's Address:** 742 Grayson Owner LLC
c/o REDCO Development
Four Embarcadero Center, Suite 1400
San Francisco, California 94111
Attention: Chris Freise

With copies to: REDCO Development
Four Embarcadero Center, Suite 1400
San Francisco, CA 94111
Attention: Elizabeth C. Trowbridge, Vice President of
Operations

Rent Payment by Mail: 742 Grayson Owner LLC
c/o REDCO Development
Four Embarcadero Center, Suite 1400
San Francisco, CA 94111

For payment of Rent by wire, electronic and ACH: Pursuant to separate instructions from Landlord.

1.2 **Tenant's Address:** City Manager's Office
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704
Attn: Darrin Rafferty
Telephone: 510-981-7000
Email: DRafferty@cityofberkeley.info

With a copy to: Dorothy Day House
c/o Robbi Montoya
PO Box 12701
Berkeley, CA 94712
Telephone: 510-228-7587
Email: r.montoya@dorothydayhouse.org

1.3 **Buildings:** The two Buildings located on the Land and having a commonly known address as 742 Grayson Street, Berkeley, California 94710. Each building may be referred to as a "**Building**" and together as the "**Buildings**."

1.4 **Premises and Property:** The "**Premises**" or "**Property**" means (i) both of the Buildings, including without limitation all space in the Buildings, (ii) the parcel(s) of land where the Buildings are located (the "**Land**"), and (iii) the Exterior Areas (hereinafter defined). Attached hereto as Exhibit A is a site plan that shows a general outline of the Property.

1.5 **City:** The City of Berkeley, County of Alameda, State of California.

1.6 **Commencement Date:** The “**Commencement Date**” shall be the date of this Lease.

1.7 **Term:** The “**Term**” is the period of time starting on the Commencement Date and expiring on March 31, 2022, after which the tenancy shall convert to month to month until no later than September 30, 2022, subject to Landlord and Tenant each having the independent right to terminate such month-to-month tenancy on thirty (30) days prior written notice to the other party. The “**Expiration Date**” shall be March 31, 2022, subject to extension for a month-to-month basis as provided above, but in no event shall the Expiration Date be later than September 30, 2022. Notwithstanding the foregoing, Tenant shall have the right to terminate the Term of this Lease at any time after not less than thirty (30) days prior written notice to Landlord. Landlord may not terminate the Term prior to March 31, 2022, except due to Default by Tenant or in connection with any casualty or condemnation.

1.8 **Monthly Base Rent:** The “**Monthly Base Rent**” shall be \$16,500.00 each month payable in advance by the first day of each month as provided in this Lease. Monthly Base Rent for any partial month shall be prorated on a daily basis.

1.9 **Security Deposit:** None.

1.10 **Permitted Use:** The “**Permitted Use**” shall be for the City, through its employees, agents, and contractors, to establish and operate a temporary homeless shelter at the Property, including the placement and use of recreational vehicles and portable toilet, showers, hand wash facilities in the parking area at the property, and for solid waste service, subject to the provisions set forth in this Lease and as permitted by law.

1.11 **Parking:** All of the existing parking spaces at the Property, subject to the terms of Article 11 of the Standard Lease Provisions.

1.12 **Brokers:** None.

1.13 **Interest Rate:** The lesser of: (a) Ten percent (10%) or (b) the maximum rate permitted by law in the State where the Property is located.

1.14 **Insurance Amounts:**

a. **Commercial General Liability Insurance:** General liability of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate.

b. **Commercial Automobile Liability Insurance:** Limit of liability of not less than One Million Dollars (\$1,000,000.00) per accident.

c. **Worker’s Compensation and Employers Liability Insurance:** With limits as mandated pursuant to the laws in the State in which the Property is located, or One Million Dollars (\$1,000,000.00) per person and accident, whichever is greater.

d. **Umbrella Insurance:** Limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence.

1.15 **Tenant Improvements:** The improvements installed by the Tenant in the Premises, if any.

1.16 **Exterior Areas; Definitions; Tenant's Rights.** During the Term, Tenant shall have the right to use, and subject to the Rules and Regulations referred to in Article 9 of the Standard Lease Provisions, those portions of the Property outside of the Buildings on the Property (the “**Exterior Areas**”). The Exterior Areas shall include all areas outside of the Buildings on the Property, including access ways,

loading docks, ramps, drives and platforms and any passageways and service ways thereto, the parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways and landscaped areas on the Property, fixtures, systems, decor, facilities and landscaping contained, maintained or used in connection with those areas, and shall be deemed to include any city sidewalks adjacent to the Property, any pedestrian walkway system, park or other facilities located on the Land and open to the general public.

1.17 **Operating Expenses.** Tenant shall not be required to pay or reimburse Landlord for real estate taxes for the Property or for Landlord's insurance premiums and other costs and expenses incurred by Landlord in connection with ownership of the Property, except as provided in this Lease.

1.18 **Utilities and Services.**

a. **Utilities.** As used in this Lease, "**Utilities Costs**" shall mean all actual charges for utilities for water, sewer, gas (if applicable) and electricity for the Property. Tenant shall not be responsible for payment of the Utilities Costs except as hereinafter provided. At its sole cost, Tenant shall be responsible for arranging and contracting for telephone and any internet communication services for the Property. In no event shall Landlord be liable for any interruption or failure in the supply of any such utility or other services to Tenant. In no event shall any Rent owed Landlord under this Lease be abated by reason of the failure to furnish, delay in furnishing, unavailability or diminution in quality or quantity of any such utility or other services or interference with Tenant's business operations as a result of any such occurrence; nor shall any such occurrence constitute an actual or constructive eviction of Tenant or a breach of an implied warranty by Landlord, except in the case of the gross negligence or willful misconduct of Landlord as hereinafter provided. Notwithstanding the foregoing, if any portion of the Premises becomes unfit for occupancy because Landlord fails to provide water, sewer, gas, or electricity (individually or collectively, "**Essential Services**") to the Premises (or any portion thereof) for a period in excess of three (3) business day, and the lack of such utility prevents Tenant from making reasonable use of the Premises (or any portion thereof) for the purpose intended by Tenant, then Tenant shall be entitled to a day-for-day abatement of Rent for each consecutive day (after such three (3) business day period that Landlord fails to deliver the utility. In addition, if (a) the Essential Services are not restored within five (5) business days after such utility is interrupted; and (b) the lack of such Essential Services prevents Tenant from making reasonable use of the Premises (or any portion thereof) for the purpose intended by Tenant, then Tenant may immediately terminate this Lease and receive a pro-rata refund of that month's rent payment as its sole and exclusive remedy.

b. **Excess Utility Usage Costs.** After the initial first six months of the Term, Landlord shall have the right to notify Tenant of Tenant's excess usage of utilities at the Property resulting in Utilities Costs in excess of \$2,500 per month ("**Excess Utility Usage**"). The estimated amount of such excess Utilities Costs shall be referred to as the "**Excess Utility Costs**." The parties shall negotiate in good faith to either require Tenant to increase the Monthly Base Rent to include the estimated amount of the Excess Utility Costs for the remainder of the Term or to have Tenant pay such Excess Utility Costs as additional rent on a monthly estimated basis within ten (10) days after receipt of a billing from Landlord.

c. **Intentionally Omitted.**

d. **Tenant's Other Obligation to Maintain:** At its expense, Tenant shall be responsible for the following during the Term of this Lease:

(1) **General.** Tenant shall clean and maintain in good order, condition, and repair and replace when necessary all interior: (i) fixtures, walls, floors, carpets and ceilings; (ii) doors, interior plate glass, showcases (including cleaning both interior and exterior surfaces) of the Property; and (iii) all electrical facilities and all equipment (including all lighting fixtures, lamps, bulbs, fans, vents, exhaust

equipment and systems) for the Property; and (v) any automatic fire extinguisher equipment in or servicing the Buildings to as good of a condition that existed at the commencement of this Lease.

(2) Windows and Doors. Tenant shall repair any damage to the interior and exterior windows and doors of the Buildings.

(3) Intentionally Omitted.

(4) Cleaning and Janitorial. Tenant shall arrange for all cleaning and janitorial service the Property, including without limitation, all cleaning standards recommended by any local, State or Federal authority or by the Center for Disease Control and Prevention to prevent or limit the transmission of COVID-19 and other viral pathogens, such as by way of example only frequent cleaning disinfecting areas touched surfaces, including bathrooms and maintaining daily records of the performance of such cleaning services.

e. **Landlord's Obligation to Maintain**. Landlord shall maintain and repair, but not replace, the roof and roof membrane, the exterior walls, and the structural portions of the Property, and subject to the obligations of Tenant under the provisions of this Lease. Landlord shall repair plumbing, utility, and/or sewer lines and mains which service the Premises, except for any damage caused by Tenant, any of Tenant Parties or any of Tenant's occupants at the Premises in which case Tenant, at its expense, shall make such repair. If the replacement of the roof, roof membrane, exterior walls, or structural portions of the Premises or plumbing, utility or sewer lines and mains is required and Landlord does not agree in its discretion to perform such work, then Tenant, as its sole and exclusive remedy, shall have the right to terminate this Lease upon prior written notice to Landlord if the failure to perform such work renders the Premises untenable for Tenant's permitted use under this Lease.

f. **Management and Security**. At its sole cost and expense, Tenant shall be responsible for the management of the Property and for providing security at the Property. Tenant acknowledges and agrees that the operation of a homeless shelter requires constant monitoring and security personnel 24 hours a day, seven days a week. Tenant shall contract with third party vendors to perform all management security service for the Property 24 hours a day, seven days a week. Such security service shall include coverage for all areas of the Property. Under no circumstances shall Landlord be responsible or liable for any damage to any property or injury or death to any person at or about the Property except for the gross negligence or intentional misconduct of Landlord.

g. **Trash Removal**. At its expense, Tenant shall contract for the removal of all trash and refuse from the Property on no less than a weekly basis. If necessary, Landlord will arrange for the removal of bulk trash deposited outside of the perimeter fencing around the Property on a periodic basis as determined by Landlord. Landlord will pay for the cost of removal of such trash, except to the extent it is determined that the trash has been deposited by Tenant or any occupants or users at the Property, in which case Tenant shall be responsible for the removal of such trash.

1.19 **Additional Hazardous Materials Requirements**. In addition to Tenant's obligations under Article 10 of the Standard Lease Provisions, Tenant shall comply with the following provisions with respect to Hazardous Materials (as that term is defined in Article 10):

a. **Environmental Questionnaire; Disclosure**. Prior to the execution of the lease and not more than once every year thereafter, Tenant shall complete, execute and deliver to Landlord an environmental questionnaire and disclosure statement (the "**Environmental Questionnaire**") in the form required by Landlord, and Tenant shall certify to Landlord all information contained in the Environmental Questionnaire as true and correct to the best of Tenant's knowledge and belief. The completed Environmental Questionnaire shall be deemed incorporated into this Lease for all purposes, and Landlord

shall be entitled to rely fully on the information contained therein. Such Environmental Questionnaire shall include the names and amounts of all Hazardous Materials, or any combination thereof, if any, that that Tenant intends to store, generate, use or dispose of on, under or about the Premises through the next Disclosure Date. In addition to the foregoing, Tenant shall promptly notify Landlord of, and shall promptly provide Landlord with true, correct, complete and legible copies of, all of the following environmental items relating to the Premises: reports filed pursuant to any self-reporting requirements; reports filed pursuant to any Environmental Laws or this Lease; all permit applications, permits, monitoring reports, workplace exposure and community exposure warnings or notices, and all other reports, disclosures, plans or documents (even those that may be characterized as confidential) relating to water discharges, air pollution, waste generation or disposal, underground storage tanks or Hazardous Materials; all orders, reports, notices, listings and correspondence (even those that may be considered confidential) of or concerning the release, investigation, compliance, clean up, remedial and corrective actions, and abatement of Hazardous Materials whether or not required by Environmental Laws; and all complaints, pleadings and other legal documents filed against Tenant related to Tenant's use, handling, storage or disposal of Hazardous Materials; provided, however, that Tenant shall have no responsibility under this paragraph to disclose, report on, or complete any Environmental Questionnaire regarding any environmental condition that existed on the Property prior to the commencement of the Lease, or regarding any discharge, release, disposal, migration, investigation, remediation, or abatement of any Hazardous Materials or pollutants that were used or deposited on the Property or that migrated onto the Property prior to the commence of the Lease or as the result of the acts or omission of any third party.

b. **Inspection; Compliance.** Landlord and Landlord Parties (as that term is defined in Article 10) shall have the right in its sole discretion, but not the obligation, to inspect, investigate, test, sample and/or monitor the Premises, including any air, soil, water, groundwater or other sampling, and any other testing, digging, drilling or analyses or other study or test, including any invasive test at the Premises, at any time following prior written notice to Tenant (a minimum of twenty-four (24) hours except in the case of emergency). Tenant shall provide Landlord with access to all relevant facilities, records and personnel. If Tenant is not in compliance with any of the provisions of this Section 1.19 and Article 10, or in the event of a release of any Hazardous Materials on, under, from or about the Premises, Landlord and Landlord Parties shall have the right, but not the obligation, without limitation on any of Landlord's other rights and remedies under this Lease, to immediately enter upon the Premises and to discharge Tenant's obligations under this Section 1.19 and Article 10 at Tenant's expense, including without limitation the taking of emergency or long term remedial action. Landlord and Landlord Parties shall endeavor to minimize interference with Tenant's business but shall not be liable for any such interference. In addition, Landlord shall have the right, but not the obligation, to join and participate in any legal proceedings or actions initiated in connection with any claims or causes of action arising out of the storage, generation, use or disposal by Tenant or Tenant's Parties of Hazardous Materials on, under, from or about the Premises. Landlord agrees that if any testing proves that the Tenant or Tenant's Parties have no responsibility for the presence of said Hazardous Materials, Tenant shall not be liable for any costs or expenses in connection with such inspection, testing and monitoring.

c. **Tenant Obligations.** If the presence of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant's Parties results in (i) injury to any person, (ii) injury to or contamination of the Premises, or (iii) injury to or contamination of any real or personal property wherever situated, Tenant, at its sole cost and expense, shall promptly take all actions necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of Landlord under this Lease, Tenant shall pay the cost of any cleanup work performed on, under or about the Premises as required by this Lease or any Environmental Laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or permitted by Tenant or Tenant's Parties. If Landlord has reason to believe that Tenant or Tenant's Parties may have caused or permitted the release of any Hazardous Materials on, under, from or about the Premises, then Landlord may require

Tenant, at Tenant's sole cost and expense, to conduct monitoring activities on or about the Premises satisfactory to Landlord, in its sole and absolute judgment, concerning such release of Hazardous Materials on, under, from or about the Premises. Notwithstanding anything to the contrary contained in the foregoing, Tenant shall not, without Landlord's prior written consent, take any remedial action in response to the presence of any Hazardous Materials on, under or about the Premises, or enter into any settlement agreement, consent decree or other compromise with any governmental agency with respect to any Hazardous Materials claims; provided, however, Landlord's prior written consent shall not be necessary in the event that the presence of Hazardous Materials on, under or about the Premises (i) poses an immediate threat to the health, safety or welfare of any individual, or (ii) is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Landlord's consent before taking such action. Tenant's failure to timely comply with this Section 1.19 shall constitute an event of default under this Lease. Notwithstanding any provision in this Lease to the contrary, in no event shall Tenant be liable to Landlord for any Hazardous Materials stored, released, or disposed of on, under or about the Premises prior to the Commencement Date by anyone other than the Tenant or any of Tenant Parties, or for any contamination due to Hazardous Materials on, under or about the Premises before, during, and after the Commencement Date that was not caused by Tenant or any Tenant Parties.

d. **Tenant's Responsibility at Conclusion of Lease.** Promptly upon the expiration or sooner termination of this Lease, Tenant shall represent to Landlord in writing that (i) Tenant has made a diligent effort to determine whether any Hazardous Materials are on, under or about the Premises, as a result of any acts or omissions of Tenant or Tenant's Parties and (ii) no such Hazardous Materials exist on, under or about the Premises, other than as specifically identified to Landlord by Tenant in writing or that existed on the Property prior to the commencement of the Lease. If Tenant or any of Tenant Parties caused or permitted the storage, release or disposal of any Hazardous Materials on, under, from or about the Premises during the Term of this Lease, Tenant shall, at Landlord's request, immediately prepare and submit to Landlord within thirty (30) days after such request a comprehensive plan, subject to Landlord's approval, specifying the actions to be taken by Tenant to return the Premises to the condition existing prior to the introduction of such Hazardous Materials by Tenant or any of Tenant Parties. Upon Landlord's approval of such clean up plan, Tenant shall, at Tenant's sole cost and expense, without limitation on any rights and remedies of Landlord under this Lease or at law or in equity, immediately implement such plan and proceed to clean up such Hazardous Materials in accordance with all Environmental Laws and as required by such plan and this Lease.

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STANDARD LEASE PROVISIONS

ARTICLE 2 - LEASE

2.1 **Lease Elements; Definitions; Exhibits.** The Lease is comprised of the Lease Summary and Property Specific Provisions (the "**Summary**"), these Standard Lease Provisions ("**Standard Lease Provisions**") and all exhibits attached hereto (collectively, "**Exhibits**"), all of which are incorporated together as part of one and the same instrument. All references in any such documents and instruments to "Lease" means the Summary, these Standard Lease Provisions and all Exhibits attached hereto. All terms used in this Lease shall have the meanings ascribed to such terms in the Summary, these Standard Lease Provisions and any Exhibits. To the extent of any inconsistency between the terms and conditions of the Summary, these Standard Lease Provisions, or any Exhibits attached hereto, the Summary and any Exhibits attached hereto shall control over these Standard Lease Provisions.

ARTICLE 3 - PREMISES

3.1 **Lease of Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, upon and subject to, the terms, covenants and conditions of this Lease. Each party covenants and agrees, as a material part of the consideration for this Lease, to keep and perform their respective obligations under this Lease.

3.2 **Landlord's Reserved Rights.** Landlord reserves the right from time to time, and upon reasonable prior written notice to Tenant, to do any of the following: (a) make any changes, additions, improvements, maintenance, repairs or replacements in or to the Property if required to do so by any applicable Laws or to the extent necessary in conjunction with any improvements to the Property; (b) close temporarily any areas of the Property while engaged in making repairs, improvements or alterations to the Property; and (c) perform such other acts and make such other changes with respect to the Property, as Landlord may, in the exercise of good faith business judgment, deem to be appropriate. If Landlord is required to reconfigure the Premises as a result of Landlord's exercise of its rights under this Section 3.2, Landlord shall provide Tenant with reasonable advance written notice of the construction schedule to the extent that the Premises are affected, and Landlord shall endeavor to minimize, as reasonably practicable, the interference with Tenant's business as a result of any such construction. All measurements of rentable area in this Lease shall be deemed to be correct.

ARTICLE 4 - TERM AND POSSESSION

4.1 **Term; Notice of Lease Dates.** The Term shall be for the period designated in the Summary commencing on the Commencement Date and ending on the Expiration Date, unless the Term is sooner terminated or extended as provided in this Lease. If the Commencement Date falls on any day other than the first day of a calendar month then the Term will be measured from the first day of the month following the month in which the Commencement Date occurs. Within ten (10) days after Landlord's written request, Tenant shall execute a written confirmation of the Commencement Date and Expiration Date of the Term in the form of the Notice of Lease Term Dates attached hereto as Exhibit B. The Notice of Lease Term Dates shall be binding upon Tenant unless Tenant reasonably objects thereto in writing within such ten (10) day period. The failure or delay by Landlord to request such confirmation or the failure or delay by Tenant to execute and deliver such confirmation shall not delay the Commencement Date or the date Tenant must commence the payment of Rent.

4.2 **Possession.** Tenant acknowledges it will accept possession of the Premises in its then as-is condition, subject to any latent and patent defects, without the construction of any improvements or the grant of any allowances or concessions of any kind. Notwithstanding the foregoing, Tenant will not be

entitled to possession of the Premises until Landlord has received from Tenant all of the following: (i) a copy of this Lease fully executed by Tenant; (ii) the first installment of Monthly Base Rent due under this Lease; and (iii) copies of Tenant's insurance certificates as required hereunder; however, any delay in Tenant's possession under this sentence shall not delay the date by which Tenant must pay Rent or the Commencement Date.

4.3 Condition of Premises. Pursuant to Section 1938 of the California Civil Code, Landlord hereby advises Tenant that as of the date of this Lease the Premises have not undergone inspection by a Certified Access Specialist. Further, pursuant to Section 1938 of the California Civil Code, Landlord notifies Tenant of the following: "A Certified Access Specialist (CASp) can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although California state law does not require a CASp inspection of the Premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of any such CASp inspection, the payment of the costs and fees for the CASp inspection and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises." Therefore and notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant agree that (a) Tenant may, at its option and at its sole cost, cause a CASp to inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under California law, (b) the parties shall mutually coordinate and reasonably approve of the timing of any such CASp inspection so that Landlord may, at its option, have a representative present during such inspection, and (c) Tenant shall be solely responsible for the cost of any repairs necessary to correct violations of construction-related accessibility standards within the Premises, in any Building or at the Property identified by any such CASp inspection, any and all such alterations and repairs within the Premises to be performed by Tenant in accordance with Article 13 of this Lease and if any alterations and repairs to other portions of the Building or the Property are required as a result of Tenant's CASp inspection then Tenant shall reimburse Landlord upon demand, as Additional Rent, for the cost to Landlord of performing such alterations and repairs; provided, however, unless such repair or alterations relate solely to other alterations to the Premises which Tenant is obligated to, or elects to, remove upon the expiration or earlier termination of the Lease Term (in which case Tenant shall simultaneously also remove any CASp identified alterations and repairs), Tenant shall have no obligation to remove any repairs or alterations made pursuant to a CASp inspection under this Section 4.3.

ARTICLE 5 - RENT

5.1 Monthly Base Rent. Tenant agrees to pay Landlord, the Monthly Base Rent as designated in the Summary. Monthly Base Rent shall be paid by Tenant in advance on the first day of each and every calendar month ("**Due Date**") during the Term, except that the first full month's Monthly Base Rent shall be paid upon Tenant's execution and delivery of this Lease to Landlord. Monthly Base Rent for any partial month shall be prorated in the proportion that the number of days this Lease is in effect during such month bears to the actual number of days in such month.

5.2 Additional Rent. All amounts and charges payable by Tenant under this Lease in addition to Monthly Base Rent, if any, to the extent payable by Tenant under this Lease shall be considered "**Additional Rent**", and the word "**Rent**" in this Lease shall include Monthly Base Rent and all such Additional Rent unless the context specifically states or clearly implies that only Monthly Base Rent is referenced. Rent shall be paid to Landlord, without any prior notice or demand therefor and without any notice, deduction or offset, in lawful money of the United States of America.

5.3 Late Charges & Interest Rate. If Landlord does not receive Rent or any other payment due from Tenant within five (5) business days after the Due Date, Tenant shall pay to Landlord a late

charge equal to five percent (5%) of such past due Rent or other payment. Tenant agrees that this late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of Tenant's late payment. Accepting any late charge shall not constitute a waiver by Landlord of Tenant's default with respect to any overdue amount nor prevent Landlord from exercising any other rights or remedies available to Landlord. If any installment of Monthly Base Rent or Additional Rent, or any other amount payable by Tenant hereunder is not received by Landlord within five (5) business days after the Due Date, it shall bear interest at the Interest Rate set forth in the Summary from the sixth day after the Due Date until paid. All interest, and any late charges imposed pursuant to this Section 5.3, shall be considered Additional Rent due from Tenant to Landlord under the terms of this Lease.

ARTICLE 6 - SECURITY DEPOSIT

Intentionally Deleted.

ARTICLE 7 - TAXES AND OTHER EXPENSES

7.1 **Taxes.** As used in this Lease, the term "**Taxes**" means: All real property taxes and assessments, possessory interest taxes, sales taxes, personal property taxes, business or license taxes or fees, gross receipts taxes, license or use fees, excises, transit charges, and other impositions of any kind (including fees "in-lieu" or in substitution of any such tax or assessment) which are now or hereafter assessed, levied, charged or imposed by any public authority upon the Building, Land, Property and/or Premises or any portion thereof, its operations or the Rent derived therefrom (or any portion or component thereof, or the ownership, operation, or transfer thereof), and any and all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in attempting to protest, reduce or minimize the same. Taxes shall not include penalties or interest arising from Landlord's late payment of Taxes as they are due and payable, inheritance or estate taxes imposed upon or assessed against the interest of Landlord, gift taxes, excess profit taxes, franchise taxes, or similar taxes on Landlord's business or any other taxes computed upon the basis of the net income of Landlord. If it shall not be lawful for Tenant to reimburse Landlord for any such Taxes, the Monthly Base Rent payable to Landlord under this Lease shall be revised to net Landlord the same net rent after imposition of any such Taxes by Landlord as would have been payable to Landlord prior to the payment of any such Taxes. Tenant shall pay for or contribute to Taxes as provided in the Summary. Notwithstanding anything herein to the contrary, Tenant shall be liable for all taxes levied or assessed against personal property, furniture, fixtures, above-standard Tenant Improvements and alterations, additions or improvements placed by or for Tenant in the Premises. Furthermore, Tenant shall pay prior to delinquency any (i) rent tax or sales tax, service tax, transfer tax or value added tax, or any other applicable tax on the rent or services provided herein or otherwise respecting this Lease, (ii) taxes assessed upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion of the Property; or (iii) taxes assessed upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

7.2 **Insurance Costs.** As used in this Lease, "**Insurance Costs**" means the cost of insurance obtained by Landlord pursuant to Article 15 (including self-insured amounts and deductibles, if any). Tenant shall pay for or contribute to Insurance Costs as provided in the Summary.

7.3 **Interruption of Utilities.** Landlord shall have no liability to Tenant for any interruption in utilities or services to be provided to the Premises when such failure is caused by all or any of the following: (a) accident, breakage or repairs; (b) strikes, lockouts or other labor disturbances or labor disputes of any such character; (c) governmental regulation, moratorium or other governmental action; (d) inability, despite the exercise of reasonable diligence, to obtain electricity, water or fuel; (e) service interruptions or any other unavailability of utilities resulting from causes beyond Landlord's control

including without limitation, any electrical power "brown-out" or "black-out"; or (f) any other cause beyond Landlord's reasonable control. In addition, in the event of any such interruption in utilities or services, Tenant shall not be entitled to any abatement or reduction of Rent (except as expressly provided in Articles 17 and 18 if such failure is a result of any casualty damage or taking described therein), no eviction of Tenant shall result, and Tenant shall not be relieved from the performance of any covenant or agreement in this Lease. In the event of any stoppage or interruption of services or utilities which are not obtained directly by Tenant, Landlord shall diligently attempt to resume such services or utilities as promptly as practicable. Tenant hereby waives the provisions of any applicable existing or future Law, ordinance or governmental regulation permitting the termination of this Lease due to an interruption, failure or inability to provide any services (including, without limitation, the provisions of California Civil Code Section 1932(1)).

ARTICLE 8 - MAINTENANCE AND REPAIR

8.1 Landlord's Repair Obligations. As provided in Section 1.18(e), Landlord shall maintain and repair the roof and roof membrane, the exterior walls, and the structural portions of the Property, and subject to the obligations of Tenant under the provisions of this Lease. Landlord shall repair plumbing, utility, and/or sewer lines and mains which service the Premises. Tenant waives the right to make repairs at Landlord's expense under any applicable Laws (including, without limitation, to the extent the Premises are located in California, the provisions of California Civil Code Sections 1941 and 1942 and any successor statutes or laws of a similar nature).

8.2 Tenant's Repair Obligations. Except for Landlord's obligations specifically set forth in Section 8.1 above, Tenant shall at all times and at Tenant's sole cost and expense, keep, maintain, clean, repair, preserve and replace, as necessary, the Premises, Buildings and Property and all parts thereof including, without limitation, all Exterior Areas, Tenant Improvements, Alterations, and all furniture, fixtures and equipment, including, without limitation, all computer, telephone and data cabling and equipment, Tenant's signs, if any, door locks, closing devices, security devices, interior of windows, window sashes, casements and frames, floors and floor coverings, shelving, kitchen, restroom facilities and/or appliances of any kind located within the Premises, if any, custom lighting, and any additions and other property located within the Premises, and all landscaping and paving at the Property so as to keep all of the foregoing elements of the Property in good condition and repair, reasonable wear and tear and casualty damage excepted. Tenant shall replace, at its expense, any and all plate and other glass in and about the Building which is damaged or broken from any cause whatsoever except due to the negligence or willful misconduct of Landlord, its agents or employees. Such maintenance and repairs shall be performed with due diligence, lien-free and in a first-class and workmanlike manner, by licensed contractor(s) that are selected by Tenant and approved by Landlord, which approval Landlord shall not unreasonably withhold, conditioned or delay. If Tenant refuses or neglects to repair and maintain the Premises, Building or Property properly as required hereunder to the reasonable satisfaction of Landlord, then at any time following ten (10) days from the date on which Landlord makes a written demand on Tenant to effect such repair and maintenance, Landlord may enter upon the Premises, Building or Property, upon prior written notice to Tenant (a minimum of twenty-four (24) hours except in the case of emergency), and make such repairs and/or maintenance. Upon completion thereof, Tenant agrees to pay to Landlord as Additional Rent, Landlord's costs for making such repairs plus an amount not to exceed ten percent (10%) of such costs for overhead, within ten (10) days after receipt from Landlord of a written itemized bill therefor. Any amounts not reimbursed by Tenant within such ten (10) day period will bear interest at the Interest Rate until paid by Tenant.

ARTICLE 9 - USE

Tenant shall procure, at its sole cost and expense, any and all permits required by applicable Law for Tenant's use and occupancy of the Premises. Tenant shall use the Premises solely for the Permitted Use specified in the Summary, and shall not use or permit the Premises to be used for any other use or purpose whatsoever without Landlord's prior written approval. Tenant shall observe and comply with the Rules and Regulations attached hereto as Exhibit C, as the same may be modified by Landlord from time to time, provided that said Rules and Regulations including any amendments (a) are reasonable; (b) are non-discriminatory; (c) do not materially and adversely affect Tenant's Permitted Use of the Premises; and (d) shall be provided to Tenant at least fifteen (15) days prior to enactment. Tenant shall, at its sole cost and expense, observe and comply with all Laws and all requirements of any board of fire underwriters or similar body relating to the Premises now or hereafter in force relating to or affecting the condition, use, occupancy, or alteration or improvement of the Premises (whether, except as otherwise provided herein, structural or nonstructural, including unforeseen and/or extraordinary alterations and/or improvements to the Premises and regardless of the period of time remaining in the Term). Tenant shall not use or allow the Premises to be used for any improper, unlawful or reasonably objectionable purpose. Tenant shall not cause, maintain or permit any nuisance in, on or about the Premises, the Building or the Property, nor commit or suffer to be committed any waste in, on or about the Premises. Without limiting the foregoing, Tenant is prohibited from engaging or permitting others to engage in any activity which would be a violation of any state and/or federal laws relating to the use, sale, possession, cultivation and/or distribution of any controlled substances (whether for commercial or personal purposes) regulated under any applicable law or other applicable law relating to the medicinal use and/or distribution of marijuana (otherwise known as the Compassionate Use Act of 1996) ("Prohibited Drug Law Activities").

ARTICLE 10 - HAZARDOUS MATERIALS

As used in this Lease, the term "**Environmental Law(s)**" means any past, present or future federal, state or local Law relating to (a) the environment, human health or safety, including, without limitation, emissions, discharges, releases or threatened releases of Hazardous Materials (as defined below) into the environment (including, without limitation, air, surface water, groundwater or land), or (b) the manufacture, generation, refining, processing, distribution, use, sale, treatment, receipt, storage, disposal, transport, arranging for transport, or handling of Hazardous Materials. As used in this Lease, the term "**Hazardous Materials**" means and includes any hazardous or toxic materials, substances or wastes as now or hereafter designated or regulated under any Environmental Laws including, without limitation, asbestos, petroleum, petroleum hydrocarbons and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls ("**PCBs**"), and freon and other chlorofluorocarbons. Except for ordinary and general office supplies, such as copier toner, liquid paper, glue, ink and common household cleaning materials, and motor vehicle fuel stored in fuel tanks of motor vehicles used on site in compliance with all Environmental Laws (some or all of which may constitute Hazardous Materials), Tenant agrees not to cause or permit any Hazardous Materials to be brought upon, stored, used, handled, generated, released or disposed of on, in, under or about any Building, the Exterior Areas or any other portion of the Property by Tenant, its agents, officers, directors, shareholders, members, managers, partners, employees, subtenants, assignees, licensees, contractors or invitees (collectively, "**Tenant's Parties**"), without the prior written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. Upon the expiration or earlier termination of this Lease, Tenant agrees to promptly remove from the Premises, the Building and the Property, at its sole cost and expense, any and all Hazardous Materials, including any equipment or systems containing Hazardous Materials which are installed, brought upon, stored, used, generated or released upon, in, under or about the Premises, the Building and/or the Property or any portion thereof by Tenant or any of Tenant's Parties. To the fullest extent permitted by law, Tenant agrees to promptly indemnify, protect, defend and hold harmless Landlord and Landlord's members, shareholders, partners, officers, directors, managers, employees, agents, contractors, successors and assigns (collectively,

"**Landlord Parties**") from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including, without limitation, clean-up, removal, remediation and restoration costs, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees and court costs) which arise or result from the use, release, storage or disposal during the Term of the Lease by Tenant or any of Tenant Parties of Hazardous Materials on, in, under or about the Premises, the Building or any other portion of the Property. The provisions of this Article 10 will survive the expiration or earlier termination of this Lease. Tenant shall give Landlord written notice of any evidence of Mold, water leaks or water infiltration in the Premises promptly upon discovery of same. Tenant shall give Landlord written notice of any evidence of cracks in any Building's concrete slabs which may result in a vapor intrusion pathway promptly upon discovery of same. Upon receipt of any such notice from Tenant under the preceding two sentences, Landlord shall have the right in its discretion to elect to make or not make the required repair to correct the condition. If Landlord elects not to make such repair, then Tenant as its sole and exclusive remedy may make the repair at Tenant's expense or elect to terminate this Lease upon written notice to Landlord. Tenant shall make such election within thirty (30) days after notice from Landlord that Landlord will not be making the repair. Landlord has provided Tenant notification of ongoing environmental concerns on, in, under or about the Property related to petroleum hydrocarbons and chlorinated volatile organic compounds (CVOCs) detected in soil-vapor and groundwater samples at concentrations exceeding screening criteria established by the San Francisco Bay Regional Water Quality Control Board. Attached hereto as Exhibit E is a copy of the Technical Memorandum dated February 9, 2021 from Terraphase Engineering Inc. outlining the ongoing environmental concerns on, in, under or about the Property. Landlord has notified Tenant that additional relevant documentation regarding the environmental status of the Property can be accessed using the publicly available GeoTracker website.

To the fullest extent permitted by law, Landlord agrees to promptly indemnify, protect, defend and hold harmless Tenant and Tenant's subcontractors, officers, directors, shareholders, employees, agents, successors and assigns from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including, without limitation, clean-up, removal, remediation and restoration costs, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees and court costs) which arise or result from the presence of environmental contamination and Hazardous Materials which existed on the Premises prior to Tenant's occupancy in violation of applicable Law, or which are caused by the negligence or willful misconduct of Landlord or any of Landlord's subcontractors, officers, directors, shareholders, employees, agents, successors and assigns before, during and after the Term or any extensions. The obligations of Landlord hereunder shall survive the expiration or termination of the Term or any extensions. The indemnification obligations of Landlord created by this section shall be in addition to the indemnification obligations set forth elsewhere herein or provided by applicable law.

ARTICLE 11 - PARKING

During the Term, Tenant shall be entitled to utilize the number of parking spaces specified in the Summary within the parking areas for the Property. Tenant's visitors shall be entitled to access to the parking areas on the Property designated for visitor use.

ARTICLE 12 - TENANT SIGNS

Tenant shall have the right to install and maintain, at Tenant's sole cost and expense, one (1) sign (restricted solely to Tenant's name) on the exterior of the Building above the doorway to the Premises or such other location as may be reasonably determined by Landlord, subject to the provisions of this Article 12. Subsequent changes to Tenant's sign and/or any additional signs, to the extent permitted by Landlord herein, shall be made or installed at Tenant's sole cost and expense. All aspects of any such signs shall be subject to the prior written consent of Landlord (which shall not be unreasonably withheld), and shall be

per Landlord's standard specifications and materials, as revised by Landlord from time to time. Tenant shall have no right to install or maintain any other signs, banners, advertising, notices, displays, stickers, decals or any other logo or identification of any person, product or service whatsoever, in any location on or in the Property except as (i) shall have been expressly approved by Landlord in writing prior to the installation thereof (which approval may be granted or withheld in Landlord's sole and absolute discretion), (ii) shall not violate any signage restrictions or exclusive sign rights contained in any then existing leases with other tenants of the Property, if any, and (iii) are consistent and compatible with all applicable Laws, and the design, signage and graphics program from time to time implemented by Landlord with respect to the Property, if any. Landlord shall have the right to remove any signs or signage material installed without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the cost of removal to Tenant as Additional Rent hereunder, payable within ten (10) days after written demand by Landlord. Any additional sign rights of Tenant, if any, shall be as provided in the Summary.

ARTICLE 13 - ALTERATIONS

13.1 **Alterations.** After installation of the initial Tenant Improvements for the Premises, Tenant may, at its sole cost and expense, make alterations, additions, improvements and decorations to the Premises ("**Alteration(s)**") subject to and upon the following terms and conditions:

a. Tenant shall not make any Alterations which: (i) affect any area outside the Premises including the outside appearance, character or use of any portions of the Building or other portions of the Property; (ii) affect the Building's roof, roof membrane, any structural component or any base Building equipment, concrete slab, services or systems (including fire and life/safety systems), or the proper functioning thereof, or Landlord's access thereto; (iii) in the reasonable opinion of Landlord, lessen the value of the Building or the Property; (iv) will violate or require a change in any occupancy certificate applicable to the Premises; or (v) would trigger a legal requirement which would require Landlord to make any alteration or improvement to the Premises, Building or other aspect of the Property.

b. Tenant shall not make any Alterations not prohibited by Section 13.1(a), unless Tenant first obtains Landlord's prior written consent, which consent Landlord shall not unreasonably withhold, condition or delay, provided Landlord's prior approval shall not be required for any Alterations that is not prohibited by Section 13.1(a) above and is of a cosmetic nature that satisfies all of the following conditions (hereinafter a "**Pre-Approved Alteration**"): (i) the costs of such Alterations do not exceed \$5,000; (ii) to the extent reasonably required by Landlord or by law due to the nature of the work being performed, Tenant delivers to Landlord final plans, specifications, working drawings, permits and approvals for such Alterations at least ten (10) days prior to commencement of the work thereof; (iii) Tenant and such Alterations otherwise satisfy all other conditions set forth in this Section 13.1; and (iv) the making of such Alterations will not otherwise cause a default by Tenant under any provision of this Lease. Tenant shall provide Landlord with ten (10) days' prior written notice before commencing any Alterations. In addition, before proceeding with any Alteration, Tenant's contractors shall obtain, on behalf of Tenant and at Tenant's sole cost and expense: (A) all necessary governmental permits and approvals for the commencement and completion of such Alterations, and (B) if the cost of such Alterations exceeds \$50,000.00, a completion and lien indemnity bond, or other surety satisfactory to Landlord for such Alterations. Landlord's approval of any plans, contractor(s) and subcontractor(s) of Tenant shall not release Tenant or any such contractor(s) and/or subcontractor(s) from any liability with respect to such Alterations and will create no liability or responsibility on Landlord's part concerning the completeness of such Alterations or their design sufficiency or compliance with Laws.

c. All Alterations shall be performed: (i) in accordance with the approved plans, specifications and working drawings, if any; (ii) lien-free and in a first-class workmanlike manner;

(iii) in compliance with all building codes and Laws; (iv) in such a manner so as not to impose any additional expense upon nor delay Landlord in the maintenance and operation of the Building; (v) by licensed and bondable contractors, subcontractors and vendors selected by Tenant and reasonably approved by Landlord (provided Landlord reserves the right to require Tenant to utilize Landlord's preferred contractors, subcontractors and vendors for certain work performed within the Premises or as to systems serving the Premises as approved by Landlord such as for fire/life safety, HVAC control work, architectural and engineering services), and (vi) at such times, in such manner and subject to such rules and regulations as Landlord may from time to time reasonably designate. Tenant shall pay to Landlord, within ten (10) days after written demand, the costs of any increased insurance premiums incurred by Landlord to include such Alterations in the causes of loss – special form property insurance obtained by Landlord pursuant to this Lease, if Landlord elects in writing to insure such Alterations; provided, however, Landlord shall not be required to include the Alterations under such insurance. If the Alterations are not included in Landlord's insurance, Tenant shall insure the Alterations under its causes of loss-special form property insurance pursuant to this Lease.

d. Tenant shall pay to Landlord, as Additional Rent, the reasonable costs of Landlord's engineers and other consultants for review of all plans, specifications and working drawings for the Alterations, within ten (10) business days after Tenant's receipt of invoices either from Landlord or such consultants. In addition to such costs, Tenant shall pay to Landlord, within ten (10) business days after completion of any Alterations, a construction supervision fee equal to five percent (5%) of the total cost of the Alterations and the actual, reasonable costs incurred by Landlord for any services rendered by Landlord's management personnel and engineers to coordinate and/or supervise any of the Alterations to the extent such services are provided in excess of or after the normal on-site hours of such engineers and management personnel.

e. Throughout the performance of the Alterations, Tenant shall obtain, or cause its contractors to obtain, workers compensation insurance and commercial general liability insurance in compliance with the insurance provisions of this Lease.

13.2 Removal of Alterations. All Alterations and the initial Tenant Improvements in the Premises (whether installed or paid for by Landlord or Tenant), shall become the property of Landlord, to the extent that the Tenant Improvements cannot be removed without damaging the Property. Tenant Improvements that are permanently affixed to the Property shall remain upon and be surrendered with the Premises at the end of the Term; provided, however, Landlord may, by written notice delivered to Tenant within thirty (30) days after Landlord's receipt of plans for any Alterations identify those Alterations which Landlord shall require Tenant to remove at the end of the Term. If Landlord requires Tenant to remove any such Alterations, Tenant shall, at its sole cost, remove the identified items on or before the expiration or sooner termination of this Lease and repair any damage to the Premises caused by such removal to its original condition (or, at Landlord's option, Tenant shall pay to Landlord all of Landlord's costs of such removal and repair).

13.3 Liens. Tenant shall not permit any mechanic's, materialmen's or other liens to be filed against all or any part of the Property or the Premises, nor against Tenant's leasehold interest in the Premises, by reason of or in connection with any repairs, alterations, improvements or other work contracted for or undertaken by Tenant or any of Tenant's Parties. If any such liens are filed, Tenant shall, at its sole cost, immediately cause such liens to be released of record or bonded so that such lien(s) no longer affect(s) title to the Property, the Building or the Premises. If Tenant fails to cause any such lien to be released or bonded within ten (10) days after filing thereof, Landlord may cause such lien to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien, and Tenant shall reimburse Landlord within five (5) business days after receipt of invoice from Landlord,

any sum paid by Landlord to remove such liens, together with interest at the Interest Rate from the date of such payment by Landlord.

ARTICLE 14 - TENANT'S INSURANCE

14.1 **Tenant's Insurance.** On or before the earlier of the Commencement Date or the date Tenant commences or causes to be commenced any work of any type in the Premises, and continuing during the entire Term, Tenant shall obtain and keep in full force and effect, the following insurance with limits of coverage as set forth in Section 1.14 of the Summary:

- a. Special Form (formerly known as "all risk") insurance, including fire and extended coverage, sprinkler leakage, vandalism, malicious mischief upon property of every description and kind owned by Tenant and located at or about the Premises, or for which Tenant is legally liable or installed by or on behalf of Tenant including, without limitation, furniture, equipment and any other personal property, and any Alterations and initial tenant improvements previously existing or installed in the Premises, in an amount not less than the full replacement cost thereof. In the event that there shall be a dispute as to the amount which comprises full replacement cost, the decision of Landlord or the Mortgagees of Landlord shall be presumptive.
- b. Commercial general liability insurance coverage on an occurrence basis, including personal injury, bodily injury (including wrongful death), broad form property damage, operations hazard, owner's protective coverage, contractual liability (including Tenant's indemnification obligations under this Lease), liquor liability (if Tenant serves alcohol on the Premises), products and completed operations liability. The limits of liability of such commercial general liability insurance may be increased every three (3) years during the Term upon reasonable prior notice by Landlord to an amount reasonably required by Landlord and appropriate for tenants of buildings comparable to the Building.
- c. Commercial Automobile Liability covering all owned, hired and non-owned automobiles.
- d. Worker's compensation, in statutory amounts and employers liability, covering all persons employed in connection with any work done in, on or about the Premises for which claims for death, bodily injury or illness could be asserted against Landlord, Tenant or the Premises.
- e. Umbrella liability insurance on an occurrence basis, in excess of and following the form of the underlying insurance described in Section 14.1.b. and 14.1.c. and the employer's liability coverage in Section 14.1.d. which is at least as broad as each and every area of the underlying policies. Such umbrella liability insurance shall include pay on behalf of wording, concurrency of effective dates with primary policies, blanket contractual liability, application of primary policy aggregates, and shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance, subject to customary commercially reasonable deductible amounts imposed on umbrella policies.
- f. Any other form or forms of insurance as Tenant or Landlord or the Mortgagees of Landlord may reasonably require from time to time, in form, amounts and for insurance risks against which a prudent tenant of a building similar to the Building would protect itself, but only to the extent such risks and amounts are available in the insurance market at commercially reasonable costs.

14.2 **Requirements.** Each policy required to be obtained by Tenant hereunder shall: (a) be issued by insurers which are approved by Landlord and/or Landlord's Mortgagees and are authorized to do business in the state of California (provided that, in any event, the same insurance company shall provide the coverages described in Sections 14.1.a. and 14.1.g. above); (b) be in form reasonably

satisfactory from time to time to Landlord; (c) name Tenant as named insured thereunder and shall name Landlord, Landlord's property manager and lender and, at Landlord's request, such other persons or entities of which Tenant has been informed in writing, as additional insureds thereunder, all as their respective interests may appear; (d) not have a deductible amount exceeding Three Hundred and Fifty Dollars (\$350,000.00), which deductible amount shall be deemed self-insured with full waiver of subrogation; (e) specifically provide that the insurance afforded by such policy for the benefit of Landlord and any other additional insureds shall be primary, and any insurance carried by Landlord or any other additional insureds shall be excess and non-contributing; (f) require the insurer to notify Landlord and any other additional insureds in writing not less than thirty (30) days prior to any material change, reduction in coverage, cancellation or other termination thereof; (g) allows a cross liability or severability of interest endorsement; and (h) be in amounts sufficient at all times to satisfy any coinsurance requirements thereof. Tenant agrees to deliver to Landlord, as soon as practicable after the placing of the required insurance, but in no event later than the date Tenant is required to obtain such insurance as set forth in Section 14.1 above, certificates from the insurance company evidencing the existence of such insurance and Tenant's compliance with the foregoing provisions of this Article 14. Tenant shall cause replacement certificates to be delivered to Landlord not less than ten (10) days after the expiration of any such policy or policies. If any such initial or replacement certificates are not furnished within the time(s) specified herein, Landlord shall have the right, but not the obligation, to procure such policies and certificates at Tenant's expense.

14.3 Effect on Insurance. Tenant shall not do or permit to be done anything which will (a) violate or invalidate any insurance policy or coverage maintained by Landlord or Tenant hereunder, or (b) increase the costs of any insurance policy maintained by Landlord. If Tenant's occupancy or conduct of its business in or on the Premises results in any increase in premiums for any insurance carried by Landlord with respect to the Building or the Property, Tenant shall either discontinue the activities affecting the insurance or pay such increase as Additional Rent within ten (10) days after being billed therefor by Landlord. If any insurance coverage carried by Landlord pursuant to this Lease or otherwise with respect to the Building or the Property shall be cancelled or reduced (or cancellation or reduction thereof shall be threatened) by reason of the use or occupancy of the Premises other than as allowed by the Permitted Use by Tenant or by anyone permitted by Tenant to be upon the Premises, and if Tenant fails to remedy such condition within five (5) business days after notice thereof, Tenant shall be deemed to be in default under this Lease and Landlord shall have all remedies provided in this Lease, at law or in equity, including, without limitation, the right (but not the obligation) to enter upon the Premises and attempt to remedy such condition at Tenant's cost.

ARTICLE 15 - LANDLORD'S INSURANCE

During the Term, Landlord shall maintain property insurance written on a Special Form (formerly known as "all risk") basis covering the Property and the Building (excluding, however, Tenant's furniture, equipment and other personal property and Alterations, unless Landlord otherwise elects to insure the Alterations pursuant to Section 13.1 above) against damage by fire and standard extended coverage perils and with vandalism and malicious mischief endorsements, rental loss coverage, earthquake damage coverage (at Landlord's option), and such additional coverage as Landlord deems appropriate. Landlord shall also carry commercial general liability in such reasonable amounts and with such reasonable deductibles as would be carried by a prudent owner of a similar building in the state in which the Building is located. At Landlord's option, all such insurance may be carried under any blanket or umbrella policies that Landlord has in force for other buildings and projects. In addition, at Landlord's option, Landlord may elect to self-insure all or any part of such required insurance coverage. Landlord may, but shall not be obligated to carry any other form or forms of insurance as Landlord or the Mortgagees or ground lessors of Landlord may reasonably determine is advisable. The cost of insurance obtained by Landlord pursuant to this Article 15 (including self-insured amounts and deductibles) shall be included in Insurance Costs, except that any increase in the premium for the property insurance attributable to the replacement cost of the Tenant

Improvements in excess of Building standard shall not be included as Insurance Costs, but shall be paid by Tenant within thirty (30) days after invoice from Landlord.

ARTICLE 16 - INDEMNIFICATION AND EXCULPATION

16.1 Tenant's Assumption of Risk and Waiver. Except to the extent such matter is attributable to the negligence or willful misconduct of Landlord, Landlord and Landlord Parties shall not be liable to Tenant, or any of Tenant's Parties, and Tenant hereby releases Landlord and Landlord Parties, from and against any of the following: (i) any damage to property of Tenant, or of others, located in, on or about the Premises, (ii) the loss of or damage to any property of Tenant or of others by theft or otherwise, (iii) any injury or damage to persons or property resulting from fire, explosion, falling ceiling tiles masonry, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, appliance of plumbing works or from the roof, street or subsurface or from any other places or by dampness or by any other cause of whatsoever nature, (iv) any such damage caused by other tenants or persons in the Premises, occupants of any other portions of the Property, or the public, or caused by operations in construction of any private, public or quasi-public work, (v) any interruption of utilities and services, or (vi) any environmental condition on, in, under or around the Property, including matters disclosed in Exhibit E attached hereto or otherwise publicly available to Tenant, except as otherwise provided in this Lease. Landlord shall in no event be liable to Tenant or any other person for any consequential damages, special or punitive damages, or for loss of business, revenue, income or profits and Tenant hereby waives any and all claims for any such damages. Notwithstanding anything to the contrary contained in this Section 16.1, all property of Tenant and Tenant's Parties kept or stored on the Premises, whether leased or owned by any such parties, shall be so kept or stored at the sole risk of Tenant and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers. Landlord or its agents shall not be liable for interference with light or other intangible rights.

16.2 Tenant's Indemnification. Tenant shall be liable for, and shall indemnify, defend, protect and hold Landlord and the Landlord Parties harmless from and against, any and all claims, damages, judgments, suits, causes of action, losses, liabilities and expenses, including, without limitation, attorneys' fees and court costs (collectively, "**Indemnified Claims**"), arising or resulting from (a) any occurrence in the Premises following the date Landlord delivers possession of all or any portion of the Premises to Tenant, except to the extent caused by the negligence or willful misconduct of Landlord, (b) any act or omission of Tenant or any of Tenant's Parties; (c) the use of the Building and the Property and conduct of Tenant's business by Tenant or any of Tenant's Parties, or any other activity, work or thing done, permitted or suffered by Tenant or any of Tenant's Parties, in or about the Premises, the Building or elsewhere on the Property; and (d) any default by Tenant as to any obligations on Tenant's part to be performed under the terms of this Lease or the terms of any contract or agreement to which Tenant is a party or by which it is bound, affecting this Lease or the Premises.. The foregoing indemnification shall include, but not be limited to, any injury to, or death of, any person, or any loss of, or damage to, any property on the Premises, or on adjoining sidewalks, streets or ways, connected with the use, condition or occupancy thereof, whether or not Landlord or any Landlord Parties has or should have knowledge or notice of the defect or conditions causing or contributing to such injury, death, loss or damage. In case any action or proceeding is brought against Landlord or any Landlord Parties by reason of any such Indemnified Claims, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant's indemnification obligations under this Section 16.2 and elsewhere in this Lease shall survive the expiration or earlier termination of this Lease. Tenant's covenants, agreements and indemnification in Section 16.1 and this Section 16.2 are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease.

16.3 Landlord's Indemnification. Except for the gross negligence or willful misconduct of Tenant and/or any of the Tenant's Parties (as hereinafter defined), Landlord shall indemnify and hold harmless Tenant and Tenant's officers, agents, employees, partners, successors, and assigns (collectively, the "**Tenant Parties**") from and against any and all claims arising from Landlord's use of the Premises in the performance of any repairs or maintenance required of Landlord under this Lease, or from the conduct of Landlord's business or from any activity, work, or things done by Landlord in, on, or about the Premises, and shall further indemnify and hold harmless the Tenant Parties from and against any and all claims arising from any breach or default in the performance of any obligation on Landlord's part to be performed under the terms of this Lease, or arising from any negligence of the Landlord, the Landlord Parties, or any of Landlord's agents, contractors, or employees, and from and against all cost, attorneys' fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding shall be brought against Tenant by reason of any such claim, Landlord, upon notice from Tenant, shall defend the same at Landlord's expense by counsel satisfactory to Tenant.

ARTICLE 17 - CASUALTY DAMAGE/DESTRUCTION

17.1 Landlord's Rights and Obligations. If the Premises or any Building is damaged by fire or other casualty ("**Casualty**") Landlord may elect in its sole and absolute discretion to either (a) terminate this Lease upon written notice to Tenant, or (b) elect to restore the damaged area to a condition acceptable to Landlord. If this Lease is not terminated due to such Casualty, then Landlord shall repair, reconstruct and restore the portion of the Premises or Building, excluding any improvements and Alterations made by Tenant or for any of Tenant's property. At its expense, Tenant shall be responsible for the repair, reconstruction and restoration of the Tenant's improvements, Alterations and personal property. Under any of the conditions of this Section 17.1, Landlord shall give written notice to Tenant of the estimated time for Landlord to restore the damage within the later of sixty (60) days after the occurrence of such Casualty, or fifteen (15) days after Landlord's receipt of the estimate from Landlord's contractor or, as applicable, thirty (30) days after Landlord receives approval from Landlord's Mortgagee to rebuild.

17.2 Tenant's Costs and Insurance Proceeds. In the event of any damage or destruction of all or any part of the Premises, Tenant shall immediately: (a) notify Landlord thereof; and (b) deliver to Landlord all insurance proceeds received by Tenant with respect to the Tenant Improvements and Alterations (to the extent such items are not covered by Landlord's casualty insurance obtained by Landlord pursuant to this Lease) and with respect to Alterations in the Premises that Tenant is required to insure pursuant to Section 13.1, excluding proceeds for Tenant's furniture trade fixtures and other personal property. If, for any reason (including Tenant's failure to obtain insurance which Tenant is required to insure pursuant to Section 13.1 hereof), Tenant fails to receive insurance proceeds covering the full replacement cost of such Alterations which are damaged, Tenant shall be deemed to have self-insured the replacement cost of such Alterations and Tenant improvements, and upon any damage or destruction thereto, Tenant shall immediately pay to Landlord the full replacement cost of such items, less any insurance proceeds actually received by Landlord from Landlord's or Tenant's insurance with respect to such items.

17.3 Abatement of Rent. If as a result of any such damage, repair, reconstruction and/or restoration of the Premises or any Building, Tenant is prevented from using, and does not use, the Premises or any portion thereof, then Rent shall be abated or reduced, as the case may be, during the period that Tenant continues to be so prevented from using and does not use the Premises or portion thereof, in the proportion that the rentable square feet of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable square feet of the Premises. Notwithstanding the foregoing to the contrary, if the damage is due to the negligence or willful misconduct of Tenant or any of Tenant's Parties, there shall be no abatement of Rent. Except for abatement of Rent as provided hereinabove, Tenant shall not be entitled to any compensation or damages for loss of, or interference with, Tenant's business or

use or access of all or any part of the Premises resulting from any such damage, repair, reconstruction or restoration.

17.4 **Tenant's Termination Right.** Tenant's termination rights shall be as set forth in section 1.7.

17.5 **Waiver of Termination Right.** This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of any damage or destruction. Accordingly, except as expressly provided herein, Tenant hereby waives any and all provisions of applicable Law that provide alternative rights for the parties in the event of damage or destruction (including, without limitation, to the extent the Premises are located in California, the provisions of California Civil Code Section 1932, Subsection 2, and Section 1933, Subsection 4 and any successor statute or laws of a similar nature).

ARTICLE 18 - CONDEMNATION

18.1 **Substantial or Partial Taking.** Subject to the provisions of Section 18.3 below, either party may terminate this Lease if any material part of the Premises is taken or condemned for any public or quasi-public use under law, by eminent domain or private purchase in lieu thereof (a "**Taking**"). Landlord shall also have the right to terminate this Lease if there is a Taking of any portion of the Building or the Property which would have a material adverse effect on Landlord's ability to profitably operate the remainder of the Building and/or the Property. The terminating party shall provide written notice of termination to the other party within thirty (30) days after it first receives notice of the Taking. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If this Lease is not terminated, Base Rent and all other elements of this Lease which are dependent upon the area of the Premises, the Building or the Property shall be appropriately adjusted to account for any reduction in the square footage of the Premises, Building or Property, as applicable. All compensation awarded for a Taking shall be the property of Landlord. The right to receive compensation or proceeds are expressly waived by Tenant, however, Tenant may file a separate claim for Tenant's furniture, fixtures, equipment and other personal property, loss of goodwill and Tenant's reasonable relocation expenses, provided the filing of the claim does not diminish the amount of Landlord's award.

18.2 **Condemnation Award.** Subject to the provisions of Section 18.3 below, in connection with any Taking of the Premises or the Building, Landlord shall be entitled to receive the entire amount of any award which may be made or given in such taking or condemnation, without deduction or apportionment for any estate or interest of Tenant, it being expressly understood and agreed by Tenant that no portion of any such award shall be allowed or paid to Tenant for any so-called bonus or excess value of this Lease, and such bonus or excess value shall be the sole property of Landlord. Tenant shall not assert any claim against Landlord or the taking authority for any compensation because of such taking (including any claim for bonus or excess value of this Lease); provided, however, if any portion of the Premises is taken, Tenant shall be granted the right to recover from the condemning authority (but not from Landlord) any compensation as may be separately awarded or recoverable by Tenant for the taking of Tenant's furniture, fixtures, equipment and other personal property within the Premises, for Tenant's relocation expenses, and for any loss of goodwill or other damage to Tenant's business by reason of such taking.

18.3 **Temporary Taking.** In the event of a Taking of the Premises or any part thereof for temporary use, (a) this Lease shall be and remain unaffected thereby and Rent shall not abate, and (b) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Term, provided that if such taking shall remain in force at the expiration or earlier termination of this Lease, Tenant shall perform its obligations with respect to surrender of the Premises and shall pay to Landlord the portion of any award which is attributable

to any period of time beyond the Term expiration date. For purpose of this Section 18.3, a temporary taking shall be defined as a taking for a period of two hundred seventy (270) days or less.

18.4 **Waiver.** Tenant hereby waives any rights it may have pursuant to any applicable Laws (including, without limitation, to the extent the Premises are located in California, any rights Tenant might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure) and agrees that the provisions hereof shall govern the parties' rights in the event of any Taking.

ARTICLE 19 - WAIVER OF CLAIMS; WAIVER OF SUBROGATION

19.1 **Waiver.** Tenant hereby waives its rights against Landlord for any claims or damages or losses, including any deductibles and self-insured amounts, which are caused by or result from (a) any occurrence insured under any property insurance policy carried by Tenant or Landlord, as the case may be, or could be insured against, or (b) any occurrence which would have been covered under any property insurance required to be obtained and maintained by Tenant under this Lease had such insurance been obtained and maintained as required. The foregoing waiver shall be in addition to, and not a limitation of, any other waivers or releases contained in this Lease.

19.2 **Waiver of Insurers.** Tenant shall cause each property insurance policy carried by Tenant to provide that the insurer waives all rights of recovery by way of subrogation against Landlord, in connection with any claims, losses and damages covered by such policy. If Tenant fails to maintain insurance for an insurable loss, such loss shall be deemed to be self-insured with a deemed full waiver of subrogation as set forth in the immediately preceding sentence.

ARTICLE 20 - ASSIGNMENT AND SUBLETTING

20.1 **Restriction on Transfer.** Tenant shall not assign this Lease or any interest herein or sublet the Premises or any part thereof, or permit the use or occupancy of the Premises by any party other than Tenant, Tenant's contractors, and individuals receiving services from Tenant (any such assignment, encumbrance, sublease, license or the like being sometimes referred to as a "**Transfer**"). In no event may Tenant encumber or hypothecate this Lease or the Premises. This prohibition against Transfers shall be construed to include a prohibition against any assignment or subletting by operation of law.

ARTICLE 21 - SURRENDER AND HOLDING OVER

21.1 **Surrender of Premises.** Upon the expiration or sooner termination of this Lease, Tenant shall surrender all keys for the Premises and exclusive possession of the Premises to Landlord broom clean and in good condition and repair, reasonable wear and tear excepted (and casualty damage excepted), with all of Tenant's personal property, electronic, fiber, phone and data cabling and related equipment that is installed by or for the exclusive benefit of Tenant (to be removed in accordance with the National Electric Code and other applicable Laws) and those items, if any, of Alterations identified by Landlord pursuant to Section 13.2, removed therefrom and all damage caused by such removal repaired. In this regard, reasonable wear and tear shall be construed to mean wear and tear caused to the Premises by the natural aging process which occurs in spite of prudent application of commercially reasonable standards for maintenance, repair and cleaning and janitorial practices. In any event, Tenant shall cause the following to be done prior to the expiration or the sooner termination of this Lease: (i) all surface areas and bathrooms and showers shall be cleaned and disinfected in accordance with the best protocol practices for the prevention of infection; (ii) all carpets shall be cleaned and shampooed, and all tile or concrete floors cleaned; (iii) all broken, marred, stained or nonconforming acoustical ceiling tiles shall be replaced; (iv) all interior and exterior windows shall be washed; and (v) the plumbing and electrical systems and lighting shall be placed in good order and repair (including replacement of any burned out, discolored or broken

light bulbs, ballasts, or lenses). If Landlord so requests, Tenant shall, prior to the expiration or sooner termination of this Lease, (a) remove any Tenant's Alterations which Tenant is required to remove pursuant to this Lease and repair all damage caused by such removal, and (b) return the Premises or any part thereof to its original configuration existing as of the time the Premises were delivered to Tenant. If Tenant fails to remove by the expiration or sooner termination of this Lease all of its personal property and Alterations identified by Landlord for removal pursuant to this Lease, Landlord may, (without liability to Tenant for loss thereof), at Tenant's sole cost and in addition to Landlord's other rights and remedies under this Lease, at law or in equity: (1) remove and store such items in accordance with applicable Law; and/or (2) upon ten (10) days' prior notice to Tenant, sell all or any such items at private or public sale for such price as Landlord may obtain as permitted under applicable Law. Landlord shall apply the proceeds of any such sale to any amounts due to Landlord under this Lease from Tenant (including Landlord's attorneys' fees and other costs incurred in the removal, storage and/or sale of such items), with any remainder to be paid to Tenant.

21.2 Holding Over. Tenant will not be permitted to hold over possession of the Premises after the expiration or earlier termination of the Term and extension period without the express written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. If Tenant holds over after the expiration or earlier termination of the Term and extension period with or without the express written consent of Landlord, then, in addition to all other remedies available to Landlord, Tenant shall become a tenant at sufferance only, upon the terms and conditions set forth in this Lease so far as applicable (including Tenant's obligation to pay all Additional Rent under this Lease), but at a Monthly Base Rent equal to three hundred percent (300%) of the Monthly Base Rent applicable to the Premises immediately prior to the date of such expiration or earlier termination of this Lease. Any such holdover Rent shall be paid on a per month basis without reduction for partial months during the holdover. The foregoing rate for holdover Monthly Base Rent and any acceptance by Landlord of Monthly Base Rent, including any Monthly Base Rent at the holdover rate, after or for any period after such expiration or earlier termination of the Term of this Lease, shall not constitute consent to or a right to a holdover hereunder or result in an extension of the Term of this Lease. Tenant acknowledges and agrees that Landlord shall have the right to initiate and pursue an unlawful detainer proceeding, and any other proceeding, at any time to recover possession of the Premises as a result of the expiration or termination of the Term of this Lease and to the extent permissible under applicable law, Tenant shall not impose or allege any defense or claim to or otherwise delay any such proceeding. Tenant acknowledges that any holding over in the Premises by Tenant without Landlord's express written consent may compromise or otherwise affect Landlord's ability to develop the Premises and enter into new leases with prospective tenants at the Premises. Therefore, if Tenant fails to vacate and deliver the Premises to Landlord upon the expiration or earlier termination of the Term of this Lease, in addition to any other liabilities and remedies available to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from and against any and all claims and liability resulting from such failure, including, without limiting the generality of the foregoing, any losses, damages and/or additional costs suffered by Landlord resulting therefrom. Tenant shall be liable, and shall pay to Landlord within ten (10) days after demand, for all losses incurred, damages and expenses incurred by Landlord as a result of such holdover, and shall indemnify, defend and hold Landlord and the Landlord Parties harmless from and against all liabilities, damages, losses, claims, suits, costs and expenses (including reasonable attorneys' fees and costs) arising from or relating to any such holdover tenancy, including without limitation, any claim for damages made by a succeeding tenant. Tenant's indemnification obligations hereunder shall survive the expiration or earlier termination of this Lease.

ARTICLE 22 - DEFAULTS

22.1 Tenant's Default. The occurrence of any one or more of the following events shall constitute a "**Default**" under this Lease by Tenant:

- a. the vacation or abandonment of the Premises by Tenant. "**Abandonment**" is herein defined to include, but is not limited to, any absence by Tenant from the Premises for five (5) business days or longer while in default of any other provision of this Lease;
- b. the failure by Tenant to make any payment of Rent, Additional Rent or any other payment required to be made by Tenant hereunder, where such failure continues for five (5) days after written notice thereof from Landlord that such payment was not received when due; provided that if Landlord provides two (2) or more notices of late payment within any twelve (12) month period, then the third failure of Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder when due in the twelve (12) month period following the second (2nd) such notice shall be an automatic Default without notice from Landlord; or
- c. the failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Sections 22.1(a) or (b) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that it may be cured but more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion, which completion shall occur not later than sixty (60) days from the date of such notice from Landlord.

Any notice sent by Landlord to Tenant pursuant to this Section 22.1 shall be in lieu of, and not in addition to, any notice required under any applicable Law.

ARTICLE 23 - REMEDIES OF LANDLORD

23.1 **Landlord's Remedies; Termination.** In the event of any such Default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity (including, without limitation, the remedies of Civil Code Section 1951.4 and any successor statute or similar Law, which provides that Landlord may continue this Lease in effect following Tenant's breach and abandonment and collect rent as it falls due, if Tenant has the right to sublet or assign, subject to reasonable limitations), Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder and to re-enter the Premises and remove all persons and property from the Premises, in accordance with applicable laws governing such repossession; such property may be removed, stored and/or disposed of as permitted by applicable Law. If Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant: (a) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus (b) the worth at the time of the award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus (d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom including, but not limited to: the total unamortized sum of any Abated Amount (amortized on a straight line basis over the initial Term of this Lease), tenant improvement costs; attorneys' fees; brokers' commissions; any costs required to return the Premises to the conditioned required at the end of the Term; the costs of refurbishment, alterations, renovation and repair of the Premises; and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, Alterations, Tenant Improvements and any other items which Tenant is required under this Lease to remove but does not remove; plus (e) all other monetary damages allowed under applicable Law.

As used in Sections 23.1(a) and 23.1(b) above, the "**worth at the time of award**" is computed by allowing interest at the Interest Rate set forth in the Summary. As used in Section 23.1(c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). To the extent the Premises are located in California, Tenant hereby waives for Tenant and all those claiming under Tenant all right now or hereafter existing including, without limitation, any rights under California Code of Civil Procedure Sections 1174 and 1179 and Civil Code Section 1950.7 to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

23.2 Landlord's Remedies; Continuation of Lease; Re-Entry Rights. In the event of any such Default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall also have the right to (a) continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, and (b) with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises, in accordance with applicable laws governing such repossession; such property may be removed, stored and/or disposed of as permitted by applicable Law. No re-entry or taking possession of the Premises by Landlord pursuant to this Section 23.2, and no acceptance of surrender of the Premises or other action on Landlord's part, shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. No notice from Landlord or notice given under a forcible entry and detainer statute or similar Laws will constitute an election by Landlord to terminate this Lease unless such notice specifically so states. Notwithstanding any reletting without termination by Landlord because of any Default, Landlord may at any time after such reletting elect to terminate this Lease for any such Default.

23.3 Landlord's Right to Perform. Except as specifically provided otherwise in this Lease, all covenants and agreements by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement or offset of Rent. In the event of any Default by Tenant, Landlord may, without waiving or releasing Tenant from any of Tenant's obligations, make such payment or perform such other act as required to cure such Default on behalf of Tenant. All sums so paid by Landlord and all necessary incidental costs incurred by Landlord in performing such other acts shall be payable by Tenant to Landlord within five (5) days after demand therefor as Additional Rent.

23.4 Rights and Remedies Cumulative. All rights, options and remedies of Landlord contained in this Article 23 and elsewhere in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this Article 23 shall be deemed to limit or otherwise affect Tenant's indemnification of Landlord pursuant to any provision of this Lease.

23.5 Costs Upon Default and Litigation. Tenant shall pay to Landlord and its Mortgagees as Additional Rent all the expenses incurred by Landlord or its Mortgagees in connection with any default by Tenant hereunder or the exercise of any remedy by reason of any default by Tenant hereunder, including reasonable attorneys' fees and expenses. If Landlord or its Mortgagees shall be made a party to any litigation commenced against Tenant by any third party or any litigation by a third party pertaining to the contemplated use of the Premises as a homeless shelter, at the option of Landlord and/or its Mortgagees, Tenant, at its expense, shall provide Landlord and/or its Mortgagees with counsel approved by Landlord and/or its Mortgagees and shall pay all costs incurred or paid by Landlord and/or its Mortgagees in connection with such litigation.

ARTICLE 24 - ENTRY BY LANDLORD

Landlord and its employees and agents shall at all reasonable times have the right to enter the Premises to inspect the same, to supply any service required to be provided by Landlord to Tenant under this Lease, to exhibit the Premises to prospective lenders or purchasers (or during the last year of the Term or during any default by Tenant, to prospective tenants), to post notices of non-responsibility, to conduct any examination, study or test at the Premises, whether invasive or non-invasive, and/or to alter, improve or repair the Premises or any other portion of any Building or Property, all as determined by Landlord in its discretion, without being deemed guilty of or liable for any breach of Landlord's covenant of quiet enjoyment or any eviction of Tenant, and without abatement of Rent. In exercising such entry rights, Landlord shall endeavor to minimize, to the extent reasonably practicable, the interference with Tenant's business, and shall provide Tenant with a minimum of twenty-four (24) hours advance written notice of such entry (except in emergency situations and for scheduled services). For each of the foregoing purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes, and Landlord shall have the means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises.

ARTICLE 25 - LIMITATION ON LANDLORD'S LIABILITY

Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including as to any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual members, managers, investors, partners, directors, officers, or shareholders of Landlord or Landlord's members or partners, and Tenant shall not seek recourse against the individual members, managers, investors, partners, directors, officers, or shareholders of Landlord or Landlord's members or partners or any other persons or entities having any interest in Landlord, or any of their personal assets for satisfaction of any liability with respect to this Lease. In addition, in consideration of the benefits accruing hereunder to Tenant and notwithstanding anything contained in this Lease to the contrary, Tenant hereby covenants and agrees for itself and all of its successors and assigns that the liability of Landlord for its obligations under this Lease (including any liability as a result of any actual or alleged failure, breach or default hereunder by Landlord), shall be limited solely to, and Tenant's and its successors' and assigns' sole and exclusive remedy shall be against, Landlord's interest in the Building, and no other assets of Landlord. The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease of, the Property. In the event of any transfer or conveyance of any such title or interest (other than a transfer for security purposes only), the transferor shall assume all covenants and obligations on the part of Landlord contained in this Lease that accrue from and after the effective date of such transfer. Landlord and Landlord's transferees and assignees shall have the absolute right to transfer all or any portion of their respective title and interest in the Premises, the Building, the Property and/or this Lease without the consent of Tenant, and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

ARTICLE 26 - SUBORDINATION

Tenant accepts this Lease subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now or subsequently arising upon the Premises, the Building or the Property, and to renewals, modifications, refinancings and extensions thereof (collectively referred to as a "**Mortgage**"). This clause shall be self-operative, but no later than ten (10) business days after written request from Landlord or any holder of a Mortgage (each, a "**Mortgagee**" and collectively, "**Mortgagees**"), Tenant shall execute a commercially reasonable subordination agreement. As an alternative, a Mortgagee shall have the right at any time to subordinate its Mortgage to this Lease. No later than ten (10) business days after written request by Landlord or any Mortgagee, Tenant shall, without charge, attorn to any successor to Landlord's

interest in this Lease. Tenant hereby waives its rights under any current or future Law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale. Should Tenant fail to sign and return any such documents within said ten (10) business day period, Tenant shall be in default hereunder.

ARTICLE 27 - ESTOPPEL CERTIFICATE

Within ten (10) business days following Landlord's written request, Tenant shall execute and deliver to Landlord an estoppel certificate, in a form substantially similar to the form of Exhibit D attached hereto. Any such estoppel certificate delivered pursuant to this Article 27 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of any portion of the Property, as well as their assignees. Tenant's failure to deliver such estoppel certificate following an additional two (2) business day cure period after notice shall constitute a default hereunder. Tenant's failure to deliver such certificate within such time shall be conclusive upon Tenant that this Lease is in full force and effect, without modification except as may be represented by Landlord, that there are no uncured defaults in Landlord's performance, and that not more than one (1) month's Rent has been paid in advance.

ARTICLE 28 - Intentionally Deleted

ARTICLE 29 - MORTGAGEE PROTECTION

If, in connection with Landlord's obtaining or entering into any financing or ground lease for any portion of the Building or Property, the lender or ground lessor shall request modifications to this Lease, Tenant shall, within thirty (30) days after request therefor, execute an amendment to this Lease including such modifications, provided such modifications are reasonable, do not increase the obligations of Tenant hereunder, decrease the useable floor area of the Premises or the Property, eliminate any parking spaces, or adversely affect the leasehold estate created hereby or Tenant's rights hereunder. In the event of any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a deed of trust or mortgagee covering the Premises or ground lessor of Landlord whose address shall have been furnished to Tenant, and shall offer such beneficiary, mortgagee or ground lessor a reasonable opportunity to cure the default (including with respect to any such beneficiary or mortgagee, time to obtain possession of the Premises, subject to this Lease and Tenant's rights hereunder, by power of sale or judicial foreclosure, if such should prove necessary to effect a cure).

ARTICLE 30 - QUIET ENJOYMENT

Landlord covenants and agrees with Tenant that, upon Tenant performing all of the covenants and provisions on Tenant's part to be observed and performed under this Lease (including payment of Rent hereunder), Tenant shall have the right to use and occupy the Premises in accordance with and subject to the terms and conditions of this Lease as against all persons claiming by, through or under Landlord, subject to Landlord's right to conduct any examination, study or test at the Premises as provided in this Lease. This covenant shall be binding upon Landlord and its successors only during its or their respective periods of ownership of the Building.

ARTICLE 31 - MISCELLANEOUS PROVISIONS

31.1 **Broker.** Tenant represents that it has not had any dealings with any real estate broker, finder or intermediary with respect to this Lease. Tenant shall indemnify, protect, defend (by counsel reasonably approved in writing by Landlord) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys'

fees and court costs) resulting from any breach by Tenant of the foregoing representation, including, without limitation, any claims that may be asserted against Landlord by any broker, agent or finder undisclosed by Tenant herein. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

31.2 Governing Law. This Lease shall be governed by, and construed pursuant to, the laws of the state of California. Venue for any litigation between the parties hereto concerning this Lease or the occupancy of the Premises shall be initiated in the county in which the Premises are located. Tenant shall comply with all governmental and quasi-governmental laws, ordinances and regulations applicable to the Building, Property and/or the Premises, and all rules and regulations adopted pursuant thereto and all covenants, conditions and restrictions applicable to and/or of record against the Building, Property and/or the Land (individually, a "**Law**" and collectively, the "**Laws**").

31.3 Successors and Assigns. Subject to the provisions of Article 25 above, and except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives and permitted successors and assigns; provided, however, no rights shall inure to the benefit of any Transferee of Tenant unless the Transfer to such Transferee is made in compliance with the provisions of Article 20, and no options or other rights which are expressly made personal to the original Tenant hereunder or in any exhibit attached hereto shall be assignable to or exercisable by anyone other than the original Tenant under this Lease.

31.4 No Merger. The voluntary or other surrender of this Lease by Tenant or a mutual termination thereof shall not work as a merger and shall, at the option of Landlord, either (a) terminate all or any existing subleases, or (b) operate as an assignment to Landlord of Tenant's interest under any or all such subleases.

31.5 Professional Fees. If either Landlord or Tenant should bring suit (or alternate dispute resolution proceedings) against the other with respect to this Lease, including for unlawful detainer, forcible entry and detainer, or any other relief against the other hereunder, then all costs and expenses incurred by the prevailing party therein (including, without limitation, its actual appraisers', accountants', attorneys' and other professional fees, expenses and court costs), shall be paid by the other party, including any and all costs incurred in enforcing, perfecting and executing such judgment and all reasonable costs and attorneys' fees associated with any appeal.

31.6 Waiver. The waiver by either party of any breach by the other party of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant and condition herein contained, nor shall any custom or practice which may become established between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of any party to insist upon the performance by the other in strict accordance with said terms. No waiver of any default of either party hereunder shall be implied from any acceptance by Landlord or delivery by Tenant (as the case may be) of any Rent or other payments due hereunder or any omission by the non-defaulting party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver.

31.7 Terms and Headings. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The Article and Section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language. The parties hereto acknowledge and agree that each has participated in the negotiation

and drafting of this Lease; therefore, in the event of an ambiguity in, or dispute regarding the interpretation of, this Lease, the interpretation of this Lease shall not be resolved by any rule of interpretation providing for interpretation against the party who caused the uncertainty to exist or against the draftsman.

31.8 **Time.** Time is of the essence with respect to performance of every provision of this Lease in which time or performance is a factor.

31.9 **Business Day.** A "business day" is Monday through Friday, excluding holidays observed by the United States Postal Service and reference to 5:00 p.m. is to the time zone of the recipient. Whenever action must be taken (including the giving of notice or the delivery of documents) under this Lease during a certain period of time (or by a particular date) that ends (or occurs) on a non-business day, then such period (or date) shall be extended until the immediately following business day.

31.10 **Payments and Notices.** All Rent and other sums payable by Tenant to Landlord hereunder shall be paid to Landlord at the address designated in the Summary, or to such other persons and/or at such other places as Landlord may hereafter designate in writing. Any notice required or permitted to be given hereunder must be in writing and may be given by personal delivery (including delivery by nationally recognized overnight courier or express mailing service), or by registered or certified mail, postage prepaid, return receipt requested, or by email, addressed to Tenant and Dorothy Day House at the address(es), or if applicable the email addresses, designated in the Summary, or to Landlord at the address(es), or if applicable the email address, designated in the Summary. Either party may, by written notice to the other, specify a different address for notice purposes. Notice given in the foregoing manner shall be deemed given (i) upon confirmed transmission if sent by e-mail transmission, provided sender does not receive a "undeliverable" notification and provided such transmission is prior to 5:00 p.m. on a business day (if such transmission is after 5:00 p.m. on a business day or is on a non-business day, such notice will be deemed given on the following business day), (ii) when actually received or refused by the party to whom sent if delivered by a carrier or personally served or (iii) if mailed, on the day of actual delivery or refusal as shown by the certified mail return receipt or the expiration of three (3) business days after the day of mailing, whichever first occurs.

31.11 **Prior Agreements; Amendments.** This Lease, including the Summary and all Exhibits attached hereto, contains all of the covenants, provisions, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and any other matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to the Premises or any such other matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not expressly incorporated herein.

31.12 **Separability.** The invalidity or unenforceability of any provision of this Lease shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain valid and in full force and effect to the fullest extent permitted by law.

31.13 **Recording.** Neither Landlord nor Tenant shall record this Lease or a short form memorandum of this Lease.

31.14 **Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the Rent payment herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by any statute or at common law.

31.15 Intentionally Deleted.

31.16 No Partnership. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant by reason of this Lease.

31.17 Force Majeure. If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including, without limitation, failure, refusal or delay in issuing permits, approvals and/or authorizations), injunction or court order, riots, insurrection, war, terrorism, bioterrorism, fire, earthquake, inclement weather including rain, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Lease (but excluding delays due to financial inability) (herein collectively, "**Force Majeure Delay(s)**"), then performance of such act shall be excused for the period of such Force Majeure Delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 31.17 shall not apply to nor operate to excuse Tenant from the payment of Monthly Base Rent, or any Additional Rent or any other payments strictly in accordance with the terms of this Lease or to extend the Term or remain in possession after the scheduled expiration or sooner termination of the Term.

31.18 Counterparts. This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement. Signatures and initials required in this document may be executed via "wet" original handwritten signature or initials, or via electronic signature or mark, which shall be binding on the parties as originals, and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means, and any such transmittal shall constitute delivery of the executed document for all purposes of this Lease.

31.19 Tenant's Authority. If Tenant executes this Lease as a partnership, corporation or limited liability company, then Tenant and the persons and/or entities executing this Lease on behalf of Tenant represent and warrant that: (a) Tenant is a duly organized and existing partnership, corporation or limited liability company, as the case may be, and is qualified to do business in the state in which the Building is located; (b) such persons and/or entities executing this Lease are duly authorized to execute and deliver this Lease on Tenant's behalf; and (c) this Lease is binding upon Tenant in accordance with its terms. Tenant shall provide to Landlord a copy of any documents reasonably requested by Landlord evidencing such qualification, organization, existence and authorization within ten (10) days after Landlord's request. Tenant represents and warrants to Landlord that Tenant is not, and the entities or individuals constituting Tenant or which may own or control Tenant or which may be owned or controlled by Tenant are not, (i) in violation of any Laws relating to terrorism or money laundering, or (ii) among the individuals or entities identified on any list compiled pursuant to Executive Order 13224 for the purpose of identifying suspected terrorists or on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/tlstdn.pdf> or any replacement website or other replacement official publication of such list.

31.20 No Option. The submission of this Lease for examination or execution by Tenant does not constitute a reservation of or option for the Premises and this Lease shall not become effective as a Lease until the final lease has been approved by any and all Mortgagee(s) and it has been executed by Landlord and delivered to Tenant.

31.21 **Options and Rights in General.** Any option (each an “**Option**” and collectively, the “**Options**”), including without limitation, any option to extend, option to terminate, option to expand, right to lease, right of first offer, and/or right of first refusal, granted to Tenant is personal to the original Tenant executing this Lease or a Permitted Transferee and may be exercised only by the original Tenant executing this Lease while occupying the entire Premises and without the intent of thereafter assigning this Lease or subletting the Premises or a Permitted Transferee and may not be exercised or be assigned, voluntarily or involuntarily, by any person or entity other than the original Tenant executing this Lease or a Permitted Transferee. The Options, if any, granted to Tenant under this Lease are not assignable separate and apart from this Lease, nor may any Option be separated from this Lease in any manner, either by reservation or otherwise. Tenant will have no right to exercise any Option, notwithstanding any provision of the grant of option to the contrary, and Tenant’s exercise of any Option may be nullified by Landlord and deemed of no further force or effect, if (i) Tenant is in default under the terms of this Lease (or if Tenant would be in such default under this Lease but for the passage of time or the giving of notice, or both) as of Tenant’s exercise of the Option in question or at any time after the exercise of any such Option and prior to the commencement of the Option event, (ii) Tenant has sublet all or more than fifty percent (50%) of the Premises except pursuant to a Permitted Transfer, (iii) Landlord has given Tenant two (2) or more notices of default, whether or not such defaults are subsequently cured, during any twelve (12) consecutive month period of this Lease, or (iv) if in Landlord’s reasonable determination Tenant’s financial condition is not equal to or greater than Tenant’s financial condition as reported by Tenant to Landlord in connection with and as of the execution date of this Lease by Tenant. Each Option granted to Tenant, if any, is hereby deemed an economic term which Landlord, in its sole and absolute discretion, may or may not offer in conjunction with any future extensions of the Term.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed the date first above written.

TENANT: City of Berkeley
a municipal corporation

By: _____

Name: _____

Its: _____

LANDLORD: 742 Grayson Owner LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

EXHIBIT A – SITE PLAN OF THE PROPERTY

This Exhibit is intended only to show the general outline of the Property, as reflected in the outlined below as “Adjusted Parcel 1.” It is not to be scaled; any measurements or distances shown should be taken as approximate.

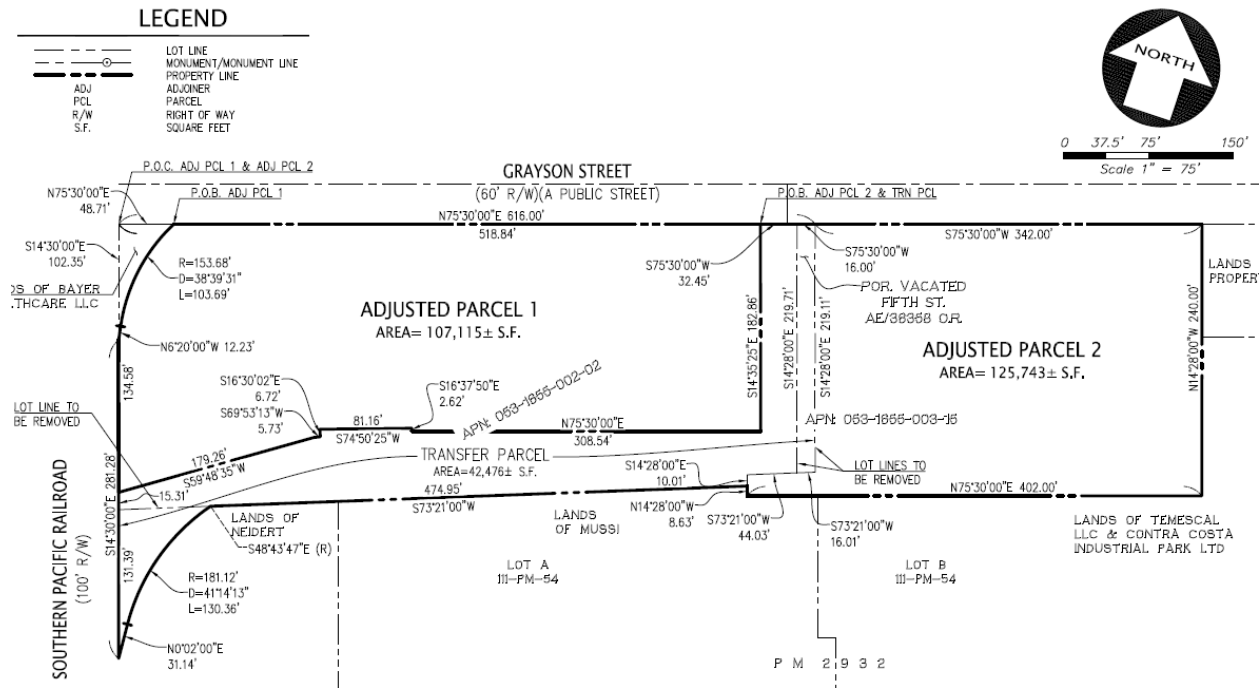


EXHIBIT B

NOTICE OF LEASE TERM DATES

Date:

To:

Re: _____ dated _____ (“Lease”) by and between 742 Grayson Owner LLC, a Delaware limited liability company (“Landlord”) and the City of Berkeley, a municipal corporation (“Tenant”) for the premises commonly known as 742 Grayson Street, Berkeley, California (“Premises”).

Dear:

In accordance with the above-referenced Lease, we wish to advise and/or confirm as follows:

- That Tenant has accepted and is in possession of the Premises and acknowledges the following:
 - Term of the Lease:
 - Commencement Date:
 - Expiration Date:

That in accordance with the Lease, rental payments will/has commence(d) on _____ and rent is payable in accordance with the following schedule:

- Rent is due and payable in advance on the first day of each and every month during the Term of the Lease.

ACCEPTED AND AGREED:

TENANT: City of Berkeley,
a Municipal corporation

By: _____

Name: _____

Its: _____

LANDLORD: 742 Grayson Owner LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

EXHIBIT C**RULES AND REGULATIONS**

1. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises. No awnings or other projection shall be attached to the outside walls of the Building without the prior written consent of Landlord. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises, other than Building standard materials, without the prior written consent of Landlord.
2. Tenant and no employee, invitee, agent, licensee or contractor of Tenant shall go upon or be entitled to use any portion of the roof of the Building without the prior written consent of Landlord.
3. Landlord shall not in any way be responsible to Tenant for loss of property on the Premises, however occurring, or for any damage to Tenant's property by any janitors or any other employee or any other person.
4. Landlord will furnish Tenant, free of charge, with two keys to each door lock in the Premises. Landlord may impose a reasonable charge for any additional keys. Tenant may not make or have made additional keys, and Tenant shall not alter any lock or install a new additional lock or bolt on any door or window of its Premises. Tenant, upon termination of its tenancy, shall deliver to Landlord the keys of all doors which have been furnished to, or otherwise procured by Tenant, and, in the event of loss of any keys, shall pay Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such change.
5. Intentionally Deleted.
6. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by Law. Landlord shall have the right to prescribe the weight of all equipment, materials, furniture or other property brought into the Building. Heavy objects, if such objects are considered necessary by Tenant, as determined by Landlord, shall stand on such platforms as determined by Landlord to be necessary to properly distribute the weight. Business machines and mechanical equipment which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to Landlord, shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. Landlord will not be responsible for loss of, or damage to, any such equipment or other property from any cause, and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant.
7. Tenant shall not use or keep in the Premises any kerosene, gasoline or inflammable or combustible fluid or material other than those limited quantities necessary for the operation or maintenance of office equipment. Tenant shall not use or permit to be used in the Premises any foul or noxious gas or substance, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord by reason of noise, odors or vibrations, nor shall Tenant bring into or keep in or about the Premises any birds or animals.
8. Tenant shall not use any method of heating or air-conditioning other than that supplied to the Premises by Landlord, with the exception of space heaters inside the Building and propane heaters outside the Building.
9. Intentionally Deleted.

10. The toilet rooms, toilets, urinals, wash bowls and other apparatus, including any portable bathrooms and showers, shall not be used for any purpose other than that for which they were constructed, and no foreign substances of any kind whatsoever shall be thrown therein.
11. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building without the prior written consent of Landlord.
12. Except as expressly permitted in the Lease, Tenant shall not mark, drive nails, screw or drill into the partitions, window mullions, woodwork or drywall, or in any way deface the Premises or any part thereof, except to install normal wall hangings. Tenant shall repair any damage resulting from noncompliance under this rule.
13. Tenant shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions reasonably issued from time to time by Landlord.
14. No cooking shall be done or permitted by Tenant on the Premises, except that use by Tenant of Underwriters' Laboratory-approved equipment for brewing coffee, tea, hot chocolate and similar beverages shall be permitted and the use of a microwave shall be permitted, provided that such equipment and use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations. Notwithstanding the above, cooking within RVs outside the Building shall be permitted.
15. Tenant shall not use in any space any hand trucks or forklifts except those equipped with rubber tires and side guards, or such other material-handling equipment as Landlord may approve. Tenant shall not bring any other vehicles of any kind into the Building.
16. Tenant shall not use the name of the Building in connection with, or in promoting or advertising, the business of Tenant, except for Tenant's address.
17. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage. Such responsibility shall include keeping doors locked and other means of entry to the Premises closed.
18. Landlord reserves the right to make such other and reasonable non-discriminatory Rules and Regulations as, in its judgment, may from time to time be needed for safety, security, care and cleanliness of the Building or Property and for the preservation of good order therein, provided that said Rules do not materially and adversely affect Tenant's Permitted Use of the Premises and shall be provided to Tenant at least fifteen (15) days prior to enactment. Tenant agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted.
19. Tenant shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except by a paste, or other material which may easily be removed with water, the use of cement or other similar adhesive materials being expressly prohibited. The method of affixing any such linoleum, tile, carpet or other similar floor covering shall be subject to the approval of Landlord. The expense of repairing any damage resulting from a violation of this rule shall be borne by Tenant.
20. Tenant shall not without Landlord's consent, which may be given or withheld in Landlord's sole and absolute discretion, receive, store, discharge, or transport firearms, ammunition, or weapons or explosives of any kind or nature at, on or from the Premises.

EXHIBIT D

ESTOPPEL CERTIFICATE

The undersigned ("**Tenant**") hereby certifies to _____ ("**Landlord**"), and _____, as follows:

1. Attached hereto is a true, correct and complete copy of that certain Lease dated _____, between Landlord and Tenant (the "**Lease**"), for the premises commonly known as _____ (the "**Premises**"). The Lease is now in full force and effect and has not been amended, modified or supplemented, except as set forth in Section 6 below.

2. The term of the Lease commenced on _____, ___.

3. The term of the Lease is currently scheduled to expire on _____, ___.

4. Tenant has no option to renew or extend the Term of the Lease except: _____.

5. Tenant has no preferential right to purchase the Premises or any portion of the Building/Premises except: _____.

6. The Lease has: (Initial One)
() not been amended, modified, supplemented, extended, renewed or assigned.
() been amended, modified, supplemented, extended, renewed or assigned by the following described agreements, copies of which are attached hereto: _____.

7. Tenant has accepted and is now in possession of the Premises and has not sublet, assigned or encumbered the Lease, the Premises or any portion thereof except as follows: _____.

8. The current Base Rent is \$ _____; and current monthly parking charges are \$ _____.

9. The amount of security deposit (if any) is \$ _____. No other security deposits have been made.

10. All rental payments payable by Tenant have been paid in full as of the date hereof. No rent under the Lease has been paid for more than thirty (30) days in advance of its due date.

11. All work required to be performed by Landlord under the Lease has been completed and has been accepted by Tenant, and all tenant improvement allowances have been paid in full except _____.

12. As of the date hereof, Tenant is not aware of any defaults on the part of Landlord under the Lease except _____.

13. As of the date hereof, there are no defaults on the part of Tenant under the Lease.

14. Tenant has no defense as to its obligations under the Lease and claims no set-off or counterclaim against Landlord.

15. Tenant has no right to any concession (rental or otherwise) or similar compensation in connection with renting the space it occupies, except as expressly provided in the Lease.

16. All insurance required of Tenant under the Lease has been provided by Tenant and all premiums have been paid.

17. There has not been filed by or against Tenant a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or any state thereof, or any other action brought pursuant to such bankruptcy laws with respect to Tenant.

18. Tenant pays rent due Landlord under the Lease to Landlord and does not have any knowledge of any other person who has any right to such rents by collateral assignment or otherwise.

The foregoing certification is made with the knowledge that _____ is about to [fund a loan to Landlord or purchase the Building from Landlord], and that _____ is relying upon the representations herein made in [funding such loan or purchasing the Building].

Dated: _____, ____.

"TENANT"

By: _____

Print Name: _____

Its: _____

EXHIBIT E

**TECHNICAL MEMORANDUM FROM TERRAPHASE ENGINEERING INC.
DATED FEBRUARY 9, 2021 (See attached copy)**



TECHNICAL MEMORANDUM

To:
Chris Freise
REDCO Development LLC
Four Embarcadero Center, Suite 1400
San Francisco, CA 94111

From:
Alice Hale Price, PE, Terraphase
Chris Alger, PG, CHG, Terraphase

Date:
February 9, 2021

Project Number:
0337.002.001

Subject: Summary of Environmental Conditions and Documentation Associated with the 742 Grayson Street Property Located in Berkeley, California

At the request of REDCO Development LLC (REDCO), Terraphase Engineering Inc. (Terraphase) has prepared this memorandum summarizing the site history and current environmental status of the 742 Grayson Street property located in Berkeley, California ("the Site", also referenced as Area of Concern [AOC] 1 in previous documents; Figure 1). The Site was purchased by REDCO from Henkel Corporation on December 28, 2017. The Site is adjoined to the east by the 800 Grayson Street property, which remains under Henkel Corporation ownership and is often referenced as AOC 2.

As discussed below, the past and current environmental concerns associated with the Site are primarily grouped into two categories: (1) petroleum hydrocarbon impacted soil, soil vapor, and groundwater associated with historical on-Site sources, and (2) nearby, offsite volatile organic compound (VOC) impacts to regional groundwater and soil vapor that encroaches on the Site boundary. Site data suggest that impacts from these separate sources (i.e., the onsite and offsite sources) in both soil vapor and groundwater are likely comingled on-Site.

Site History

The Site was first developed for industrial use prior to 1903. Railroad tracks are present off-Site to the west of the Site and former railroad spurs were located on the western portion and on the southern boundary of the Site. Historical and recent Site manufacturing operations have included the following:

- a distillery and use of a buried heating oil tank located in the northwestern portion of the Site (1903 Sanborn Map);
- a Stauffer Chemical Works facility and use of two steel aboveground storage tanks (ASTs) and six wooden underground storage tanks (USTs) with unknown contents (1911 Sanborn Map);

- a Wesco Waterpaints Inc. facility including a crude material storage building (1950 Sanborn Map); and
- an adhesives manufacturing facility (National Starch and Chemical Corporation / Henkel) including four former ASTs for solvent storage (containing toluene, hexane, acetone, and 1,1,1-trichloroethane). The ASTs were reportedly situated on concrete and contained within a 3-foot concrete dike and material was transferred to the interior manufacturing areas via overhead piping. The ASTs are identified in the 1974 aerial photograph and 1980 Sanborn map, but appear to have been removed in the 1988 aerial photograph.

Environmental investigations indicated that the above historical activities contributed minor petroleum hydrocarbon impacts to shallow soil. Shallow groundwater occurs between 5 feet and 10 feet below the ground surface.

The current environmental status based on the previous and recent investigations at the Site and communications with RWQCB staff are discussed in the following section.

Environmental Status

As a result of a report to the Alameda County Department of Environmental Health, the San Francisco Bay Regional Water Quality Control Board (RWQCB) filed a California Spill, Leak, Investigation and Cleanup (SLIC) New Case Data Sheet for the Site in 1991 based on detections of tetrachloroethene (PCE), trichloroethene (TCE), and 1,2-dichloroethene (1,2-DCE) in groundwater at the Site. As documented on the RWQCB online database GeoTracker, the RWQCB opened the SLIC case in March 2001. Based on further research by the RWQCB and multiple site investigations in the area, it was concluded by the RWQCB that a regional groundwater contamination problem existed. The RWQCB also concluded that the likely source(s) of VOCs in groundwater and soil vapor were located upgradient (east) from the Subject Site.

Since 1991, extensive environmental investigation of soil, soil vapor, and groundwater has been performed at the Site and the adjoining site to the east (800 Grayson Street). Investigations refer to the Site as constituting AOC 1 and the 800 Grayson Street site as constituting AOC 2.

In 2015, ERM, on behalf of Henkel, began investigating the subsurface conditions at the Site. ERM continued to investigate and present work plans to the RWQCB to address agency requested remediation through 2017, when the RWQCB approved the submitted Updated Phase II ESA (ERM 2017; RWQCB 2017). Following approval of the Updated Phase II ESA, in 2018, ERM conducted a targeted excavation of petroleum hydrocarbon impacted shallow soil within AOC 1 (ERM 2019a, 2019c, 2020).

In 2020, Terraphase conducted a limited subsurface investigation to evaluate current Site conditions in soil, groundwater, and soil vapor at target locations (Terraphase 2020).

Petroleum Hydrocarbon Impacts to Soil, Soil Vapor and Groundwater

- Soils in the area of the former UST, AST concrete containment area, and along the edge of Building 5 contained petroleum hydrocarbons at concentrations exceeding the RWQCB's Environmental Screening Levels (ESLs) for commercial/industrial properties, which are conservative human health risk screening levels. In July 2019, ERM submitted a *Soil Remediation Summary Report and Request for Closure* which documents the removal of petroleum

hydrocarbon impacted soils exceeding commercial/industrial ESLs; this report was subsequently revised in October 2019 and September 2020 (ERM 2019a, 2019c, 2020). On February 2, 2021, the RWQCB issued a letter stating that no further action is required for petroleum hydrocarbon impacts to shallow soil in AOC 1 (RWQCB 2021).

- As required by the RWQCB (RWQCB 2017), in July 2019, ERM also submitted the Risk Management Plan (RMP; ERM 2019b) for both the Site (AOC 1) and the adjoining Henkel-owned property to the east (AOC 2; 800 Grayson Street) to the RWQCB. The RMP documents guidelines and management methods for potentially-impacted soil and shallow groundwater which may be encountered during subsurface development activities at the Site.
 - Management methods include, but are not limited to, implementation of dust controls and monitoring; allowable on-Site re-use of soil not meeting State of California or Federal hazardous waste criteria; and installation of a vapor intrusion mitigation system in the event of future Site redevelopment. The RMP also specifies that existing on-Site groundwater monitoring wells will require destruction upon closure approval from the RWQCB. To-date, no formal comments have been received from the RWQCB regarding the RMP. Terraphase anticipates that the RWQCB will request an updated RMP that addresses both the existing use scenario (addressed in the current RMP) as well as a redevelopment scenario (not addressed in the current RMP).
- Documented groundwater in the AOC 1 area and west of the Site has been impacted primarily with petroleum hydrocarbons, generally at concentrations below the RWQCB's 2016 ESLs (RWQCB 2016) for commercial site use.¹
 - In their approval letter (RWQCB 2017), the RWQCB concurred that groundwater containing petroleum hydrocarbon concentrations exceeding the ESLs (RWQCB 2016) is stable and unlikely to further impact beneficial uses of groundwater due to natural subsurface degradation and adsorption.
 - Groundwater data considered by this 2017 letter are presented in Attachment A, Figure 9.
 - Two additional groundwater monitoring wells were installed at the Site by Terraphase in 2020, and off-Site grab groundwater samples were also collected. Groundwater sampling results from this investigation confirmed the presence of petroleum hydrocarbons and vinyl chloride in the groundwater above commercial/industrial ESLs (Figure 2). Generally, the data collected during the 2020 sampling event support the RWQCB's previous conclusions (RWQCB 2017) that the distribution of groundwater containing petroleum hydrocarbon concentrations exceeding the ESLs is defined, stable, and unlikely to further impact beneficial uses of groundwater due to natural subsurface

¹ The RWQCB approval letter was prepared in 2017 and therefore references the 2016 ESLs (RWQCB 2016) rather than the current 2019 ESLs (RWQCB 2019).

degradation and adsorption. Based on the results, Terraphase concluded that groundwater impacts are adequately characterized, and no additional monitoring wells are needed (Terraphase 2020).

- Henkel, ERM, REDCO and Terraphase have been in ongoing discussions with the RWQCB regarding the case status of the petroleum hydrocarbons in groundwater.
- During the 2020 investigation, Terraphase also installed and sampled temporary soil vapor monitoring probes in the vicinity of the excavation area discussed above (Figure 3). Soil vapor sampling was also previously conducted by ERM in 2015 and 2016 (Attachment A, Figure 16).
 - Benzene was detected at concentrations above commercial/industrial ESLs in the soil-vapor samples collected. The maximum benzene detection was 940 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) (Figure 3).²
 - Although the 2020 soil vapor sampling results exceed commercial/industrial screening criteria, Terraphase concluded that no excessive health risk exists under current site use (i.e., there are no buildings overlaying this portion of the Site and therefore there is no completed vapor intrusion pathway) (Terraphase 2020).

Regional VOC Impacts to Soil Vapor and Groundwater

- Chlorinated VOC (CVOC) concentrations in soil-vapor samples exceed current screening levels for commercial/industrial properties (Figure 3; Attachment A, Figure 16). Compounds exceeding ESLs include: 1,1-dichloroethene (1,1-DCE), 1,1-dichloroethane (1,1-DCA), TCE, and vinyl chloride (Terraphase 2020).
- In their approval letter (RWQCB 2017), the RWQCB stated that the regional VOC groundwater plume does not originate within the Site and does not appear to present a vapor intrusion risk on the AOC 1 parcel as long as the parcel is maintained with commercial or industrial use (e.g., commercial office, warehouse, retail, etc.). The RWQCB stated that no remedial measures pertaining to the regional VOC groundwater plume are required on AOC 1 so long as such use continues.
- The RWQCB concurred that the source of VOC groundwater impacts in the eastern portion of the Henkel site (AOC 2, 800 Grayson Street), and by extension on AOC 1, may be located south of the AOC 2 site. The RWQCB has indicated that they are in discussions with the current owners of the suspected source areas to require that the appropriate parties investigate their sites south of AOC 2 and, based on investigation results, identify the parties responsible for remediating the VOC impacts at the AOC 1 and AOC 2 properties and surrounding areas.

² Sample location SVP-07, shown on ERM's Figure 16, was within the boundary of their subsequent remedial excavation; data from this location does not represent current conditions.

References

- ERM. 2017. Updated Phase II Environmental Site Assessment Report, Henkel Berkeley Facility, 742 and 800 Grayson Street, Berkeley, California. 17 October.
- _____. 2018a. Soil Remediation Workplan, Former Henkel Berkeley Facility, 742 Grayson Street, Berkeley, California. 16 October.
- _____. 2018b. Pre-Excavation Confirmation Soil Sampling Results and Revised Proposed Excavation Limits, Former Henkel Berkeley Facility, 742 Grayson Street, Berkeley, California. 15 November.
- _____. 2019a. Soil Remediation Summary Report and Request for Case Closure, Former Henkel Berkeley Facility, 742 Grayson Street, Berkeley, California. July 30.
- _____. 2019b. Risk Management Plan, Former Henkel Berkeley Facility, 742 Grayson Street, Berkeley, California. July 31.
- _____. 2019c. Revised Soil Remediation Summary Report and Request for Case Closure, Former Henkel Berkeley Facility, 742 Grayson Street, Berkeley, California. October 25.
- _____. 2020. Area of Concern 1 Soil Remediation Summary Report, Former Henkel Berkeley Facility, 742 Grayson Street, Berkeley, California. September 14.
- San Francisco Bay Regional Water Quality Control Board. 2016. Environmental Screening Levels.
- _____. 2017. Property at 742 and 800 Grayson Street, Berkeley, Alameda County – Approval of Updated Phase II Environmental Site Assessment Report and Requirement for Submittal of Soil Remediation Implementation Report. December 15.
- _____. 2019. Environmental Screening Levels.
- _____. 2021. Concurrence with Soil Excavation Completion, National Starch & Chem Company, 742 Grayson Street, Berkeley, Alameda County. February 2.
- Terraphase Engineering Inc. (Terraphase). 2020. Summary of Data Gap Investigation Results, San Francisco Bay Regional Water Quality Control Board Case # 01S0386, 742 Grayson Street Property, Berkeley, California. November 2.

Attachments:

Figures

- Figure 1 – Subject Property Location
- Figure 2 – Groundwater Analytical Results
- Figure 3 – Soil Gas Analytical Results

Attachment A – Figures from ERM’s *Updated Phase II Environmental Site Assessment Report*

- Figure 9 (from ERM 2017) – AOC 1 – COPCs in Groundwater
- Figure 16 (from ERM 2017) – Site Soil Vapor Results

Figures

Figure 1 – Subject Property Location

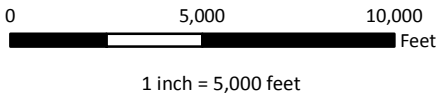
Figure 2 – Groundwater Analytical Results

Figure 3 – Soil Gas Analytical Results





File: K:\GIS\Prj\0246 Lift Partners\MXD\Figure 1 - Site Location.mxd 10/12/2017 Created by: Initial Checked by: Initial Coordinate System: NAD 1983 StatePlane California III FIPS 0403 Feet



Legend

★ Site Location

Base Map: USGS Davis 7.5 Minute Quadrangle.

SAFETY FIRST



CLIENT: REDCO Development LLP

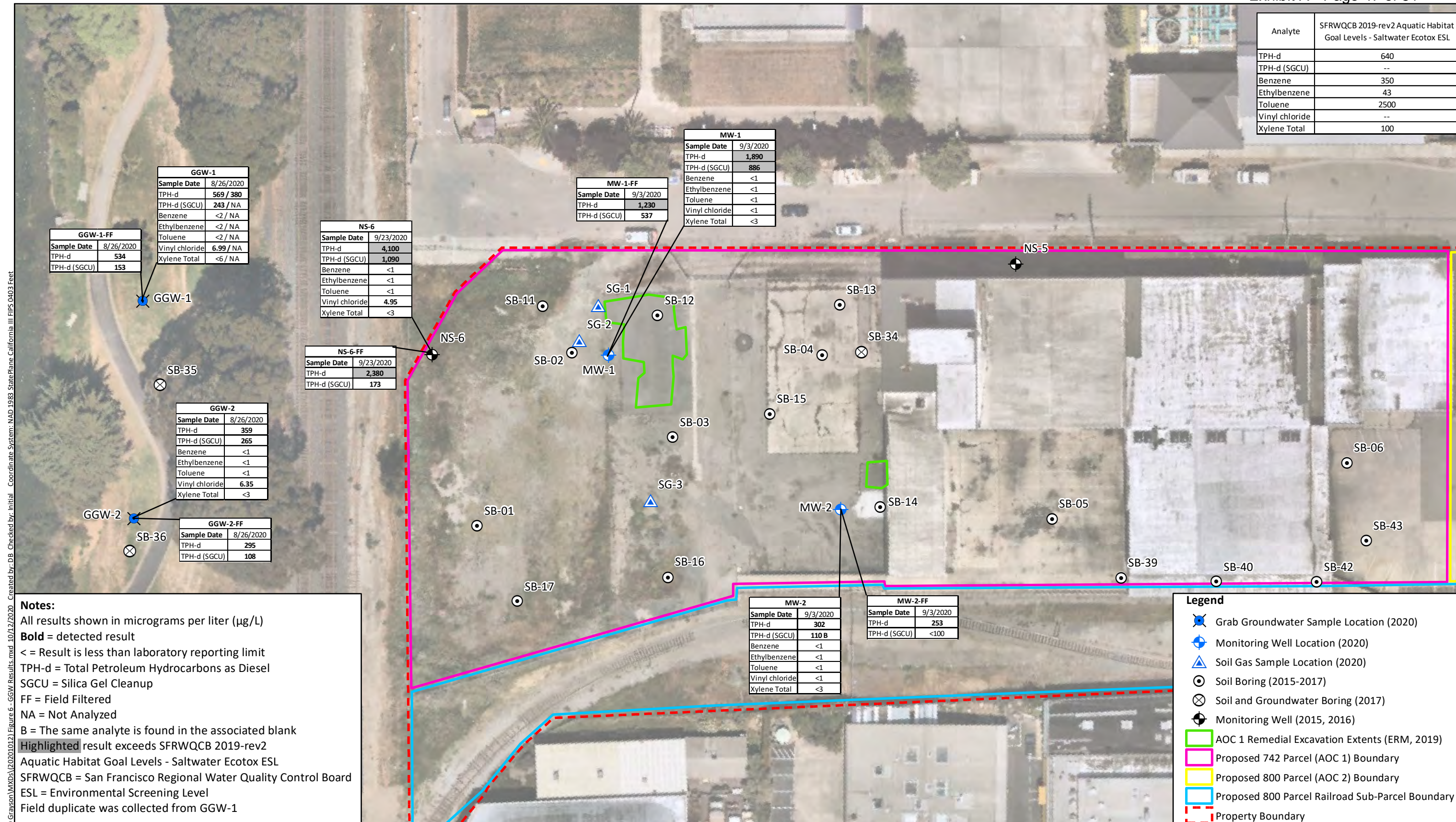
PROJECT: 742 and 800 Grayson Street
Berkeley, CA

PROJECT NUMBER: 0337.002.002

Subject Property Location

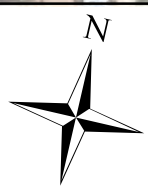
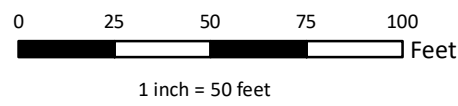
FIGURE 1

Analyte	SFRWQCB 2019-rev2 Aquatic Habitat Goal Levels - Saltwater Ecotox ESL
TPH-d	640
TPH-d (SGCU)	--
Benzene	350
Ethylbenzene	43
Toluene	2500
Vinyl chloride	--
Xylene Total	100



File: N:\GIS\PM\0337.002_REDCO\Grayson\MXD\20201012\Figure 6 -GGW Results.mxd 10/12/2020 Created by: Initial Checked by: DB Coordinate System: NAD 1983 StatePlane California III FIPS 0403 Feet

Notes: Aerial imagery source - Nearmap (May 2020)



 	CLIENT: REDCO Development, LLC	Groundwater Analytical Results FIGURE 2
	PROJECT: 742 and 800 Grayson Street Berkeley, CA	
PROJECT NUMBER: 0337.002.002		

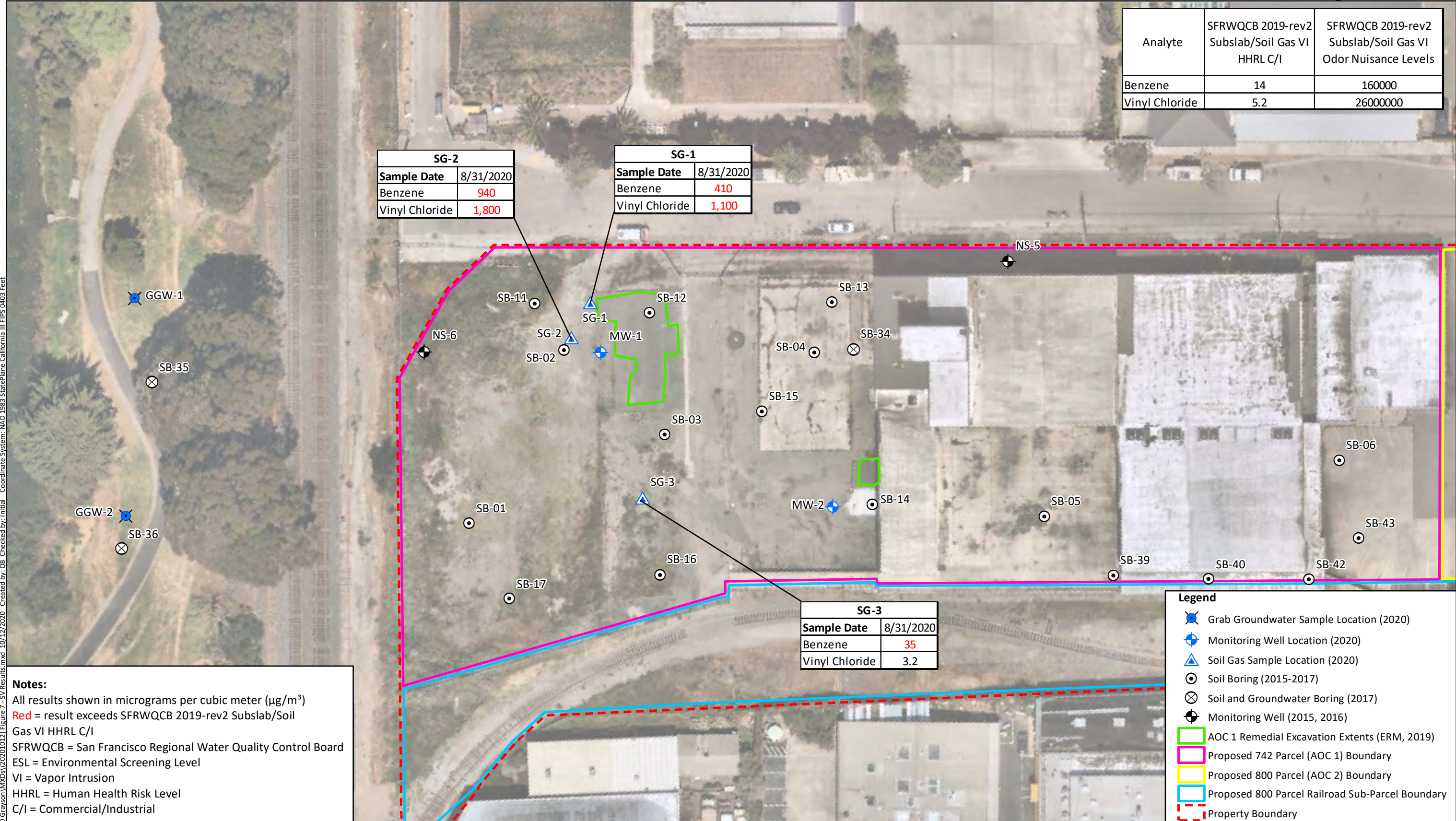
Analyte	SFRWQCB 2019-rev2 Subslab/Soil Gas VI HHRL C/I	SFRWQCB 2019-rev2 Subslab/Soil Gas VI Odor Nuisance Levels
Benzene	14	160000
Vinyl Chloride	5.2	2600000

SG-2	
Sample Date	8/31/2020
Benzene	940
Vinyl Chloride	1,800

SG-1	
Sample Date	8/31/2020
Benzene	410
Vinyl Chloride	1,100

SG-3	
Sample Date	8/31/2020
Benzene	35
Vinyl Chloride	3.2

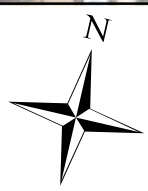
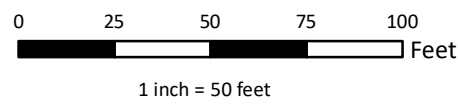
File: N:\GIS\PM\0337.002_REDCO Grayson\MXDs\20201012\Figure 7 - SV Results.mxd 10/12/2020 Created by: DB Checked by: Initial Coordinate System: NAD 1983 StatePlane California III FIPS 0403 Feet



Notes:
 All results shown in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)
 Red = result exceeds SFRWQCB 2019-rev2 Subslab/Soil Gas VI HHRL C/I
 SFRWQCB = San Francisco Regional Water Quality Control Board
 ESL = Environmental Screening Level
 VI = Vapor Intrusion
 HHRL = Human Health Risk Level
 C/I = Commercial/Industrial

Legend	
	Grab Groundwater Sample Location (2020)
	Monitoring Well Location (2020)
	Soil Gas Sample Location (2020)
	Soil Boring (2015-2017)
	Soil and Groundwater Boring (2017)
	Monitoring Well (2015, 2016)
	AOC 1 Remedial Excavation Extents (ERM, 2019)
	Proposed 742 Parcel (AOC 1) Boundary
	Proposed 800 Parcel (AOC 2) Boundary
	Proposed 800 Parcel Railroad Sub-Parcel Boundary
	Property Boundary

Notes: Aerial imagery source - Nearmap (May 2020)



 	CLIENT: REDCO Development, LLC	Soil Gas Analytical Results FIGURE 3
	PROJECT: 742 and 800 Grayson Street Berkeley, CA	
PROJECT NUMBER: 0337.002.002		

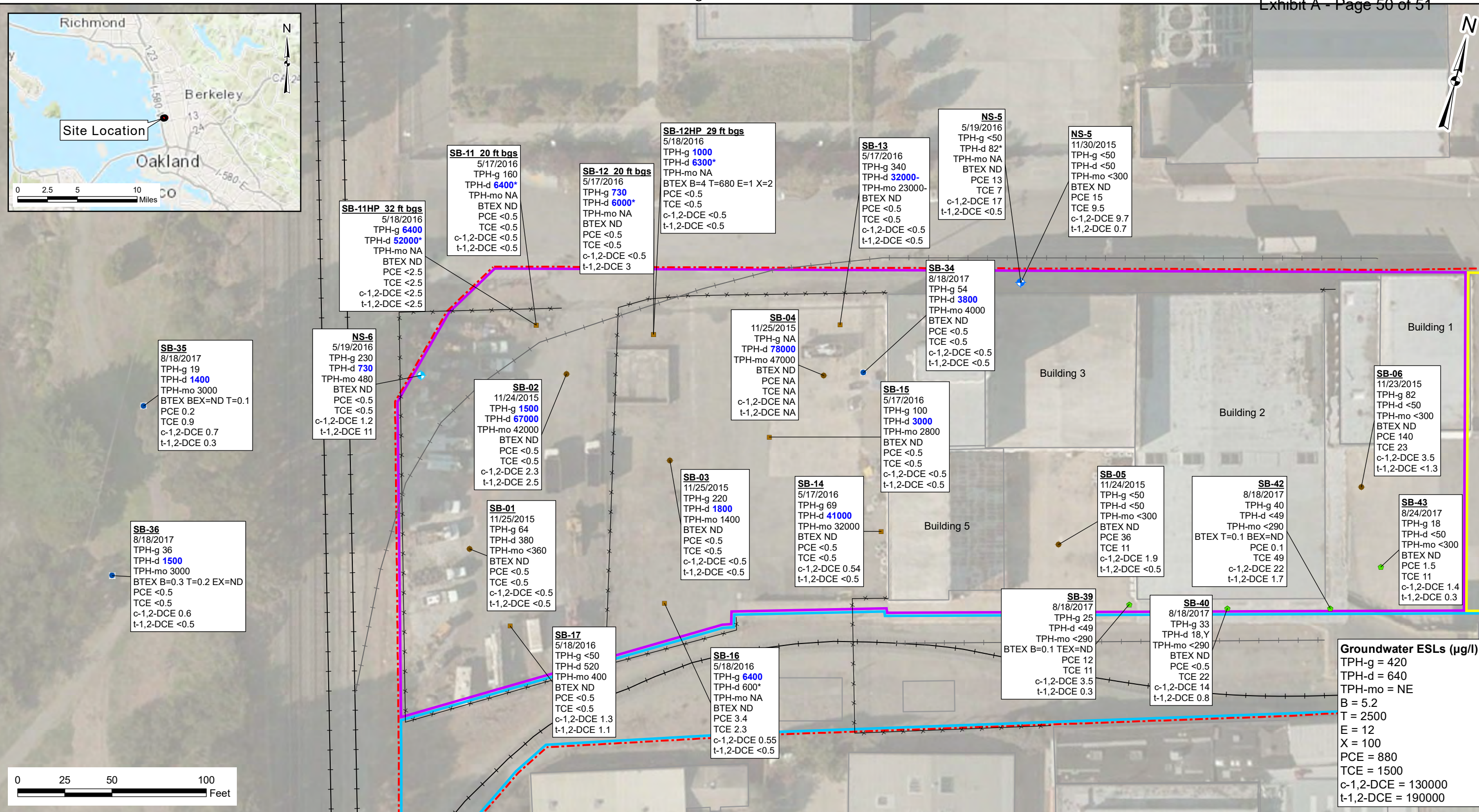
Attachment A

Figures from ERM's *Updated Phase II Environmental Site Assessment Report*



Created By: G Shenker 9/26/2017 Project: 0318259

M:\Projects\0318259 Henkel\maps\CSIR\F9 AOC1\GW.mxd



Legend

- Soil Boring, 2015
- Soil Boring, 2016
- Soil Boring, 2017
- Soil and Groundwater Boring, 2017
- Monitoring Well, 2015
- Monitoring Well, 2016
- Property Boundary
- Proposed 742 Parcel (AOC 1) Boundary
- Proposed 800 Parcel (AOC 2) Boundary
- Proposed 800 Parcel Railroad Sub-Parcel Boundary
- Buildings
- Rail Line
- Former Rail Spur
- Fence

Notes:

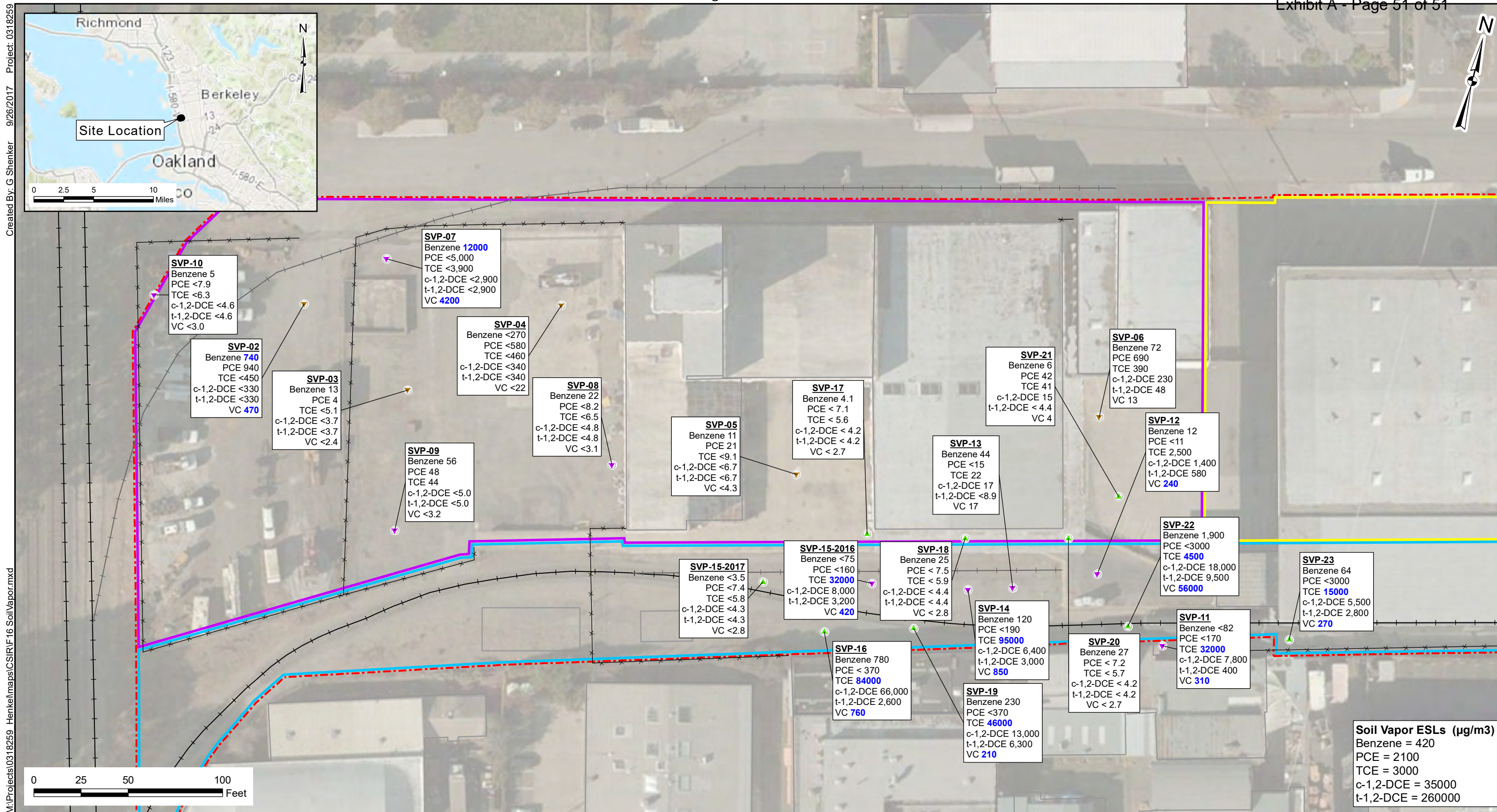
Values in Blue indicate a concentration detected above the respective screening level.
 * = No silica gel cleanup
 ND = Compound not detected above laboratory method detection limit.
 TPH-g = Total Petroleum Hydrocarbons gasoline range
 TPH-d = Total Petroleum Hydrocarbons diesel range
 TPH-mo = Total Petroleum Hydrocarbons motor oil range

B = Benzene
 T = Toluene
 E = Ethylbenzene
 X = Xylenes
 PCE = Tetrachloroethene
 TCE = Trichloroethene
 c-1,2-DCE = cis-1,2-Dichloroethene
 t-1,2-DCE = trans-1,2-Dichloroethene
 NE = Not Established
 All results in micrograms per liter (µg/l).
 ft bgs = feet below ground surface

Figure 9
 AOC 1 - COPCs in Groundwater
 Updated Phase II ESA Report
 Henkel Corporation
 742 and 800 Grayson Street
 Berkeley, California

Groundwater ESLs (µg/l)

TPH-g	= 420
TPH-d	= 640
TPH-mo	= NE
B	= 5.2
T	= 2500
E	= 12
X	= 100
PCE	= 880
TCE	= 1500
c-1,2-DCE	= 130000
t-1,2-DCE	= 190000



Created By: G Shenker 9/26/2017 Project: 0318259

M:\Projects\0318259 - Henkel\maps\CSIR\F16 Soil Vapor.mxd

- Legend**
- Temporary Soil Vapor Well, 2015
 - Temporary Soil Vapor Well, 2016
 - Temporary Soil Vapor Well, 2017
 - Property Boundary
 - Proposed 742 Parcel (AOC 1) Boundary
 - Proposed 800 Parcel (AOC 2) Boundary
 - Proposed 800 Parcel Railroad Sub-Parcel Boundary
 - Building
 - Rail Line
 - Former Rail Spur
 - Fence

Notes:
 Values in Blue indicate a concentration detected above the respective screening level.
 B = Benzene
 PCE = Tetrachloroethene
 TCE = Trichloroethene
 c-1,2-DCE = cis-1,2-Dichloroethene
 t-1,2-DCE = trans-1,2-Dichloroethene
 All results in micrograms per cubic meter (µg/m3).

Figure 16
 Site Soil Vapor Results
 Updated Phase II ESA Report
 Henkel Corporation
 742 and 800 Grayson Street
 Berkeley, California



Kate Harrison
Councilmember District 4

ACTION CALENDAR
January 21, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmembers Harrison, Davila, Mayor Arreguin, and Councilmember
Robinson
Subject: Establishing an Outdoor Emergency Shelter

RECOMMENDATION

1. Refer to the City Manager to establish an outdoor emergency shelter in Berkeley. Such a shelter should consider the following amenities to be provided but not required:
 - A. Climate-controlled, wind-resistant durable tents with wooden pallets for support.
 - B. Seeking an agency to manage and oversee the emergency shelter.
 - C. Portable toilet service and handwashing service.
 - D. Shower and sanitation services
 - E. Garbage pickup and safe needle disposal.
2. Refer to the November budget process \$615,000 to be considered alongside other Measure P recommendations.
3. Temporarily waive BMC Article 9 Section 19.28.100 Section N106, to allow for the installation of tents and membrane structures that may be erected for longer than 180 days even if they do not meet all physical requirements.¹
4. Refer to the City Manager protocol for selecting residents that mirror other shelter selection criteria and are less restrictive than HUD protocols.

¹ For example, tents and membrane structures are required to sit at least four inches off the ground, have wooden or concrete floors, and be equipped with smoke alarms. Though all of these requirements are important to the health and safety of Berkeley residents, they are arduous requirements to meet. The purpose is to provide temporary accommodations.

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POLICY COMMITTEE RECOMMENDATION

On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee adopted the following action: M/S/C (Davila/Hahn) to send the item to Council with a positive recommendation and the following additional amendments made by the author:

1. Refer to the November budget process the costs of \$615,000 associated with establishing the outdoor emergency shelter to be considered with other Measure P Panel of Experts recommendations;
2. Referral to the City Manager to begin the process of establishing an outdoor emergency shelter in Berkeley. This includes seeking an agency to manage and oversee the outdoor emergency shelter including amenities for trash pick-up, toilets, handwashing stations, showers services, and needle receptacles, as well as provide basic service levels including security, housing support services, and outreach coordinators.
3. Additionally, the committee recommends but does not require, that staff establish protocols based on existing application processes for eligibility allocation and that the eligibility criteria be less restrictive than the HUD criteria.

Vote: Ayes – Davila, Hahn; Noes – None; Abstain – Kesarwani; Absent – None.

BACKGROUND

According to the Alameda County Point In Time count (see Attachment 1), there are 1108 homeless people living in Berkeley, 813 of whom are unsheltered. Of the unsheltered people, 251 individuals are sleeping in a tent and 231 are sleeping on a street, sidewalk, or in a park. Roughly 500 people in Berkeley are sleeping in tents or without shelter altogether, whether officially sanctioned or not. Under current policy, many of these encampments do not have any trash, sanitary services, good neighbor policy, or engagement with services, creating unsanitary and unsafe circumstances for both the residents of the encampments and surrounding neighbors.

Over the past several years, Berkeley has made significant investments in affordable housing and supportive services, such as approving the Berkeley Way² project that will permanently house 59 people, and the Pathways STAIR Center which has already housed over 100³ in a year of existence. In total, we are able to shelter about 295 people (not including the 40 emergency shelter beds at Old City Hall), and about 100 of those shelter beds have been added since 2016. We have also expanded mental health and crisis services, are working to find a location for a safe RV parking site, and have provided other homeless services. Our long-term investments are working, but in the short term, people are sleeping in tents and outdoors without durable shelter, a potentially dangerous situation with autumn smoke and winter rains approaching. In addition to the elements, transportation-related deaths were the third leading cause of death among the homeless in Los Angeles County in 2018.⁴ Living by highway onramps increases the likelihood of a deadly collision by many factors. Within the next year, we want to provide people with

² <https://bfhp.org/news/berkeley-way/>

³ "Pathways STAIR Center: First Year Data Evaluation and Results-Based Accountability Dashboard", Item 41, September 24, 2019 Berkeley City Council meeting.

⁴ <https://www.theguardian.com/us-news/2019/oct/30/homeless-deaths-los-angeles-county>

permanent housing. In the next month, we want to prevent anyone from dying of exposure.

Emergency outdoor shelters should be seen only as a temporary fix. Berkeley must continue to build permanently affordable housing and provide comprehensive services to lift people out of homelessness, prevent displacement and move into homes. However, despite our recent gains, we are still unable to serve all homeless people in Berkeley simultaneously, and there are still gaps in service. An emergency outdoor shelter with durable tents and sanitation services is a short term option that is safer and cleaner than the status quo of unsanctioned camping throughout the City. The intention of this item is to create a limited number of sanctioned encampments operated in an organized fashion. The emergency outdoor shelter has a 180 day suggested length of stay. The goal is that no individual will remain for an extended period of time as placement in an indoor navigation center or permanent housing are more appropriate mid- and long-term options.

The state of California has declared a shelter emergency⁵ as has the City of Berkeley.⁶ Berkeley's shelter beds are at capacity just about every night. The demand for beds is great – according to the Point in Time count, 98% of survey respondents said that they want to find permanent housing. At present, the need far outweighs the available beds, and it is time to look at other, temporary options.

Establishing a limited number of emergency outdoor shelters would represent a positive step for the housed Berkeley community as well. Lack of sanitation services, garbage collection, and potable water can spread infection and disease. Currently, rather than investing in resources to address these important issues, significant resources are being spent on enforcement, simply moving the issues elsewhere in Berkeley. The benefit of an emergency outdoor shelter is the ability to choose the most appropriate location, and provide appropriate services, rather than current disorder.

At the September 10, 2019 City Council meeting, unhoused people and their advocates attended with signs⁷ that read “Where Do We Go?” There is currently a community of about 100 individuals living in tents or on the street in the area surrounding the I-80 freeway entrance on University Avenue. People live on a combination of City of Berkeley parkland and CalTrans-owned medians. CalTrans police chase residents onto City land, then City land pushes residents back onto CalTrans property, and there are no locations in this vicinity where any number of people can sleep safely. Various public agencies regularly threaten the residents of this property with permanent eviction. Sleeping in parks has long been prohibited by BMC 6.32.020.

A possible location is at 611-639 University Ave, beneath the bridge connecting Fourth St and the Waterfront. It is a City-owned⁸ lot surrounded by light industry manufacturing

⁵ https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB932

⁶ “Extension of Housing Crisis Declaration.” Item 10, October 31, 2017, Berkeley City Council meeting.

⁷ http://berkeley.granicus.com/MediaPlayer.php?publish_id=627e4d8c-d4ce-11e9-b703-0050569183fa

⁸ Attachment 4

to the North, South, and East, and I-80 and Eastshore Highway to the West, so located outside of residential or commercial zones. There are currently about 15 tents set up in an alley between the lot in question and an industrial plant at 1930 Second St. The 611-639 University lot is mostly empty, with some room used to store old pipes, shipping containers, and other disused pieces of construction equipment.

Regardless of current use, the lot has room for about 15 tents from east to west (judging by the number of tents that are already along the north side of the lot) and, by estimate, room for about 5-8 tents from north to south. Arranged into a grid, there is the potential for up to 75-120 tents on this parcel of City-owned but under-utilized property.

Beyond simply being owned by the City of Berkeley, there are other amenities that make it a strong candidate for the location of an emergency outdoor shelter. It is surrounded on all sides by MULI (light industrial manufacturing), so the emergency outdoor shelter will not disturb residential or commercial neighbors.⁹ Moreover, is not visible from I-80. The lot is adjacent to areas where unhoused people are currently living, thus transferring to this location would permit this community to stay together. There is a water main about 15 feet from the lot line (see attached pictures). The location is three blocks away from the Pathways STAIR Center, about a mile away from Berkeley Mental Health, and accessible via University Avenue and San Pablo Avenue bus routes.¹⁰ The location fits the needs of our unhoused community, and is currently housing only old pipes. It is a smart location for a City-managed emergency shelter.

Other locations should be considered as appropriate. Ideal locations would be owned and/or managed by the City of Berkeley in non-residential zones and be accessible by public transit.

Several other cities have already¹¹ established similar emergency shelters in response to this housing and homelessness crisis. In February, the City of Modesto¹² established several hundred tents under a bridge, where about 300-400 people sleep every night.¹³ The project, called the Modesto Outdoor Emergency Shelter (MOES), has proven extremely successful. On September 7, 2019, Gavin Newsom's Homeless and Supportive Housing Advisory Task Force met in Modesto to "observe best practices firsthand."¹⁴ MOES provides portable bathrooms, showers, and handwashing stations,

⁹ The Homeless Shelter Crisis Resolution specifies that no planning, zoning, building, or other permit requirements shall be required to the extent that compliance would prevent, hinder, or delay the effects of the shelter crisis. Nonetheless, the site's classification as mixed use light industrial is an advantage,

¹⁰ The proximity to public transportation is a strength of the location though it, like other homeless service providers, would be stronger with dedicated transportation as is called for in Item 33, "Budget Referral: Transportation to Support Mobility-Impaired Individuals Experiencing Homelessness" from the 11/12/19 Berkeley City Council Meeting.

¹¹ https://www.vice.com/en_us/article/vb9we3/the-homelessness-crisis-is-getting-so-bad-that-cities-are-now-building-their-own-camps

¹² <https://www.modbee.com/news/local/article226465300.html>

¹³ https://www.youtube.com/watch?v=J_gQ54kZXmA&t=65s

¹⁴ <https://www.modbee.com/news/local/article234754707.html>

nonprofits and agencies bring food, medical, mental health, and rehousing services, and the encampment is fenced and monitored by a security guard. An editorial in the Modesto Bee applauded MOES for “easing some suffering, however temporary.”¹⁵ The Modesto Outdoor Emergency Shelter is in the process of closing because they are transitioning residents indoors into a newly constructed homeless shelter.¹⁶ The MOES was always intended to be temporary until long-term accommodations could be constructed, and now that Modesto and Stanislaus County have indoor accommodations for the unhoused, the MOES is being shut down.

The Sacramento Mayor and City Council are also looking at using Modesto’s model.¹⁷ Sacramento, like Berkeley, is in the process of building new shelters and affordable housing developments, but “as the city enters another month in crisis, other alternatives are coming to the fore.”¹⁸ Berkeley previously considered outdoor emergency shelters. At the February 13, 2018 Council meeting, the Council referred to the Homeless Commission a series of questions about what an outdoor emergency shelter may look like, including how many residents, who provides facilities, how rules are enforced, etc. (see Attachment 9). In the nearly two years since this referral, homelessness has increased, as has the need for City-designated encampments.

Modesto, Sacramento, and Governor Newsom have all recently concluded that outdoor emergency shelters are an appropriate temporary addendum, and that MOES models best practices for outdoor emergency shelters. Berkeley has the opportunity to learn from Modesto and MOES, and establish a similar outdoor emergency shelter.

Durable Tents

Working with suppliers to provide durable, waterproof tents for those unhoused people who require shelter would be a major step toward improving the health, safety and quality of life of Berkeley’s homeless population. Nearly one third of Berkeley’s homeless population currently lives in tents or makeshift shelters, a number that has doubled in the past two years.¹⁹ Creating a space with durable tents would allow this sizeable part of the homeless community to shift away from temporary and potentially unsafe, unsanitary and weather-prone tents.

Health and safety standards call for wood or concrete floors to raise tents off the ground. Providing wooden pallets underneath tents fulfills this requirement at a low price. If feasible, collecting pallets should be a part of establishing the emergency shelter.

In addition, a portable solar powered system for charging phones, wheelchairs, or other electronics should be provided. Generators are also a possibility, but can be dangerous

¹⁵ <https://www.modbee.com/opinion/editorials/article234558672.html>

¹⁶ <https://www.abc10.com/article/news/local/modesto/stanislaus-county-prepares-to-close-outdoor-shelter/103-c4b2b17e-e048-4b31-8627-a88fbd8214c2>

¹⁷ <https://www.sacbee.com/news/local/homeless/article234483397.html>

¹⁸ *Ibid.*

¹⁹ 2019 HIRD Report

around so many people. High-quality solar generators are a one-time expense of about \$500-800 but will last for years and can provide power to many people.

Modesto established an encampment that now houses approximately 400 people in 290 10x10ft waterproof tents,²⁰ donated by the Reno-based company Qamp.²¹ These tents include a heavy-duty steal frame, screen door, and an insulating heat-reflective roof.²² These tents are 150D polyester, which has a 200% lifespan compared with average camping tents.²³ Partnering with a local company to acquire similarly-sized tents would increase security, community wellbeing and order at the new encampment. Additionally, a 10x10ft space grants homeless individuals a larger, constant and secure location to fit their belongings, exceeding the 9 square feet allocation permitted by the Sidewalk Ordinance.

Other durable tents include those made by ShiftPod,²⁴ and Sweetwater Bungalows²⁵ produces larger tents intended for entire families. The purpose of this item is not to specify a vendor, but to lay out basic criteria for safe tents, including but not limited to:

- Insulation
- Wind resistance
- Solid (easy to set up and take down, but with a durable frame)

Since original submission of this item, local fundraising efforts from the unhoused and advocates have been able to replace and weatherize tents for many individuals. If individuals choose to keep their own tents, the City may not need to provide tents for anyone upon initial set-up, though they should be offered to those in need.

Staffing

A successful emergency shelter will require the City or a qualified non-profit providing services its residents or providing referrals to other qualified agencies. All services or referrals to services will be offered but not required. Such services include but are not limited to:

- Coordination of safety and security 24 hours a day
- Governance of the community, including arrangement of the tents
- Coordination of volunteerism and donations
- Supportive services (such as case management and integration with existing homeless services)
- Rehabilitative opportunities to support the transition out homelessness

²⁰ <https://www.sacbee.com/news/local/homeless/article234483397.html>

²¹ <https://qamp.com/products/qamp-tent?variant=35987893763>

²² *Ibid.*

²³ <https://www.goodcampingtents.com/tent-fabrics/>

²⁴ <https://shiftpod.com/shiftpod/shelter>

²⁵ <https://www.sweetwaterbungalows.com/>

Modesto partnered with Turning Point Community Programs to manage all of these services.²⁶²⁷ The city also invited other charitable organizations like the Salvation Army²⁸ to assist with shelter management and food services. Berkeley could similarly work with local organizations specialized in such projects or expand existing city government services to the new shelter.

Having a team to supervise the camp and provide case management, psychological services, and job search support for those who choose to utilize them would ensure that the homeless residents have a shot at keeping their stay in the emergency shelter to a minimum. This could be handled similarly to the Pathways project, or through a mechanism similar to that of Modesto's outsourcing of most service responsibilities to non-profit organizations. The Pathways Center is a "low barrier" shelter with two key rules: no onsite drug or alcohol consumption, and a zero tolerance policy for abuse and harassment. These same rules would be applicable, and even more important given the close proximity of residents. Engagement with services is encouraged but is not a requirement for staying in the emergency outdoor shelter, as a low-barrier emergency shelter.

The emergency shelter should be open 24 hours a day. Unhoused people want to know where they can go, and if they are removed every morning, that question remains unanswered. Many unhoused people do not utilize traditional shelters because they work nights and need to sleep when the shelter is closed. However, most shelters have limited hours because they provide extensive services, meals, and other amenities, and do not have the resources to maintain this level of service all day. If there is a direct tradeoff between hours of operation and the depth of service, this referral prioritizes hours of operation.

A safe and secure environment is vital to the success of the project. A designated, limited space that would not allow extending tents on to surrounding streets is preferred. Setting up a fence and hiring a security team, as was done in Modesto,²⁹ would be one way to achieve this goal, though the lot at 611 University already has a fence surrounding it. Just as in Modesto, the need for security would have to be balanced with limited restrictions on entry and exit. Regulating permitted activities and items brought into the camp would also help ensure improved safety for its residents. Mobility around the camp can be ensured by capping the amount or size of possessions at what residents can fit in their own tents. A ban on bonfires would drastically reduce the risk to health and life of residents.

²⁶ <https://www.tpcp.org/programs/moes/>

²⁷ <https://www.abc10.com/article/news/local/modesto/modesto-homeless-community-to-leave-beard-brook-for-new-location/103-622123290>

²⁸ <http://www.stancounty.com/bos/agenda/2019/20190226/DIS01.pdf>

²⁹ <https://www.sacbee.com/news/local/homeless/article234483397.html>

Staff should include one program and site manager to oversee the program, two outreach coordinators, and two housing navigators to assist the residents with finding permanent housing.

Toilets and Handwashing Stations

The potential for disease in compact outdoor emergency shelters is significant, and decreases dramatically with adequate access to handwashing.³⁰ In 2017, three counties in California experienced an unprecedented hepatitis A outbreak that was primarily carried by the homeless population.³¹ As part of the response, San Diego County implemented 160 new handwashing stations, which was highly influential in curbing the spread of the disease.³² The Here/There encampment on Ashby and Adeline has a portable toilet and handwashing station that was donated by Friends of Adeline,³³ because proper sanitation for the homeless is beneficial to entire communities.

The City is making progress setting up public restrooms across the City, which is a positive development. However, restrooms spread throughout the City do not meet the needs of a single community. A highly concentrated group of people (as currently exists on CalTrans land) will have more intense restroom needs, and the City should establish restrooms to account for those needs.

There is a water pipe just northwest of the lot at 611-639 University (see Attachment 5) and while the toilet may be portable, there is the possibility to install a real handwashing station with running water, which would reduce the costs to refill a reservoir. Even if the City decides that both the toilet and handwashing station are to be portable, the proximity to potable water provides options.

Mobile Shower Services

Berkeley has an ongoing partnership with Lava Mae, a mobile shower charity. Access to showers prevents disease and allows unhoused people to live in dignity. In addition to showers, Lava Mae and other organizations such as Dignity On Wheels also organize day-long “care villages” that provide dental care, haircuts, clothing, vaccinations, and other services. For several months Lava Mae has been operating at two pilot locations in near the STAIR Center and at the Progressive Baptist Church.³⁴ However, according to City staff, Lava Mae is relocating their South Berkeley location to West Oakland. The mobile shower program has been extremely successful and has improved quality of life for unhoused people in Berkeley. Rather than sending those services to Oakland, we

³⁰ <https://www.cdc.gov/handwashing/why-handwashing.html>

³¹ <https://www.mercurynews.com/2017/10/02/california-scrambles-to-contain-deadly-hepatitis-a-outbreaks/>

³² <https://www.sandiegocounty.gov/content/dam/sdc/cosd/SanDiegoHepatitisAOutbreak-2017-18-AfterActionReport.pdf>

³³ <https://www.berkeleyside.com/2017/07/18/homeless-camp-city-berkeley-want-bathroom>

³⁴ [file:///C:/Users/sbarnard/Downloads/2019-09-10%20Item%2066%20Referral%20Response%20Lava%20Mae%20Mobile%20\(1\).pdf](file:///C:/Users/sbarnard/Downloads/2019-09-10%20Item%2066%20Referral%20Response%20Lava%20Mae%20Mobile%20(1).pdf)

should expand them. Any sanctioned encampment will need some shower services for simple sanitary purposes, and by bringing them to Second and University, Berkeley can reinstate the previous practice of having mobile showers twice weekly, at two separate locations. Reinstating services at this location should not preclude finding other strategic locations for mobile shower services in Berkeley.

The City of Berkeley previously partnered with the Alameda County Mobile Healthcare for the Homeless³⁵ program which is on hiatus due to staffing shortages. The program brings primary care to homeless individuals free of charge. If the program resumes service in Berkeley, a partnership with them will help keep residents sanitary and healthy.

Trash Pickup

On June 4, 2019 the Modesto City Council voted unanimously to perform garbage removal and disposable services for the Outdoor Emergency Shelter (see Attachment 2). Reliable garbage pickup is crucial to the success of any homeless services. Excessive garbage is highly detrimental to all City residents, as it is unsightly and can attract rodents and disease. Currently there is a rodent infestation at the encampments on University and Frontage Road negatively affecting quality of life for the residents and visitors to the Marina. To prevent this in the future, we need reliable garbage pickup. Housed Berkeleyans have their garbage removed and disposed of once a week. Unhoused people oscillate between having nothing, and having all of their belongings removed that do not fit in nine square feet, whether it is garbage or not.

As a part of regular refuse pickup, the City or coordinating agency should provide sharps containers or other forms of safe needle disposal. Approximately 8% of homeless adults in the United States have diabetes,³⁶ and there are many other diseases that require sharps to mediate, including arthritis, hepatitis, HIV/AIDS, blood clotting disorders, and others.³⁷ Regardless of why an individual may need a sharp, safe disposal is critical to prevent the spread of infection. Putting sharps in the garbage is insufficient and can harm zero waste employees.³⁸ Sharps boxes can be purchased at drugstores and are inexpensive, but are crucial to the health and safety of all involved.

There is enormous need for refuse services for the homeless population. Early reports on enforcement of the Sidewalk Ordinance indicate that thousands of pounds of refuse have already been removed, since implementation began six months ago. Many complaints regarding homelessness to Council offices and 311 are concerning garbage and illegal dumping. All residents of Berkeley deserve clean streets, and refuse removal will provide not only cleanliness and safety to homeless residents, but more harmony among the community at large as well.

³⁵ <https://www.achch.org/mobile-health.html>

³⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4318300/>

³⁷ <https://www.fda.gov/medical-devices/consumer-products/safely-using-sharps-needles-and-syringes-home-work-and-travel>

³⁸ *Ibid.*

Initiating refuse service is a process typically initiated by the property owner³⁹ and performed by the Customer Service Division. Because 611-639 University is owned by the City of Berkeley, this item refers the initiation of refuse services to the City Manager.

REVIEW OF EXISTING PLANS AND POLICIES

The Strategic Plan includes several goals and priorities that are in line with an emergency outdoor shelter, including creating housing support services for our most vulnerable community members and fostering a resilient and connected City. The purpose of an emergency outdoor shelter is to provide basic shelter needs to the most vulnerable as a City, not relying on private development to do so.

The 1000 Person Plan is a comprehensive plan to permanently end homelessness. It costs between \$16 million and \$20 million, depending on the depth of housing subsidies. The emergency outdoor shelter is not intended to supersede the 1000 Person Plan, but complement its goals and efforts. Finding 2 in the 1000 Person Plan says that our system is serving a progressively smaller percentage of the literally homeless population every year, and the emergency outdoor shelter is a low-barrier way to serve more literally homeless people.

ALTERNATIVES CONSIDERED

At roughly \$615,000 yearly, this proposal costs less than any aspect of the 1000 Person Plan except for outreach. Concentrating where people living on the streets makes outreach simpler and more cost effective.

With a goal of a 180 day stay, this shelter should serve about 150 people annually. This is equivalent to about \$4,100 per person or about two months' rent at the market rate. Direct subsidies are possible alternative, but direct subsidies cannot serve as many people for as long as an emergency outdoor shelter. In addition, there is currently limited market rate housing to be had.

FINANCIAL IMPLICATIONS

The costs below could be considered most appropriate coming from Measure P funds allocated for Shelter and Temporary Accommodations or the General Fund, with the possibility of future funding from Homeless Housing, Assistance, and Prevention (HHAP) funds or other funds.

Please see Attachments 6 and 7 for a full breakdown on cost. Health, Housing, and Community Services provided a cost estimate, and we removed a number of line items to reflect the needs laid out in the item above. The emergency outdoor shelter is intended as an emergency measure, less service-intensive than a navigation center, and thus does not include a community tent and significantly cuts down on staff members. In addition, in April of this year staff elected not to fund community meals through our standard homeless services programming. Furthermore, in the interim, some of the line items in

³⁹

https://www.cityofberkeley.info/Customer_Service/Home/Refuse_Start_Stop_or_Change_Service.aspx

the staff memo are being funded through other sources. The Clean and Livable Commons Initiative was funded and includes money for Port A Potties and dumpsters. Other Measure P monies were already allocated for rapid rehousing, thus we did not include that in the budget for this emergency shelter in particular.

In addition, this measure would reduce enforcement costs. The City expends significant resources in both the City Manager's office and the police force by moving unhoused individuals from place to place. By providing a place where people can go, this staff time can be directed back towards neighborhood services and curbing criminal behavior.

ENVIRONMENTAL SUSTAINABILITY

Regular refuse removal will decrease littering and illegal dumping, in line with the City's Zero Waste goals.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

ATTACHMENTS

- 1: Summary of Point in Time Count, 2019.
- 2: Modesto City Ordinance 2019-254.
- 3: *City Officials Suddenly Support Homeless Tent Cities, Car Camps in Sacramento Neighborhoods*, Sacramento Bee, August 29, 2019.
- 4: Map of 2nd and University and surrounding areas.
- 5: Pictures of 2nd and University and surrounding areas.
- 6: Health, Housing, and Community Services Memo on potential costs
- 7: Edited HHCS Memo on Costs
- 8: BMC Article 9 Section 19.28.100 Section N106
- 9: Supplemental 3 to Item 38a, "First They Came For The Homeless Encampment" at February 13, 2018 Berkeley City Council Meeting.

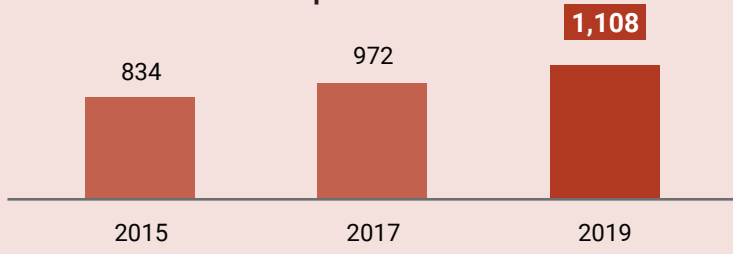
City of Berkeley

2019 EveryOne Counts Homeless Point-in-Time Count & Survey

Every two years, during the last 10 days of January, communities across the country conduct comprehensive counts of people experiencing homelessness in order to measure the prevalence of homelessness in each local community.

The 2019 Alameda County EveryOne Home Point-in-Time Count was a community-wide effort conducted on January 30th, 2019. In the weeks following the street count, a survey was administered across Alameda County. In the city of Berkeley, 257 unsheltered and sheltered homeless individuals were surveyed in order to profile their experience and characteristics.

Homeless Census Population



Sheltered/ Unsheltered Population



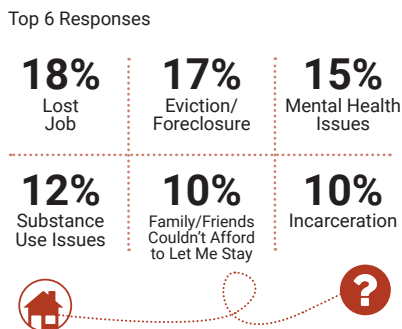
Duration of Current Episode of Homelessness



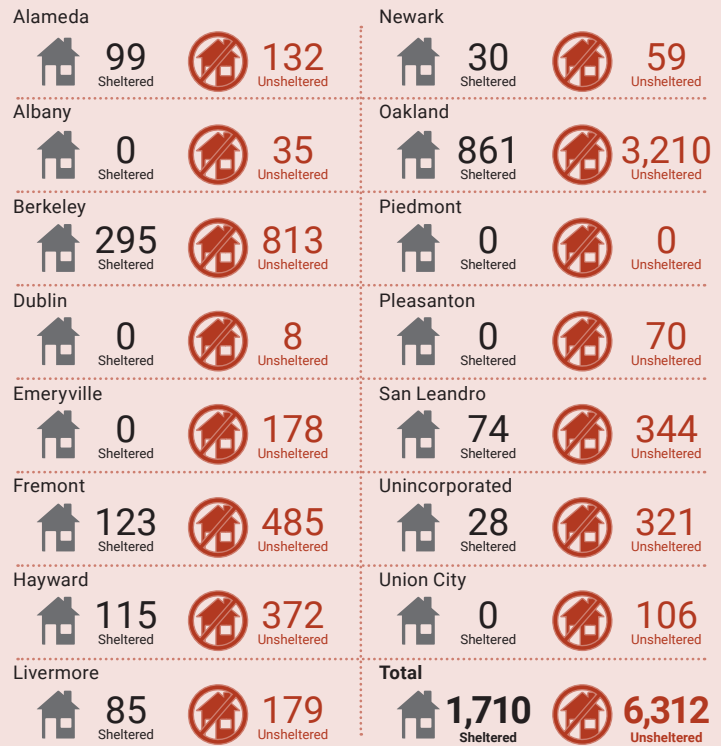
What Might Have Prevented Homelessness



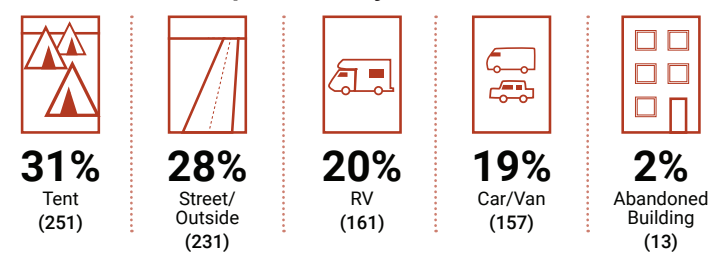
Primary Causes of Homelessness



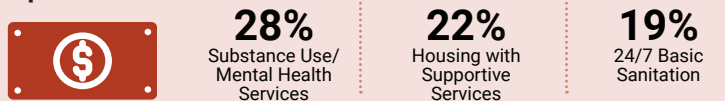
Sheltered/Unsheltered Population by City



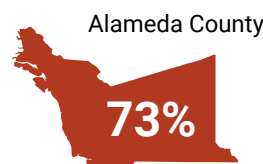
Unsheltered Population by Location



How New Money Should Be Spent



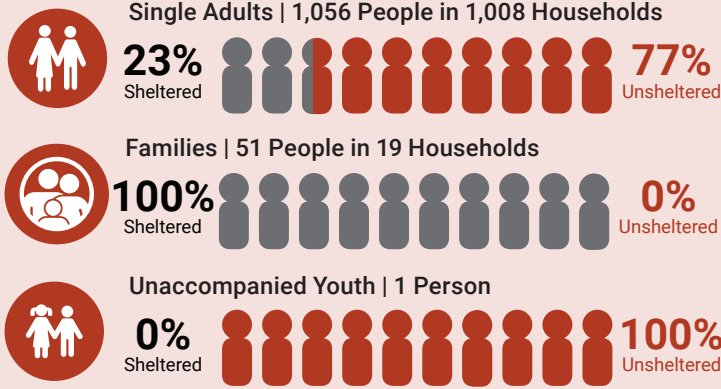
Residence Prior to Homelessness



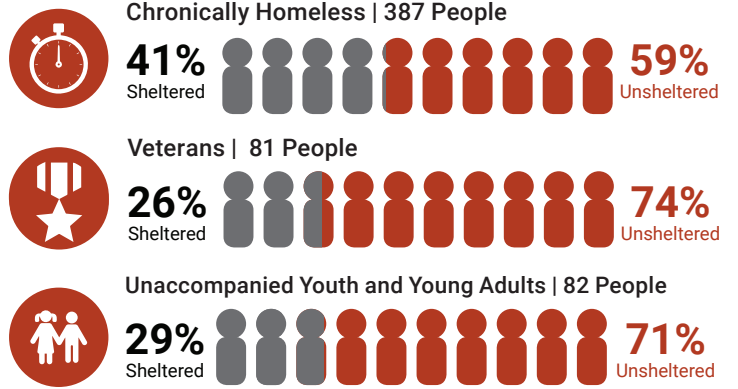
Length of Time in Alameda County



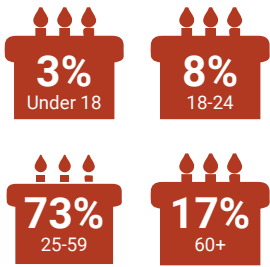
Household Breakdown



Subpopulations



Age

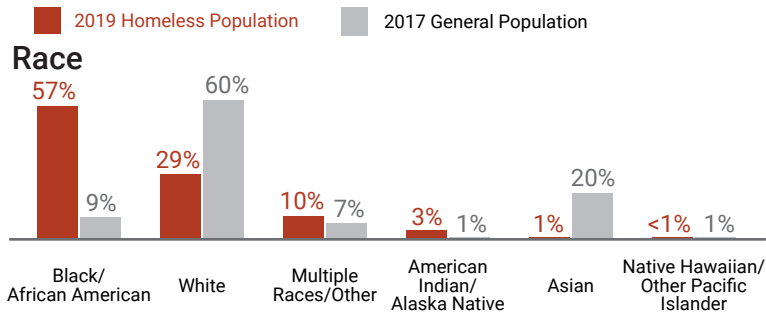


LGBTQ+ Status

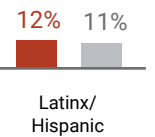
14% of survey respondents identified as LGBTQ+.



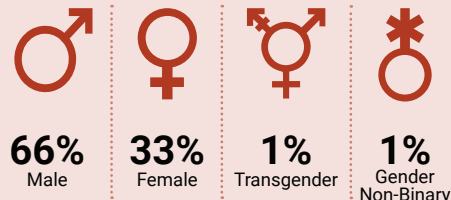
Race and Ethnicity Compared to General Population



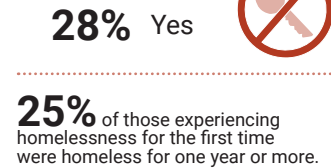
Ethnicity



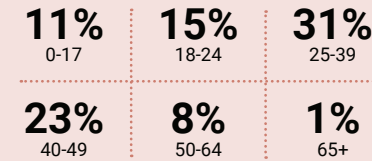
Gender



First Episode of Homelessness



Age at First Episode of Homelessness



Not Interested in Housing

2% of survey respondents said they were not interested in Independent, Affordable Rental Housing or Housing with Supportive Services.

Health Conditions

Current health conditions reported by survey respondents.



Disabling Conditions

41% of survey respondents reported having at least one disabling condition.



A disabling condition is defined by HUD as a developmental disability, HIV/AIDS, or a long-term physical or mental impairment that impacts a person's ability to live independently, but could be improved with stable housing.

**MODESTO CITY COUNCIL
RESOLUTION NO. 2019-254**

**RESOLUTION APPROVING THE AGREEMENT WITH BERTOLOTTI
MODESTO DISPOSAL INC., CERES, CA, TO PERFORM GARBAGE
REMOVAL AND DISPOSAL SERVICES AT THE MODESTO OUTDOOR
EMERGENCY SHELTER AND FOR HOMELESS ENCAMPMENT BLIGHT
REMOVAL BY THE MODESTO POLICE DEPARTMENT BEAT HEALTH
UNIT THROUGH MAY 31, 2021 FOR A TOTAL AMOUNT NOT TO EXCEED
\$150,000; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE,
TO EXECUTE THE AGREEMENT**

WHEREAS, in response to an emerging and concentrated homeless population precipitated by recent legal developments and case law the City permitted a temporary homeless encampment at Beard Brook Park, and

WHEREAS, the Modesto Police Department (MPD) established a blight abatement team to assist with on-going City efforts in city-wide cleanup and the temporary encampment at Beard Brook Park, and

WHEREAS, the City established a temporary outdoor shelter underneath the 9th Street Bridge known as the Modesto Outdoor Emergency Shelter (MOES) to accommodate the growing number of homeless individuals which Beard Brook Park could no longer sustain, and

WHEREAS, the maintenance and cleanup of both encampments required extensive use of garbage and disposal services which nearly depleted the city-wide blanket purchase order, and

WHEREAS, the Finance Purchasing Division issued an emergency purchase agreement, not to exceed \$50,000, with Bertolotti Disposal designated to cover MOES expenses through December 31, 2019, and

WHEREAS, funding for the emergency purchase agreement has been exhausted,
and

WHEREAS, the City and Bertolotti desire to enter into a new purchase agreement to include garbage and disposal services for MOES and for MPD's Beat Health expenses for illegal homeless camps and dumping to capture all costs related to encampment cleanup, and

WHEREAS, the total amount for MOES garbage and disposal services through December 31, 2019 is \$105,000, and

WHEREAS, the total amount for MPD's Beat Health homeless encampment blight removal through May 31, 2021 is \$45,000, and

WHEREAS, the total amount of the agreement with Bertolotti for both MOES and homeless encampment blight removal by MPD's Beat Health Unit is \$150,000.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves the agreement with Bertolotti Modesto Disposal Inc., Ceres, CA, to perform garbage removal and disposal services at the Modesto Outdoor Emergency Shelter and for MPD Beat Health homeless encampment blight removal by the Modesto Police Department Beat Health Unit through May 31, 2021 for a total amount not to exceed \$150,000.

BE IT FURTHER RESOLVED, that the City Manager or his designee is authorized to execute the Agreement, in a form approved by the City Attorney.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of June, 2019, by Councilmember Kenoyer, who moved its adoption, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
ADAM U. LINDGREN, City Attorney

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CLOTHING MONSTER



As homeless men, women and children in Sacramento wait for three new large shelters to open, another model that local officials have repeatedly rejected over the years is now quickly gaining traction.

The “safe ground” model – essentially creating an area where homeless people can live safely in tent cities or in cars – has not been a part of Mayor Darrell Steinberg’s homeless plan. Steinberg has instead been pushing hard for large shelters with rehousing services. But as the city enters its fifth month without a city-run shelter, other alternatives are now coming to the fore.

Councilman Jeff Harris was previously opposed to the “safe ground” model, along with most of the council aside from Councilman Allen Warren. Now, Harris is proposing the city open a temporary homeless camp similar to one Modesto and Stanislaus County opened earlier this year.

TOP ARTICLES



“To get from today until we stand up more shelter beds, which we desperately need, I suggest we take a look at the safe ground model,” Harris said.

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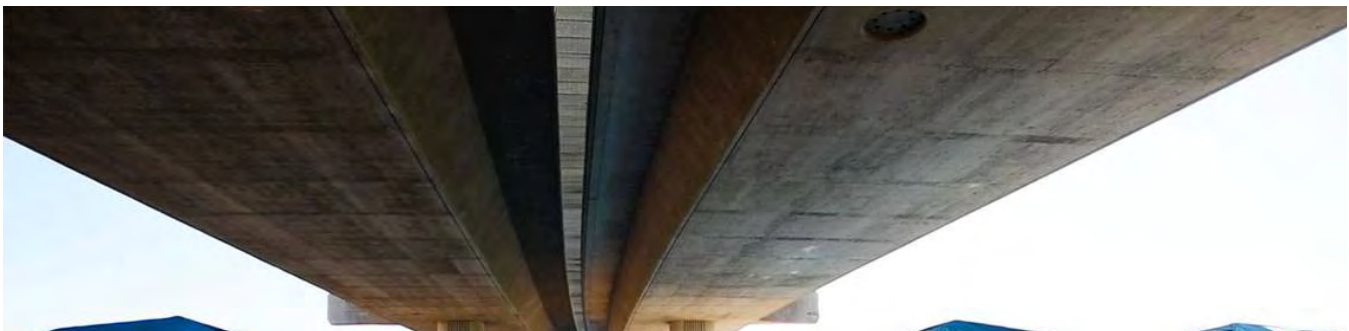
[SAVE NOW](#)

Harris and city staff earlier this month traveled to Modesto to check out that model. He liked what he saw.

The camp, officially called [the Modesto Outdoor Emergency Shelter](#), opened underneath a bridge in a regional park in February. It holds roughly 400 campers who sleep in about 290 white and blue 10-foot-by-10-foot tents donated by a Reno company called Qamp, said Doug Halcomb, the camp’s operations manager.

Local officials provide portable bathrooms and wash stations, and nonprofits provide at least one meal a day, Halcomb said. The camp is fenced in and has two full-time security guards to ensure safety. Providers come to offer medical, mental health and rehousing services to campers. Sacramento-based organization Turning Point handles the day-to-day operations, Halcomb said.

“When I came back from Modesto, I went to the River District and there were more than 150 camps on one city block,” Harris said during a meeting earlier this month. “People were sleeping on the street, defecating in the open. I mean, it’s a mess. This is our city. And this is my district. And that’s what I saw when I came home and I thought, why don’t we do it? Why don’t we try a safe ground model and try to control some of these issues?”





Tents have been assembled in preparation for the new homeless camp under the Ninth Street Bridge at Gateway Park in Modesto, Calif., Tuesday, Feb. 19, 2019. Andy Alfaro
AALFARO@MODBEE.COM

Opening a “safe ground” for campers could also be cost effective; Harris estimates well under \$1 million. By comparison, the two 100-bed shelters the council approved Tuesday will cost [more than \\$20 million to open and operate for two years](#).

Harris suggested the tent city open next month and close in the spring, after a shelter under the W/X freeway opens. He has a few location ideas in his district – which includes the American River, East Sacramento, South Natomas and part of north Sacramento – but is not sure if they will work.

“It’s not a solution. It’s a way to get from here to there and mitigate the deep impacts on the street in the short term and create safety and hygiene,” Harris said.

Harris previously proposed a [shelter site on Cal Expo property](#), but Cal Expo has not yet approved it.

City Hall has long debated the tent city model. In 2016, a delegation of 20 Sacramento officials [toured tent facilities in Seattle](#), where a network of camps has existed for years. Some officials expressed support for the Seattle model, but the issue was soon dropped.

Councilman Rick Jennings, also struggling to find a site for a large shelter in his south Sacramento district, is pushing for the city to open “safe parking zones,” essentially a safe ground model for car camping.

Volunteers canvassing the county in January found [four times the number of vehicles](#) where people were living than they counted in 2015. Researchers estimate people were sleeping in at least 340 vehicles in the county. This included approximately 100 children. Most of the vehicles were in the city of Sacramento.

The City Council on Tuesday asked staff to come back with a plan for both models. Jennings said he hopes staff can come back with a plan, including costs and potential sites for safe parking zones, within 30 days. He wants to start with a pilot program for about six months. If it goes well, he wants to open more.

“We’re going to look at every possibility within our district, from businesses to nonprofit partners to community centers to parks,” Jennings said Wednesday. “We’re going to look and see if there’s an opportunity at every single one to put a pilot in place so we can get some results.”

Steinberg is supportive of both ideas, he told The Sacramento Bee Wednesday.

“I applaud my colleagues who are working to find creative solutions to our community’s greatest challenge,” Steinberg said in a statement. “Our goal is to get people under a roof with the help they need as quickly as possible. I support any efforts to make their plight even a little better as we aggressively help people get inside.”

Crystal Sanchez, a homeless activist who visited the Modesto site earlier this year, has been urging local officials to replicate the model here. She and other activists, including civil rights attorney Mark Merin, urged Sacramento County Board of Supervisors members to create a safe ground at the former San Juan Motel lot on Stockton Boulevard, where Sacramento Sheriff's deputies [cleared out dozens of campers earlier this year](#). They didn't go for it.

"Modesto is utilizing what is already in place to help their homeless population," Sanchez said. "It is a full-scaled organized community ... It is cost effective and involves every aspect of the community. The local government and the community grassroots have been doing what they do to help."

The Sacramento Regional Coalition to End Homelessness also supports the model as a temporary response until there is enough affordable housing.

"Safe ground means that people experiencing homelessness can camp without fear of harassment from law enforcement and can come and go without the fear that all their possessions have been taken or destroyed," Bob Erlenbusch of SRCEH said. "Equally important is that they can get a good night's sleep without fear of violence from predators who prey on vulnerable people."

James "Faygo" Clark, a local well-known homeless activist, said he is in favor of a safe ground model that rotates locations periodically.

"It would allow people a place to begin to stabilize and move forward," Clark said. "They would need private security, access to trauma-informed services, access to water, sanitation, and trash pickup to succeed. We should also work to ensure that such encampments give the unhoused a voice in their operation."

Warren, [who proposed safe ground sites](#) on his property years ago, said he still supports the model.

"I started on this three years ago and the council wasn't prepared at that time," Warren said. "They seem more willing now."

Merin and other activists [in January 2017 proposed a "safe ground" site](#) near Sacramento Army Depot off Florin Perkins Road.

Councilman Eric Guerra, who represents that area, opposed it, and so did his colleagues.

Now, Guerra, also struggling to find a site for a large shelter, appears to be supportive of a safe parking zone in his south Sacramento district.

Guerra Tuesday suggested staff contact the nonprofit Power Inn Alliance to see if any parking lots could be used in the industrial area for nighttime car camping. A representative for the Power Inn group was unavailable for comment.

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C-W



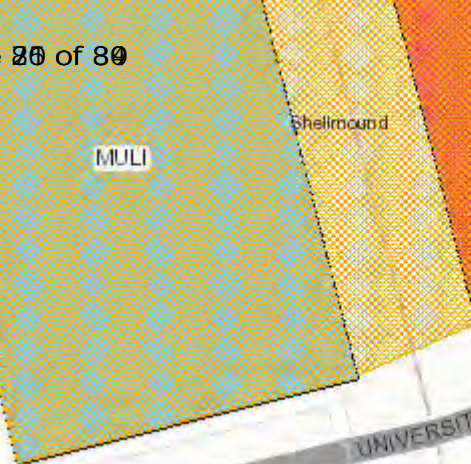
MULI

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EASTSHORE HWY

21 ft



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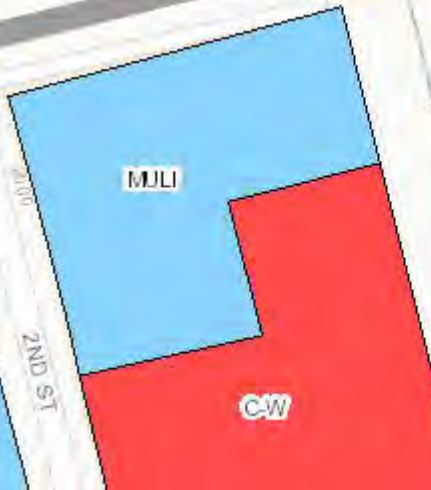
Fire Zone 1



UNIVERSITY AVE

Antrol
Be

Southern Pacific Railroad Station



MULI

2ND ST

C-W



C-W



EAST









# of People	50
Intensive Services?	Yes
Self Governed?	No

MATERIALS (Start-up)			
Item	Number/ Quantity	Cost	Notes
Tents	50	\$22,000	Assumes \$400 per unit Qamp tent, with none donated
Pallets + Plywood	50	\$2,644	Assumes 10'x10' wooden pallet foundation with plywood cover
Lighting	6	\$6,600	Purchased parking lot flood lamps for site lighting
Generators	2	\$12,000	Power supply for site. Could be substituted for solar panels, though under-bridge site may complicate solar access.
Misc Supplies		\$10,000	Toilet paper, linens and towels, cleaning supplies, tarps for rain, etc.
Furniture/sleeping bags/etc.		\$20,000	Assumes every client provided a sleeping bag + sufficient for replacements; plus staff and common area furniture.
Staff Shelter	1	\$4,400	16'x10' shed that can house staff + desks, supplies
Community tent	1	\$200	for common space, meals, etc
Communications		\$2,000	Staff laptops, cell phones
Drinking Water	12775	\$30,660	Assumes 0.7 gallons per person per day in water consumption. No City water connection.
10'x12' sheds for storage	4	\$2,800	For storage of client belongings
TOTAL		\$113,304	

OPERATIONS			
Item	Number/ Quantity	Cost	Notes
Shower truck		\$27,000	Annual rental/365 days for a 24 ft, 6 stall shower trailer. Does not include water expense.
Port-a-potties and handwashing (per each)	4	\$52,000	1 toilet per 15 of each gender required per Berkeley Min Health and Safety Ordinance (2017). Assumes ADA with daily servicing
20 yard dumpster and weekly service		\$39,840	Berkeley Zero Waste annual fee for 20 yard dumpster with 1x/week trash collection
Medical Waste/ sharps disposal		\$2,400	Assumes monthly service with a qualified vendor
Flex Funding/RRH	100	\$600,000	<i>Only applies if this is a service-intensive program</i>
1 meal/day	18250	\$109,500	<i>Only applies if this is a service-intensive program</i>
IT, facilities maintenance		\$10,000	Budget for repairs and communications network maintenance
Insurance		\$2,000	Liability and property
Indirects (@ .15)	0.1	\$172,024	
Generator operations		\$72,000	To power site/lighting plus shower trailer
TOTAL		\$1,086,764	

STAFFING			
Position	FTE	Cost	Notes
Program and Site Manager	1	\$75,000	Oversees program and provides security
Program Coordinators	7	\$350,000	<i>Staffing level depends on program governance structure</i>
Housing Navigators	2	\$120,000	<i>Only applies if this is a service intensive program</i>
Outreach Coordinators	2	\$130,000	Linked to encampment resolutions
Benefits (@30%)	0.3	\$202,500	Medical, dental, PTO
TOTAL		\$877,500	

# of People	50
Intensive Services?	Yes
Self Governed?	No

MATERIALS (Start-up)			
Item	Number/ Quantity	Cost	Notes
Tents	50	\$22,000	Assumes \$400 per unit Qamp tent, with none donated
Pallets + Plywood	50	\$2,644	Assumes 10'x10' wooden pallet foundation with plywood cover
Lighting	6	\$6,600	Purchased parking lot flood lamps for site lighting
Generators	2	\$12,000	Power supply for site. Could be substituted for solar panels, though under-bridge site may complicate solar access.
Misc Supplies		\$10,000	Toilet paper, linens and towels, cleaning supplies, tarps for rain, etc.
Furniture/sleeping bags/etc.		\$20,000	Assumes every client provided a sleeping bag + sufficient for replacements; plus staff and common area furniture.
Staff Shelter	1	\$4,400	16'x10' shed that can house staff + desks, supplies
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TOTAL		\$877,500	

Article 9. Emergency Housing

19.28.100 Emergency Housing and Emergency Housing Facilities.

HCD Appendix N of the 2016 [California Building Code](#) is adopted on an emergency basis and reproduced in its entirety subject to the modifications thereto which are set forth below:

APPENDIX N - EMERGENCY HOUSING

SECTION N106

TENTS AND MEMBRANE STRUCTURES

N106.1 General. Tents and membrane structures shall not be used to house occupants for more than 7 days unless such tents and membrane structures are maintained with tight wooden floors raised at least 4 inches (101.6 mm) above the ground level and are equipped with baseboards on all sides to a height of at least 6 inches (152.4 mm). Tents and membrane structures may be maintained with concrete slabs with the finished surface at least 4 inches (101.6 mm) above grade and equipped with curbs on all sides at least 6 inches (152.4 mm) high.

A tent or membrane structure shall not be considered a suitable sleeping place when it is found necessary to provide heating facilities in order to maintain a minimum temperature of 50 degrees Fahrenheit (10 degrees Celsius) within such tent or membrane structure during the period of occupancy.

Tents and membrane structures shall comply with Chapter 31 of the [California Fire Code](#) and shall not be erected for a period of more than 180 days within a 12 month period. Tents and membrane structures shall be limited to one level located at the level of Fire Department vehicle access road or lane. Tents and membrane structures complying with Chapter 31 of the [California Fire Code](#) shall not be subject to additional provisions of Sections N111 and N112 of this appendix.

Tents and membrane structures used for sleeping purposes shall be equipped with single station battery powered smoke alarms installed in accordance with Section 907.2.11 of the [California Fire Code](#).

Chart reads from left to right only, not from top to bottom

What would "Sanctioned Encampments" look like? A quick overview of some elements to consider

LOCATION	100% Resident Discretion	City designated	One/Several locations	Unlimited locations
RESIDENTS <i>Who?</i>	City/Agency Criteria	No Criteria	Resident Criteria	Hybrid
RESIDENTS <i>How Many?</i>	No limit per Encampment	City/Agency determined limit	Resident-determined limit (Who/how decided?)	Variable/Stable
RESIDENTS <i>Criteria?</i>	Resident-Determined	City/Agency determined	Hybrid	Protected Class requirements for criteria?
RESIDENTS <i>Duration</i>	Indefinite/Forever	City/Agency specified – limited time	Resident specified – limited time	
Rules /Code of Conduct	Defined by residents	Defined by City/Agency	Hybrid	
Governance	Resident defined: any system desired, self-governing. What system?	City/Agency Defined	Jointly determined/different areas of governance for each?	
Enforcement of Rules	Residents	City/Agency		
Removal/exclusion of Individuals	Decision and Action by Residents	Decision and Action by City/Agency	No removal or exclusion	
Engagement with Services <i>Housing</i>	Not Necessary	Required	Voluntary	Who decides?
Engagement with Services <i>Other (health, jobs, etc.)</i>	Not necessary	Required	Voluntary	Who decides?
Facilities <i>Provision</i>	Provided by community/Not for profits	Provided by City	Hybrid/Mix	
Facilities <i>maintenance</i>	Residents	City/Agency	Not for Profit Org.	Shared responsibilities
First Amendment issues	"Protest" camp – if City affirmatively sanctions/provides space, does this become sanctioning of one type of speech? Code Pink – type concerns?			
Self-Governance	What system?	Who picks system?	Who ensures fairness?	Recourse?
City/Agency	Which agency?	Scope of Responsibility?	Funding?	

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 OFFICE OF THE CITY CLERK
 CITY OF BERKELEY



Office of the City Manager

CONSENT CALENDAR
September 29, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 29, 2022

RECOMMENDATION

Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

Total estimated cost of items included in this report is **\$15,891,000**.

<u>PROJECT</u>	<u>Fund</u>	<u>Source</u>	<u>Amount</u>
On-Call Consultant for American With Disabilities Act (ADA) Support Services	501 011	Capital Improvement Discretionary	\$300,000
Sanitary Sewer Rehabilitation Project: Urgent Project at Various Locations	611	Sanitary Sewer Operation	\$1,211,000
Sanitary Sewer Rehabilitation Project: Hearst, Et. Al.	611	Sanitary Sewer Operation	\$6,380,000
City Fleet EV Charing Stations – Corp Yard & 2180 Milvia	501	Capital Improvement	\$850,000
Sanitary Sewer	611	Sanitary Sewer	\$7,150,000

Rehabilitation Project: Parnassus, Et. Al.		Operation	
Total:			\$15,891,000

CURRENT SITUATION AND ITS EFFECTS

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager’s purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB (Invitation for Bid) or RFP (Request for Proposal) may be released to the public and notices sent to the potential bidder/respondent list.

BACKGROUND

On May 6, 2008, Council adopted Ordinance No. 7,035-N.S., amending the City Manager’s purchasing authority for services.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Finance Department reviews all formal bid and proposal solicitations to ensure that they include provisions for compliance with the City’s environmental policies. For each contract that is subject to City Council authorization, staff will address environmental sustainability considerations in the associated staff report to City Council.

RATIONALE FOR RECOMMENDATION

Need for the services.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Formal Bid Solicitations and Request for Proposals
Scheduled for Possible Issuance After Council
Approval on September 29, 2022

CONSENT CALENDAR
September 29, 2022

Attachment:

1: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance
After Council Approval on September 29, 2022

- a. On-Call Consultant for American With Disabilities Act (Ada) Support Services
- b. Sanitary Sewer Rehabilitation Project: Urgent Project at Various Locations
- c. Sanitary Sewer Rehabilitation Project: Hears, Et. Al.
- d. City Fleet EV Charging Stations – Corp Yard & 2180 Milvia
- e. Sanitary Sewer Rehabilitation Project: Parnassus Et. Al.

Note: Original of this attachment with live signature of authorizing personnel is on file in
General Services.

SPECIFICATI ON NO.	DESCRIPTION OF GOODS / SERVICES BEING PURCHASED	APPROX. RELEASE DATE	APPROX. BID OPENING DATE	INTENDED USE	ESTIMATED COST	BUDGET CODE TO BE CHARGED	DEPT. / DIVISION	CONTACT NAME & PHONE
23-11543-C	On-Call Consultant for American with Disabilities Act (ADA) Support Services	9/30/2022	10/13/2022	Americans with Disabilities Act (ADA) consulting services on an ongoing and back up basis for its Disability Compliance Program. Including support for: • Intake/evaluation/response to ADA compliance complaints • Coordinate ADA Transition Plan implementation • Consult on Building and CIP projects for ADA compliance • Staff Commission on Disability Meetings • Provide ADA Training • Respond to daily ADA related inquiries	\$300,000	501-54-624-698-0000- 000-431-665110 011-54-624-698-0000- 000-431-665110 Will be the accounts used. Funds currently in: 501-54-624-698-0000- 000-431-665110-* will be requested to carryover via AAO1 (\$200,000) 011-54-623-677-3010- 000-412-511110- (\$100,000 6 months projected sal/ben savings)	Public Works/ Engineering Additional salary savings will be added based on duration of the vacancy and needs for consultant support.	Andrew Brozyna 981-6396
23-11544-C	Sanitary Sewer Rehabilitation Project: Urgent Project at various locations	9/30/2022	10/13/2022	Fulfill Sewer Consent Decree requirement. Sewer rehabilitation and replacement project to repair and replace old and deteriorated sewer lines.	\$1,211,000	611-54-623-676-3013- 000-473-665130- *(PWENSR2303)	Public Works - Engineering	Daniel Akagi 981-6394 Adadu Yemane 981-6413
23-11545-C	Sanitary Sewer Rehabilitation Project: Hearst, et al.	10/3/2022	10/25/2022	Sewer rehabilitation and replacement project to repair and replace old and deteriorated sewer lines.	\$6,380,000	611-54-623-676-3013- 000-473-665130- *(PWENSR2302)	Public Works - Engineering	Daniel Akagi 981-6394 Ricardo Salcedo 981-6407
23-11546-C	City Fleet EV Charing Stations – Corp Yard & 2180 Milvia	11/1/2022	11/29/2022	Install electrical infrastructure for EV chargers for City fleet cars at the Corporation Yard & 2108 Milvia	\$850,000	501-54-623-677-0000- 000-444-663110-	Public Works/Engineering	Uriel Gonzalez 981-6627

SPECIFICATI ON NO.	DESCRIPTION OF GOODS / SERVICES BEING PURCHASED	APPROX. RELEASE DATE	APPROX. BID OPENING DATE	INTENDED USE	ESTIMATED COST	BUDGET CODE TO BE CHARGED	DEPT. / DIVISION	CONTACT NAME & PHONE
23-11548-C	Sanitary Sewer Rehabilitation Project: Parnassus, et al.	9/30/2022	10/25/2022	Fulfill Sewer Consent Decree requirement. Sewer rehabilitation and replacement project to repair and replace old and deteriorated sewer lines.	\$7,150,000	611-54-623-676-3013- 000-473-665130- (*PWENSR2301)	Public Works - Engineering	Daniel Akagi 981-6394 Stephanie Angla 981-6422
Dept TOTAL					\$15,891,000			
TOTAL					\$15,891,000.00			



Office of the City Manager

CONSENT CALENDAR
September 29, 2022

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: David Sprague, Interim Fire Chief
 Subject: Contract: Gaumard Scientific Company, Inc. for High Fidelity Training Equipment

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to issue purchase orders with Gaumard Scientific Company, Inc., using the General Services Agency's (GSA) Contract No. 47QSEA21D002V, for high fidelity training equipment in an amount not to exceed \$375,000 through June 30, 2024.

FISCAL IMPACTS OF RECOMMENDATION

One-time funding for this project is available in the FY23 Fire Department in Budget Code: 164-72-742-837-0000-000-423-612990 (Measure FF).

CURRENT SITUATION AND ITS EFFECTS

As part of the fire department's transition to staffing ambulances with non-firefighter paramedics and Emergency Medical Technicians (EMTs), staff is building a new hire academy curriculum (Paramedic: Approx. 8 Weeks, EMT: Approx. 4 Weeks). In order to reduce the staff time necessary for each academy and improve the quality of training, the Department is improving our ability to delivery realistic, scenario based training using high-fidelity (patient) simulators.

This simulator will mimic the physiological conditions of a patient such as blood pressure, bleeding, EKG, blood oxygen level, exhaled CO2, and lung sounds. Interventions can also be performed on the simulators such as placement of breathing tubes, IVs, tourniquets, IOs (bone IV), and plural decompression (placing a needle in the chest to help with breathing). This purchase will include 3 adult, 1 child, 1 pediatric simulator, service plans for each unit, and training on their use. The anticipated service life of the simulators is between 5-7 years.

Supporting the transition to non-firefighter ambulances is a Strategic Plan Priority Project, advancing our goals to provide an efficient and financially-healthy City government, create a resilient, safe, connected, and prepared city, be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community, and attract and retain a talented and diverse City government workforce.

BACKGROUND

The training simulators produced by Gaumard Scientific meet the needs of the fire department. The Gaumard simulator allows training to occur utilizing department issued diagnostic tools including stethoscopes, blood pressure cuffs, intravenous medications, and cardiac monitors which helps to improve the realism of training.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This equipment will reduce the number of instructors who will need to commute to the city each day to support the new hire academy, keeping the carbon footprint of the academy as small as possible.

RATIONALE FOR RECOMMENDATION

High-fidelity training equipment helps leverage existing City staff in a time when staff time is at a premium. The equipment also provides a realistic training environment for students who can interact with this equipment using their normal diagnostic equipment and then perform treatments that would not otherwise be possible including: administering intravenous access, medications, defibrillation and other electrical therapy for the heart, and inserting advanced airways.

Gaumard Scientific was selected through the competitive selection process from General Services Agency's (GSA) Contract No. 47QSEA21D002V.

ALTERNATIVE ACTIONS CONSIDERED

Increase the number of staff assigned to the academy which will have impacts to overtime and use older training equipment that is in need of replacement and does not provide the same level of realism.

CONTACT PERSON

David McPartland, EMS Assistant Fire Chief, (510) 981-5595

David Sprague, Interim Fire Chief, Fire Department, (510) 981-3473

Attachments:

1: Resolution

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

CONTRACT: GAUMARD SCIENTIFIC COMPANY, INC. FOR HIGH FIDELITY
TRAINING EQUIPMENT

WHEREAS, as part of the Fire Department's transition to staffing ambulances with non-firefighter paramedics and Emergency Medical Technicians (EMTs), staff is building a new hire academy curriculum (Paramedic: Approx. 8 Weeks, EMT: Approx. 4 Weeks); and

WHEREAS, in order to reduce the staff time necessary for each academy and improve the quality of training, the Department is improving our ability to delivery realistic, scenario based, training using high-fidelity (patient) simulators; and

WHEREAS, the training simulators produced by Gaumard Scientific Company, Inc. meet the needs of the fire department; and

WHEREAS, the Gaumard simulator allows training to occur utilizing department issued diagnostic tools including stethoscopes, blood pressure cuffs, intravenous medications, and cardiac monitors which helps to improve the realism of training; and

WHEREAS, Gaumard Scientific Company, Inc. was selected through the competitive selection process from General Services Agency's (GSA) Contract No. 47QSEA21D002V; and

WHEREAS, funds are available in the FY23 Fire Department in Budget Code: 164-72-742-837-0000-000-423-612990-(Measure FF).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to issue purchase orders with Gaumard Scientific Company, Inc., using the General Services Agency's (GSA) Contract No. 47QSEA21D002V, for high fidelity training equipment in an amount not to exceed \$375,000 through June 30, 2024.



Office of the City Manager

PUBLIC HEARING
September 29, 2022

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jordan Klein, Director, Planning & Development Department
 Subject: ZAB Appeal: 1201-1205 San Pablo Avenue, Use Permit #ZP2021-0070

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units (including five Very-Low-Income units), 1,680 square feet of commercial space, 2,514 square feet of usable open space, and 17 to 28 ground-level parking spaces, and dismiss the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On April 1, 2021, Isaiah Stackhouse of Trachtenberg Architecture submitted a Preliminary Application pursuant to Government Code 65941.1 to vest rights pursuant to SB 330, the Housing Crisis Act of 2019, for a housing development project.

On May 11, 2021, Isaiah Stackhouse of Trachtenberg Architecture submitted an application for Use Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units and 1,680 square feet of commercial space.

On December 9, 2021, the ZAB conducted a public preview and provided a preliminary review of the project.

On January 20, 2022, the Design Review Committee (DRC) conducted a Preliminary Design Review (PDR) of the project and continued the discussion to a second meeting. On March 29, 2022, the DRC conducted a second PDR meeting and forwarded a favorable recommendation for the project to the ZAB with conditions and recommendations for Final Design Review (FDR).

On April 28, 2022, the ZAB conducted a public hearing for the use permit application. After hearing public comments and holding discussion, the ZAB approved the use

permit by a vote of 7-0-2-0 (Yes: Duffy, Matthews, Kim, Olson, Sanderson, Gaffney, Tregub; No: None; Abstain: Sheahan, Thompson; Absent: None).

On May 5, 2022, staff issued the ZAB Notice of Decision.

On May 19, 2022, the City Clerk received an appeal filing from Yvette Bozzini, resident at 1110 Harrison Street, and Dan Hayes, resident at 1116 Harrison Street.

On September 15, 2022, staff posted the public hearing notice at the site and three nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council must conduct a public hearing to resolve the appeal.

BACKGROUND

There was considerable interest in the project from the residents in the surrounding neighborhood. Neighbors attended and spoke at the ZAB Preview, both DRC meetings, and the ZAB hearing. In the weeks leading up to the ZAB hearing in April 2022, neighbors contacted Councilmember Kesarwani's office and met with her on April 18, 2022 to present their questions and concerns, which covered a range of issues in relation to the project, including Senate Bill 330 streamlined permit review, the Housing Accountability Act, density bonus, privacy screening, neighborhood permit parking, traffic, and pedestrian safety. Councilmember Kesarwani's office worked with City staff in several departments and answered the questions via emails to the neighbor group in the days prior to the ZAB hearing.

In response to the concerns about privacy screening, traffic impact and pedestrian safety in the neighborhood, staff recommended several conditions of approval and presented them to the ZAB at the hearing:

12. Screening Trees. The Project Proponent shall consult with the project landscape architect for species recommendations for planting in the 5-foot-wide landscape strip on the eastern property line that closely achieves this objective: a row of large screening trees (24" box minimum) that have an initial height of 10' and full height of 25-30 feet height minimum. The project Landscape Plan shall include the proposed plantings to be reviewed by Land Use staff.
27. Bike Boulevard. The Project Proponent shall be responsible for establishing Kains Avenue, between Harrison Street and Gilman Avenue, as a Class 3 bike boulevard (installing sharrow pavement markings and signage as required), consistent with the bike network improvements stated in the City's Bicycle Plan (May 2017). The Project Proponent shall coordinate with the Public Works (Engineering and Transportation Divisions) to obtain necessary approvals.
28. Traffic Study. The Project Proponent shall retain the project traffic consultant to perform an analysis of the remaining eight traffic signal warrants at San Pablo and

Harrison Avenues for consideration of a traffic signal for the intersection. The traffic study shall include an analysis of Loss of Service (LOS) levels at this intersection for consideration of a left turn prohibition at the intersection. The traffic study shall be submitted to the Transportation Division for review and approval.¹

- 29. Parking Garage Exit.** The Project Proponent shall submit plans showing the installation of a “Left Turn Only” sign and left turn pavement markings at the parking garage exit, to facilitate left turns only onto Harrison Street. The Project Proponent shall also consider modifying the driveway to angle toward the left to facilitate left turns. Sound level specifications for a pedestrian alert system at the garage exit shall be submitted for review and approval by the Land Use staff.

The applicant agreed to the recommended conditions, and they were approved by the ZAB for inclusion in the permit conditions.

For additional project background, please see Attachment 3, the ZAB staff report for this project.

RATIONALE FOR RECOMMENDATION

The issues raised in the appellants’ letter and staff’s responses follow. For the sake of brevity, the appeal issues are not re-stated in their entirety. Please refer to the attached appeal letter (Attachment 2) for the full text.

Issue 1: The appellants request that the parking garage driveway for the Project be relocated from Harrison Street to San Pablo Avenue in the design, to help with traffic, pedestrian safety and to reduce garage door noise.

Response 1: Relocation of the parking garage driveway to the San Pablo side of the project would require the applicant to re-design the ground floor plan and apply for a permit from the California Department of Transportation (CalTrans) to locate a driveway on a State Highway, Route 123, San Pablo Avenue. Staff consulted with CalTrans on feasibility of the proposal. CalTrans advised that the agency would require a traffic analysis for the location of the driveway on San Pablo, including a study of a potential turn prohibition at Harrison, and would consider approval of an encroachment permit for the proposal based upon the report. The Transportation Division indicated that it would support the relocation if the traffic study concludes that a driveway on San Pablo would not create any operational or safety and circulation issues.

¹ SB 375 requires the use of Vehicle Miles Traveled (VMT) as criteria for analysis of traffic impacts for CEQA, but LOS can still be used as an informational tool to help assess safety and circulation impacts as part of a project. In this case, LOS results would help determine how a left turn prohibition would increase vehicle delay. The traffic study would also provide information on other factors such as pedestrian circulation and vehicle sight triangles to guide the recommendation.

Staff advises that relocation of the driveway to San Pablo in the project could be a feasible solution to neighbor concerns regarding traffic and pedestrian safety. However, it is not required to address an identified problem; i.e. City staff and consultants have not identified any safety or operational issues with the project as approved by ZAB, which has a driveway located on Harrison Street to access the ground-floor garage with 17 to 28 parking spaces. The street front along San Pablo Avenue is currently planned to have a commercial space on the corner, a residential lobby, and other support space designed to activate the pedestrian experience.

Issue 2: The appellants request that Council require the developer to complete an updated traffic study (including peak commute hour traffic), and for traffic mitigation measures to be included as conditions of approval (COAs) and implemented before the completion of the project.

Response 2: The City's Zoning Project Submittal Requirements list states that projects that do not meet at least one of the screening thresholds listed in the City's Vehicle Miles Traveled (VMT) Criteria and Thresholds (June 29, 2020) must prepare further analysis of potential traffic impacts from the project. A project must meet at least one of the screening criteria – location in a Transit Priority Area or Low VMT Area – to assess whether VMT can be presumed to be less-than-significant. The applicant submitted a Transportation Assessment Memorandum prepared by project transportation consultant, Fehr and Peers, dated July 2, 2021, which concluded that the project meets both criteria. The memo was reviewed by Transportation Division staff, which concurred with the memo's conclusion that traffic impacts from the project could be presumed to be less-than-significant, and that no further traffic analysis is required.

Peak hour trip generation for the project was analyzed in the Transportation Assessment Memorandum, and was reviewed by the Transportation Division. The Division did not indicate any further concerns.

Prior to the ZAB hearing, neighbors expressed concerns over increased traffic and impact to pedestrian safety from the project on Harrison Street, and in the larger neighborhood east of San Pablo. Although the applicants were not required to submit further traffic analysis for the project, in response to neighbor concerns, staff recommended that conditions of approval be added to the permit that would require further traffic analysis for consideration of a traffic signal at the intersection of San Pablo and Harrison Avenues, and other traffic mitigation measures such as the establishment of a bike boulevard on Kains Avenue and signage to direct outgoing traffic from the garage exit on Harrison Street westward, away from the neighborhood streets and toward San Pablo Avenue (see Conditions #27, 28 and 29, in Attachment 1, Exhibit A; see the Background section of this report for discussion). The applicant agreed to the recommended conditions, and ZAB approved the permit with the added conditions. The Finding and Conditions specify that the traffic study condition must be implemented prior to the issuance of any building permit for construction. The applicant would have to

conduct and submit the traffic study to the Transportation Division for approval before a building permit could be issued.

A detailed traffic study, to be approved by the City prior to issuance of the building permit, is already required by condition of approval #28 in the permit approved by the ZAB.

Issue 3: The appellants request that Council require the developer to directly compensate the adjacent neighbor at 1110 Harrison for impacts to their property as a COA, including impacts to loss of light, privacy in the home and yard; potential damage to the house foundation, walls, and driveway from construction; and disruption of the home office.

Response 3: The ZAB determined that the project is compliant with all applicable, objective general plan and zoning standards. The Berkeley Municipal Code (BMC) does not have objective standards for the loss of light or privacy. Though the BMC does require findings of general non-detriment for approval of discretionary projects, non-detriment findings are not objective standards and cannot provide a basis for denial or reduction of the project. An analysis of shadow and privacy impacts is provided in the staff report and those impacts were determined to be within the range of what is normally expected in an urban environment.

To protect neighboring properties against potential damage and disruption from construction activities associated with the project, standard conditions of approval have been included with the permit:

- #14 Project Liaison – requires liaison contact information posted visibly at the construction site and on the construction plans
- #20 Construction Noise Reduction Program – requires preparation of an assessment and program by a noise consultant and implementation of noise mitigations
- #21 Damage Due to Construction Vibration. – requires a vibration screening analysis and/or vibration impact assessment by a noise consultant and further monitoring if necessary
- #23 Construction Noise Management – Public Notice Required. – requires public notice of initiation of construction activities two weeks prior to commencement
- #45 Construction Hours - Exceptions – requires approval by the Zoning Officer and noticing to neighbors of extensions of allowed construction hours, only for special construction activities.
- #46 Project Construction Website – requires availability of a project website with construction manager contact information; schedule of construction activities;

project conditions of approval, and other reports related to construction noise, air quality, and traffic.

Staff advises that potential damage and disruption from project construction activities are addressed by the conditions of approval included in the permit approved by the ZAB.

Issue 4: The appellants request that Council require the developer to directly compensate the neighbor at 1206 Kains Avenue for the loss of ability to generate solar power as a COA.

Response 4: The ZAB determined that the project is compliant with all applicable, objective general plan and zoning standards. The BMC does not have objective standards for the shading of solar panels. Though the BMC does require findings of general non-detriment for approval of discretionary projects, non-detriment findings are not objective standards and cannot provide a basis for denial or reduction of the project. The analysis of shadow impact from the project is provided in the ZAB staff report.

The City does not have solar access provisions in the BMC, but the State has laws that are protective of the benefits gained from having solar equipment – the California Solar Rights Act and the Solar Shade Control Act.

Though the California Solar Rights Act² does not include provisions to protect solar access, per se, it does recognize the possibility of a “solar easement” to be created. A solar easement is an agreement by which a landowner may grant access to the sunlight that transverses their land to a solar energy system owner on an adjacent parcel. California Civil Code Section 801.5 defines a “solar easement” as the “right of receiving sunlight across real property of another for any solar energy system.” A solar easement must be created for the sole purpose of accessing sunlight to create thermal or electric energy using a solar energy system, as defined by Section 801.5. A person merely seeking to access sunlight could not seek protections under Sections 801 and 801.5.³ The property owner of 1206 Kains Avenue could create a solar easement agreement with the property owner of 1201 San Pablo Avenue, outside City involvement to protect solar access for their solar panels. While State law allows for parties to voluntarily enter into solar easement agreements (where a neighbor may grant an easement to a solar system owner), the City cannot require a solar easement without just compensation.

² The Solar Rights Act comprises the following California codes of law: California Civil Code Sections 714 and 714.1, California Civil Code Section 801-801.5 (solar easements), California Government Code Section 65850.5, California Health and Safety Code Section 17959.1, California Government Code Section 66475.3, and California Government Code Section 66473.1.

³ p 20 of California’s Solar Rights Act, A Review of the Statutes and Relevant Cases, by Energy Policy Initiatives Center, University of San Diego School of Law
<http://ohp.parks.ca.gov/pages/1054/files/Solar%20Rights%20Act-A%20Review%20of%20Statutes%20and%20Relevant%20Cases.pdf>

The Solar Shade Control Act protects solar access from shading by plants and trees. However, it does not preclude private development which may cast shadows on solar panels.⁴

Issue 5: The appellants request that the City implement the Residential Preferential Parking (RPP) program in the neighborhood.

Response 5: The neighborhood where the project site is located is not currently included in the City's RPP program. Transportation Division staff advises that any expansion of the RPP Program beyond its current boundaries requires Council approval to fund the requisite parking enforcement staffing and equipment. While there is currently no established timeline for expanding RPP to West Berkeley, Councilmember Taplin submitted an agenda item on November 9, 2021 referring to the fiscal year 2023 budget process "the funding of increased staffing, new enforcement vehicles, and sign installations necessary for the expansion of the [RPP Program] out of its current boundaries into West Berkeley, in zones to be identified..."

The Council-adopted budget for fiscal years 2023 and 2024 do not indicate any funding allocated for the West Berkeley RPP referral. As a result, there is no schedule for RPP expansion to West Berkeley at this time.

Issue 6: The appellants request that Council require the developer to provide the proposed maximum number of parking of 28 spaces.

Response 6: The project is compliant with BMC parking standards, which require a minimum of four and a maximum of 37 parking spaces for the project. The project would include 17 to 28 parking spaces; the final amount is to be determined at the building permit phase, dependent upon financial feasibility, at the option of the developer. There is no requirement in the BMC or in State law for developers to provide the maximum parking allowed on the site. Staff advises that Council may discuss with the applicant the possibility of providing more parking on site.

Issue 7: The appellants request that the box size for trees to be planted at the east property line be 48-inch box, and not 24-inch box.

Response 7: Condition of approval #12 requires that 24-inch box trees be planted at the east property line for privacy screening. At the ZAB hearing, the project landscape architect advised that "less fully mature" trees are more likely to survive and would be healthier in maturity than larger, more mature trees, if they were planted with the new building. Given the narrow width of the planting strip (five feet), the 24-inch box size was recommended by the landscape architect, with the potential for increase to 36-inch box. The species selected (Sweet Shade – *hymenospermum flavum*) would grow

⁴ Government Code, Sections 25980–25986.

significantly in the first year and reach maximum height of 30 feet in height, in a short amount of time. These trees would provide some privacy screening for immediate neighbors. The largest size suggested by the landscape architect was 36-inch box. Staff advises that increasing to 48-inch box size is not recommended.

ENVIRONMENTAL SUSTAINABILITY

The project approved by the ZAB is in compliance with all applicable State and local environmental requirements, would be located in a transit-rich area, and would be built and operated according to current codes for energy conservation, waste reduction, low toxicity, and other factors.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23.410.040(G), the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to the ZAB.

Action Deadline:

Pursuant to BMC Section 23.410.040(I), if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS

Jordan Klein, Director, Planning & Development Department, (510) 981-7534
Steven Buckley, Land Use Planning Manager, (510) 981-7411
Sharon Gong, Project Planner, (510) 981-7429

Attachments:

1. Draft Resolution
 - Exhibit A: Findings and Conditions
 - Exhibit B: Project Plans, received March 23, 2022
2. Appeal Letter, dated received May 19, 2022
3. April 28, 2022 ZAB Hearing Staff Report
4. Transportation Assessment Memorandum, dated July 2, 2021
5. Index to Administrative Record
6. Administrative Record
7. Public Hearing Notice

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD APPROVAL OF USE PERMIT #ZP2021-0070 TO CONSTRUCT A SIX-STORY, MIXED-USE BUILDING ON A VACANT LOT, WITH 66 UNITS (INCLUDING FIVE VERY LOW-INCOME UNITS), 1,680 SQUARE FEET OF COMMERCIAL SPACE, 2,514 SQUARE FEET OF USABLE OPEN SPACE, AND 17 TO 28 GROUND-LEVEL PARKING SPACES, AND DISMISS THE APPEAL.

WHEREAS, on May 11, 2021, Isaiah Stackhouse of Trachtenberg Architecture (“applicant”), submitted an application for Use Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units (including five Very Low-Income units), 1,680 square feet of commercial space, 2,514 square feet of usable open space, and 17 to 28 ground-level parking spaces (“project”); and

WHEREAS, on September 22, 2021, staff deemed this application complete and determined that the project is categorically exempt from the California Environmental Quality Act (“CEQA”) under Section 15332 of the CEQA Guidelines (“In-Fill Development Projects”); and

WHEREAS, on April 13, 2022, staff mailed and posted a Notice of Public Hearing for the project at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area; and

WHEREAS, on April 28, 2022, the Zoning Adjustments Board (ZAB) conducted a public hearing for the Use Permit. After hearing public comments and holding discussion, the ZAB approved the Use Permit by a vote of 7-0-2-0 (Yes: Duffy, Matthews, Kim, Olson, Sanderson, Gaffney, Tregub; No: None; Abstain: Sheahan, Thompson; Absent: None) and

WHEREAS, on May 5, 2022, staff issued the notice of the ZAB decision; and

WHEREAS, on May 19, 2022, the City Clerk received an appeal filing of the ZAB decision from Yvette Bozzini, resident at 1110 Harrison Street, and Dan Hayes, resident at 1116 Harrison Street. The Clerk set the matter for review by the Council on September 29, 2022; and

WHEREAS, on or before September 15, 2022, staff mailed and posted a Notice of Public Hearing at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area; and

WHEREAS, on September 29, 2022, the Council held a public hearing to consider the ZAB’s decision, and in the opinion of this Council, the facts stated in, or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the City Council hereby adopts the findings made by the ZAB in Exhibit A to affirm the decision of the ZAB to approve Use Permit #ZP2021-0070, adopts the conditions of approval in Exhibit A, adopts the project plans in Exhibit B, and dismisses the appeal.

Exhibits

A: Findings and Conditions

B: Project Plans, received March 23, 2022

ATTACHMENT 1, EXHIBIT A
FINDINGS AND CONDITIONS
 SEPTEMBER 29, 2022

1201-1205 San Pablo Avenue

Use Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units (including five Very Low-Income units), 1,680 square feet of commercial space, 2,514 square feet of usable open space, and 17 to 28 ground-level parking spaces.

PERMITS REQUIRED

- Use Permit under Berkeley Municipal Code (BMC) §23E.64.030.A to construct a mixed-use development with floor area of more than 9,000 square feet;
- Use Permit under BMC §23E.64.030.A to construct new dwelling units;
- Use Permit under BMC §23E.64.050.B, to create new gross floor area of 5,000 square feet or more;
- Administrative Use Permit under BMC §23D.04.020.C to construct rooftop projections, such as mechanical appurtenances or architectural elements, which exceed the maximum average height limit for the district.

CONCESSIONS/ WAIVERS UNDER GOVERNMENT CODE SECTION 65915-65918

- Concession to reduce the Usable Open Space requirement from 2,640 to 2,514 square feet;
- Waiver of BMC §23E.64.070.A to increase maximum FAR to 3.6 where 3.0 is the limit;
- Waiver of BMC §23E.64.070.B to increase maximum average building height to be 68'-3", where 50' is the limit for a mixed-use building; and
- Waiver of BMC §23E.64.070.B to increase maximum number of stories to be 6 stories, where 4 stories is the limit for a mixed-use building.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to §15332 ("In-Fill Development Projects").

The project meets all of the requirements of this exemption, as follows:

- A. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
- B. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
- C. The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
- D. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
- E. The site can be adequately served by all required utilities and public services.

2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows:
 - (a) the site is not located in an environmentally sensitive area, (b) there are no significant cumulative impacts, (c) there are no significant effects due to unusual circumstances, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. DENSITY BONUS FINDINGS

1. Pursuant to Government Code Section 65915, the City Council hereby finds that:
 - A. Under the City's methodology for implementing density bonuses, the "base project" consists of 50 units;
 - B. The project will provide at least 5 Very-Low Income qualifying units in the 50-unit "base project", as more fully set forth in Conditions 62 to 66;
 - C. The project is therefore entitled to a density increase of 32.5% over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element, under the requirements of Government Code Section 65915(b) and (f), plus two concessions or incentives. This equates to a density bonus of 17 units above the Base Project (the project is including 16 out of the 17 allowable units), for a total of 66 units.
2. In accordance with Government Code Section 65915(d) and (k), the City Council hereby grants the following concessions in order to provide for affordable housing costs:
 - A. Reduce the Usable Open Space requirement from 2,640 to 2,514 square feet.
3. In accordance with Government Code Section 65915(d), in order to allow construction of the proposed project with the density permitted under State law, the City Council hereby finds that the approval of the concessions is required to provide for affordable rents, as provided in Government Code Section 65915(d)(1)(A) because 1) approval of the concession would result in identifiable and actual cost reduction; 2) approval of the concession would not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) would not be contrary to State or Federal law.
4. In accordance with Government Code Section 65915(e) the City Council hereby grants the following waivers:
 - A. Waiver of BMC §23E.64.070.A to increase maximum FAR to 3.6 where 3.0 is the limit;
 - B. Waiver of BMC §23E.64.070.B to increase maximum average building height to be 68'-3" where 50' is the limit for a mixed-use building; and
 - C. Waiver of BMC §23E.64.070.B to increase maximum number of stories to be 6 stories where 4 stories is the limit for a mixed-use building.

These waivers are required because State law requires the City to modify development standards as necessary to accommodate these density bonus units, and because the City Council hereby finds that the density bonus units can best be accommodated by granting these waivers.

5. In accordance with Government Code Section 65915(e), in order to allow construction of the proposed project with the density permitted under State law, the City Council hereby finds that

approval of waivers: 1) is required to construct the proposed project at the density permitted under State law; 2) approval of requested waivers would not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) approval of the requested waivers would not be contrary to State or Federal law.

III. FINDINGS FOR APPROVAL

6. The Housing Accountability Act, Government Code Section 65589.5(j) requires that when a proposed housing development project complies with applicable, objective general plan and zoning standards, a local agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that:
- A. The development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density; and
 - B. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density.

Because the Base Project would comply with applicable, objective general plan and zoning standards, §65589.5(j) applies to this project. No significant, quantifiable, direct and unavoidable impacts, based on objective, identified written public health or safety standards, polices, or conditions, have been identified by staff. The project includes construction of 66 dwelling units.

7. As required by Section 23.406.040.E.1 of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the 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 because:
- A. The project is consistent with all applicable C-W District development standards and qualifies for waivers and concessions from the district standards pursuant to State Density Bonus Law, Government Code, Section 65915;
 - B. Shadow impact on adjacent dwellings to the east, south, and west are to be expected, because the subject site is located in the C-W District, which allows heights of up to 50' and four stories for mixed-use buildings. A waiver is granted for additional height beyond the district height limits to accommodate the density bonus units to allow a 68-foot, 3-inch-tall, six-story building. Shadow impacts from the project would be reasonable and not detrimental; and
 - C. The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not 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.

IV. OTHER FINDINGS FOR APPROVAL

8. As required by Section 23E.64.090.B of the BMC, the City Council hereby finds that:
- A. The mixed-use building at this location will be an appropriate utilization of a currently underutilized site that will bring 66 new residential units (including five below-market-rate units) and 1,680 square feet of new commercial space to the district and the neighborhood;
 - B. The project will further the purposes of the district by increasing the neighborhood population with new residents of mixed income who would patronize the local businesses and contribute to the livability and character of an underutilized portion of the San Pablo Avenue commercial corridor;
 - C. The new residents and commercial patrons from the project will increase street-level activity to provide continuity for the ground-level activation near this intersection of San Pablo Avenue and Harrison Street, and would extend the existing ground-level activation near the Tokyo Fish Market (1220 San Pablo) on the west side of San Pablo Avenue to the east side of the avenue;
 - D. The project's corner commercial space and primary building orientation toward San Pablo Avenue, along with a similar configuration at the approved mixed-use building to be constructed across the street at 1200-1214 San Pablo, would serve to engage both the southwest and southeast corners of this intersection, and would contribute to the continuity of ground-level activation in the Gilman node of the West Berkeley Plan area;
 - E. At six stories tall, the proposed project will help realize the development potential in the C-W District along San Pablo Avenue, which allows up to four stories (for mixed use buildings with additional height allowed by density bonus provisions), and will add to the trend of taller, mixed-use development along San Pablo Avenue, north of University Avenue; and
 - F. The project will be an appropriate intensity of use that will not exceed local traffic and parking capacities. The City's parking reform ordinance (effective March, 2021) eliminated the residential parking requirement and established parking maximums for this district. The proposed 17 to 28 parking spaces falls within the minimum and maximum requirements.
9. As required by Section 23E.64.090.C of the BMC, the City Council hereby finds that:
- A. The project includes a commercial space at the northwest corner of the building at the intersection of San Pablo Avenue and Harrison Street. The commercial space has floor-to-ceiling windows all along the ground level, with its longer, entry (west) side oriented toward San Pablo Avenue, to activate both the Harrison Street and San Pablo Avenue sidewalks. Floor-to-ceiling windows along the commercial space, lobby, and bike room line approximately 90 percent of the project's San Pablo elevation with active spaces behind transparent glazing.
 - B. The project's strong orientation toward the San Pablo Avenue streetscape would add to the pedestrian activity and interest on this portion of the Avenue that already draws visitors daily. The project would contribute to the pedestrian activity near existing businesses by bringing new residents to the area, and by helping to draw in local visitors – potentially, those from beyond the immediate neighborhood.
-

V. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

9. Pay Transparency Acknowledgement (BMC Section 13.104.030)

Prior to the issuance of a building permit for any Project subject to this Chapter:

- A. A Responsible Representative of the Permittee shall certify under penalty of perjury that: (1) the Permittee has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (2) the Permittee will be responsible for demonstrating compliance with this Chapter.
- B. The Permittee shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. A Responsible Representative of the Permittee shall certify under penalty of perjury that the Contractor and all Qualifying Subcontractors performing work on the Project will comply with Chapter 13.104 of the Berkeley Municipal Code and with Labor Code sections 226(a) and 2810.5 for each employee who works on the Project.

10. Pay Transparency Attestations Following Project Completion (BMC Section 13.104.040)

Within 10 days of the approved final inspection of any Project subject to this Chapter, each Permittee shall provide to the City for each Contractor and Qualifying Subcontractor a Pay Transparency Attestation on a form approved by the City. On each Pay Transparency Attestation, a Responsible Representative of the Contractor or Qualifying Subcontractor shall attest under penalty of perjury that the Contractor or Qualifying Subcontractor complied with Chapter 13.104 of the Berkeley Municipal Code and Labor Code sections 226(a) and 2810.5 for each employee who performed work on the Project. The City will maintain Pay Transparency Attestation forms for period of at least three years after their date of receipt by the City.

11. Posting of Ordinance (BMC Section 13.104.050)

Each day work is performed on the Project, each Permittee shall post, and keep posted in a conspicuous location where it may be easily read by employees during the hours of the workday, a notice that: (A) contains the text of Chapter 13.104 of the Berkeley Municipal Code; (B) explains that workers can report violations of Labor Code sections 226 and 2810.5 to the Labor Commissioner of the State of California; and (C) provides current contact information, including office address, telephone number, and email address of the Labor Commissioner of the State of California.

12. Conditions of Approval (BMC Section 13.104.060)

The requirements of Sections 13.104.030 through 13.104.050 shall be included as conditions of approval of any Use Permit or Zoning Certificate for any Project that is subject to this Chapter. Failure to comply with the requirements of any provision of this Chapter shall be grounds for issuance of an administrative citation under Chapter 1.28 and/or the revocation or modification of any Use Permit issued for the Project under Chapter 23B.60.

13. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney’s fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney’s fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant’s expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

VI. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23.406.040.E, the City Council attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

14. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual’s name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

Project Liaison _____
Name Phone #

15. Final Design Review. The Project requires approval of a Final Design Review application by the Design Review Committee. Plans presented shall include an alternate design with open railings for the parapet on the eastern edge of the 5th floor.

16. Screening Trees. The Project Proponent shall consult with the project landscape architect for species recommendations for planting in the 5-foot-wide landscape strip on the eastern property line that closely achieves this objective: a row of large screening trees (24”box minimum) that

have an initial height of 10' and full height of 25-30 feet height minimum. The project Landscape Plan shall include the proposed plantings to be reviewed by Land Use Planning staff.

17. Fence at East Property Line. The Project Proponent shall replace/rebuild the retaining wall and fence along the eastern property line to six feet in height.
18. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.
19. Geotechnical Plan Review. The applicant's geotechnical consultant shall review and approve all geotechnical aspects of the project building and grading plans (i.e., site preparation and grading including removal and replacement/treatment of expansive soils, site surface and subsurface drainage improvements including site runoff discharge, and design parameters for foundations and hardscape) to ensure that their recommendations have been properly incorporated and to ensure that the project concept has not changed significantly since preparation of their report. The results of the plan review should be summarized by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of building permits.
20. Construction Noise Reduction Program. The applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
 - A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
 - B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
 - C. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
 - D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
 - E. Prohibit unnecessary idling of internal combustion engines.
 - F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
 - G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
 - H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.

- I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.

21. Damage Due to Construction Vibration. The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall take into account project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as potentially impacted in the screening level analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake an existing conditions study (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage. This study shall establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls; and include written descriptions and photographs.

The study shall be reviewed and approved by the Building and Safety Division and the Zoning Officer prior to issuance of a grading permit. Upon completion of the project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to whether the proposed project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that project construction has resulted in damage to the structure, the damage shall be repaired to the pre-existing condition by the project sponsor, provided that the property owner approves of the repair.

22. Compliance with Conditions and Environmental Mitigations. The building permit application is subject to verification of compliance to the adopted. The applicant shall be responsible for demonstrating compliance with all conditions of approval and mitigation measures per the timeline set forth by this use permit. The applicant shall deposit \$10,000 with the City, or less with the approval of the Zoning Officer, to pay for the cost of monitoring compliance with these Conditions of Approval and other applicable conditions and regulations. Should compliance-monitoring expenses exceed the initial deposit, the applicant shall deposit additional funds to cover such additional expenses upon the request of the Zoning Officer; any unused deposit will be refunded to the applicant.

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

23. Construction Noise Management - Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within **500 feet** of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities during extended work hours and reason for extended hours, (3) daily construction schedule (i.e., time of day) and expected

duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, and (5) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

- 24. Construction Phases.** The applicant shall provide the Zoning Officer with a schedule of major construction phases with start dates and expected duration, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or his/her designee shall have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these conditions. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.
- 25. Construction and Demolition Diversion.** Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.
- 26. Toxics.** The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
- A. Environmental Site Assessments:
- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 2 years old*) shall be submitted to TMD for developments for:
 - All new commercial, industrial and mixed use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at: http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
 - 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
 - 3) If the Phase I is over 2 years old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
- B. Soil and Groundwater Management Plan:
- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.

- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
 - 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.
- C. Building Materials Survey:
- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.
- D. Hazardous Materials Business Plan:
- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

Prior to Issuance of Any Building (Construction) Permit

27. Bike Boulevard. The Project Proponent shall responsible for establishing Kains Avenue, between Harrison Street and Gilman Avenue, as a Class 3 bike boulevard (installing sharrow pavement markings and signage as required), consistent with the bike network improvements stated in the City's Bicycle Plan (May 2017). The Project Proponent shall coordinate with the Public Works Department (Engineering and Transportation Divisions) to obtain necessary approvals.
28. Traffic Study. The Project Proponent shall retain the project traffic consultant to perform an analysis of the remaining eight traffic signal warrants at San Pablo and Harrison Avenues for consideration of a traffic signal for the intersection. The traffic study shall include an analysis of Level of Service (LOS) at this intersection for consideration of a left turn prohibition at the intersection. The traffic study shall be submitted to the Transportation Division for review and approval.
29. Parking Garage Exit. The Project Proponent shall submit plans showing the installation of a "Left Turn Only" sign and left turn pavement markings at the parking garage exit, to facilitate left turns only onto Harrison Street. The Project Proponent shall also consider modifying the driveway to

angle toward the left to facilitate left turns. Sound level specifications for a pedestrian alert system at the garage exit shall be submitted for review and approval by Land Use Planning staff.

30. Geotechnical Construction Inspections. The geotechnical consultant shall inspect, test (as needed), and approve all geotechnical aspects of the project construction. The inspections shall include, but not necessarily be limited to: site preparation and grading, site surface and subsurface drainage improvements, and excavations for foundations and retaining walls prior to the placement of steel and concrete. The results of these inspections and the as-built conditions of the project shall be described by the geotechnical consultant in a letter and submitted to the City Engineer for review prior to final (granting of occupancy) project approval.
31. Parcel Merger. The applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
32. Percent for Public Art. Consistent with BMC §23C.23, the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
33. Affordable Housing Mitigation Fee. Consistent with BMC §22.20.065, and fee resolution applicable to this project, the applicant shall provide a schedule, consistent with a schedule approved by the City Manager or her designee, outlining the timeframe for payment of the AHMF, and they shall pay this fee.
34. HVAC Noise Reduction. Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.
35. Interior Noise Levels. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
36. Solar Photovoltaic (Solar PV). A solar PV system, on the solar zone specified in Section 110.10 of the 2019 Energy Code, shall be installed (subject to the exceptions in Section 110.10) as specified by the Berkeley Energy Code (BMC Chapter 19.36). Location of the solar PV system shall be noted on the construction plans.
37. Electric Vehicle (EV) Charging. At least 20% of the project parking spaces for residential parking shall be "EV Charger Ready": equipped with raceway, wiring, and power to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation, and at least 80% of the project parking spaces for residential parking shall be "EV Spaces Raceway Equipped": equipped with a raceway between an enclosed, inaccessible, or concealed area and an electrical service panel/subpanel as specified by the Berkeley Green Code (BMC Section 19.37.040). Any

Level 2 EV charging systems installed at parking spaces will be counted toward the applicable readiness requirement. Readiness for EV charging and EV charging station installations shall be noted on the construction plans.

38. Water Efficient Landscaping. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELo). MWELo-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET_o) for Berkeley is 41.8.
39. Prohibition of Natural Gas Infrastructure in New Buildings. The project shall comply with the City of Berkeley Prohibition of Natural Gas Infrastructure in New Buildings (BMC Chapter 12.80).
40. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
41. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.
42. Required Parking Spaces for Persons with Disabilities. Per BMC Section 23.322.040.H of the Zoning Ordinance, "If the number of required off-street parking spaces in a non-residential district is reduced as allowed by this chapter, the number of required parking spaces for persons with disabilities shall be calculated as if there had been no reduction in required spaces."

Prior to Demolition or Start of Construction:

43. Construction Meeting. The applicant shall request of the Zoning Officer an on-site meeting with City staff and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review these conditions and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction aware of the conditions of approval.

During Construction:

44. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
45. Construction Hours- Exceptions. It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.

46. Project Construction Website. The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant:
- Contact information (i.e. “hotline” phone number, and email address) for the project construction manager
 - Calendar and schedule of daily/weekly/monthly construction activities
 - The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.
47. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
- A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer’s specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District’s phone number shall also be visible to ensure compliance with applicable regulations.
48. Air Quality - Diesel Particulate Matter Controls during Construction. All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with **one** of the following measures:
- A. The project applicant shall prepare a health risk assessment that demonstrates the project’s on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or
 - B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air

Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.

In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:

- An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
- A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

49. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

50. Low-Carbon Concrete. The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.

51. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:

- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
- Storage of building materials, dumpsters, debris anywhere in the public ROW;
- Provision of exclusive contractor parking on-street; or
- Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the

surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

- 52. Avoid Disturbance of Nesting Birds.** Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.
- 53. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
 - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
 - C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
 - D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
 - E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
- 54. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of

the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

- 55. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.
- 56. Halt Work/Unanticipated Discovery of Tribal Cultural Resources.** In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
- 57. Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
 - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
 - C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff.

When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.

- D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
 - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).
 - H. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
 - I. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - J. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - K. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 58. Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.

59. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
60. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
61. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
62. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
63. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

Prior to Final Inspection or Issuance of Occupancy Permit:

64. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
65. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **March 23, 2022**, except as modified by conditions of approval.
66. Transportation Demand Management. Prior to issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Planning Department staff to confirm that the physical improvements required in Section 23.334.030(C) and 23.322.090 (bike parking) have been installed. The property owner shall also provide documentation that the programmatic measures required in 23.334.030(A) and 23.334.030(B) will be implemented.
- A. Consistent with Section 23.334.030(A), all parking spaces provided for residents be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units, such that potential renters or buyers shall have the option of renting or buying a dwelling unit at a price lower than would be the case if there were a single price for both the dwelling unit and the parking space(s).
- B. Consistent with Section 23.334.030(B), at least one of the following transit benefits shall be offered, at no cost to the resident, for a period of ten years after the issuance of a Certificate of Occupancy. A notice describing these transportation benefits shall be posted in a location or locations visible to all employees.

1. One monthly pass for unlimited local bus transit service for every bedroom in each dwelling unit, up to a maximum of two benefits per dwelling unit.
 2. Subject to the review and approval of the Zoning Officer in consultation with the Transportation Division Manager, a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass.
- C. Consistent with Section 23.334.030(C), publicly-available, real-time transportation information in a common area, such as a lobby or elevator bay, on televisions, computer monitors or other displays readily visible to residents and/or visitors, shall be provided. Transportation information shall include, but is not limited to, transit arrivals and departures for nearby transit routes.
- Property owners may be required to pay administrative fees associated with compliance with this Condition.

BELOW MARKET RATE UNITS

- 67.** Number of Below Market Rate Units. The project shall provide **five (5) Very Low Income**, below market rate rental dwelling units (“BMR Units”), which are required to comply with the State Density Bonus Law (Government Code Section 65915). The BMR Units shall be designated in the Regulatory Agreement and shall be reasonably dispersed throughout the project; be of the same size and contain, on average, the same number of bedrooms as the non-BMR units in the project; and be comparable with the design or use of non-BMR units in terms of appearance, materials and finish quality. The designation of BMR Units shall conform to the addresses assigned to the building by the City.
- 68.** Regulatory Agreement. Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements Government Code Section 65915 and this Use Permit. The Regulatory Agreement may include any terms and affordability standards determined by the City to be necessary to ensure such compliance. The maximum qualifying household income for the BMR Units shall be 50 percent of area median income (AMI), and the maximum housing payment shall be 30 percent of 50 percent of AMI, as set forth in the following paragraphs of this condition. If the BMR units are occupied by very low income tenants receiving a rental subsidy through the Section 8 or Shelter Plus Care programs, the rent received by the project sponsor may exceed the restricted rent to the payment standards allowed under those programs so long as the rent allowed under the payment standards is not greater than the market rents charged for comparable units in the development. The applicant shall submit the Regulatory Agreement to the Housing and Community Services Department (HHCS) via email to affordablehousing@cityofberkeley.info for review and approval.
- 69.** In addition, the following provisions shall apply:
- A. Maximum rent shall be adjusted for the family size appropriate for the unit pursuant to California Health & Safety Code Section 50052.5 (h).
 - B. Rent shall include a reasonable allowance for utilities, as published and updated by the Berkeley Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking and refrigeration fuels. Such allowance shall take into account the cost of an adequate level of service. Utilities do not include telephone service. Rent also includes any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.
 - C. BMR units will be provided for the life of the project under Section 22.20.065.

70. Determination of Area Median Income (AMI).

- The “AMI” (Area Median Income) shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such income standards, AMI shall be based on income standards determined by the California State Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income.
- The applicable AMI for the purpose of determining the allowable rent for each unit (but not for the purpose of determining eligibility for occupancy of an inclusionary unit) shall be determined in accordance with the following table:

Unit Size	AMI Standard
Studio unit	AMI for a one person household
One-bedroom unit	AMI for a two person household
Two-bedroom unit	AMI for a three person household
Three-bedroom unit	AMI for a four person household

71. Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.

At All Times:

72. Transportation Demand Management Compliance. The property owner shall submit to the Planning Department periodic TDM Compliance Reports in accordance with Administrative Regulations, subject to the review and oversight of the Zoning Officer. Property owners may be required to pay administrative fees associated with compliance with this Condition, pursuant to BMC Section 23.334.040(B).

73. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

74. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.

75. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.

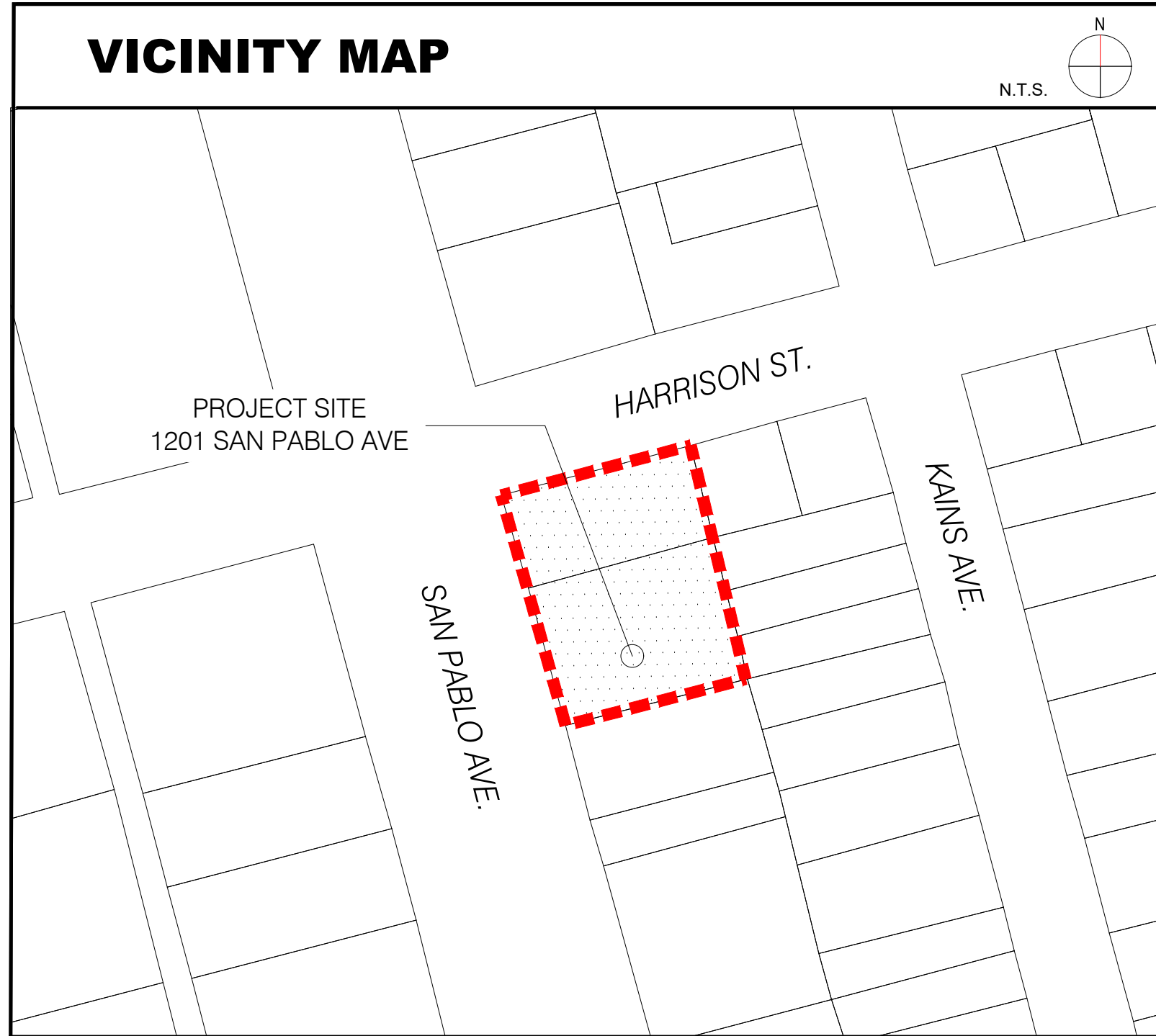
76. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

77. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.

78. Residential Permit Parking. No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The Land Use Planning staff shall notify the Finance Department, Customer

Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to Land Use Planning staff prior to issuance of an occupancy permit or final inspection.

- 79.** Tenant Notification. The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service and entertainment uses, and that each occupant shall not seek to impede their lawful operation.
- 80.** Transit Subsidy Condition. The applicant / operator of the commercial space shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area as per BMC Chapter 9.88.
- 81.** All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
-



PROJECT DIRECTORY

OWNER/APPLICANT:
Lanhai Su
4500 Great America Pkwy
Santa Clara CA, 95054

ARCHITECT:
David Trachtenberg, Principal
TRACHTENBERG ARCHITECTS
2421 Fourth Street
Berkeley, CA 94710
510.649.1414
www.TrachtenbergArch.com

PROJECT DESCRIPTION

PROJECT ADDRESS: 1201 SAN PABLO AVENUE, BERKELEY, CA 94706
APN: 060 240500100, 060 240503101

SCOPE OF WORK:
SB-330 APPLICATION FOR THE CONSTRUCTION OF A NEW 6-STORY MIXED-USE RESIDENTIAL DEVELOPMENT WITH 66 DWELLING UNITS, GROUND LEVEL LOBBIES, COMMERCIAL, AND PARKING, WITH A STATE OF CALIFORNIA DENSITY BONUS.

ZONING CODE SUMMARY
(BASED ON THE BERKELEY MUNICIPAL ZONING CODE)
ZONING: C-W
SEE SHEET A0.1 FOR COMPLETE ZONING DATA

DRAWING LIST

SHEET NO. & TITLE

ARCHITECTURAL

A0.0 GENERAL INFORMATION

A0.1 ZONING INFORMATION

A0.3 DENSITY BONUS DIAGRAMS

A0.4A SHADOW STUDIES

A0.4B SHADOW STUDIES

A0.4C SHADOW STUDIES

A0.4D SHADOW STUDIES

A0.4E SHADOW STUDIES

A0.5 SITE CONTEXT PHOTOS

A1.0 SURVEY

A2.1 SITE PLAN/ PLAN AT GROUND LEVEL

A2.2 PLAN AT LEVELS 2 - 4

A2.3 PLAN AT LEVEL 5

A2.4 PLAN AT LEVEL 6

A2.5 PLAN AT ROOF

A3.1 ELEVATIONS

A3.2 ELEVATIONS

A3.3 ELEVATIONS

A3.4 ELEVATIONS

A3.5 STREET STRIP ELEVATIONS

A3.6 PERSPECTIVE VIEWS

A3.7 PERSPECTIVE VIEWS

A3.8 PERSPECTIVE VIEWS

A3.9 PERSPECTIVE VIEWS

A3.10 PERSPECTIVE VIEWS

A3.11 PERSPECTIVE VIEWS

A3.12 PERSPECTIVE VIEWS

A3.13 PERSPECTIVE VIEWS

A3.14 PHOTO MATCH PERSPECTIVES

A4.1 BUILDING SECTIONS

A4.2 WALL SECTIONS & DETAILS

SW-1 PRELIMINARY STORMWATER MANAGEMENT PLAN

G-1 CONCEPTUAL GRADING PLAN

MAT MATERIAL BOARD

LANDSCAPE

L-1.1 LANDSCAPE PLAN - GROUND LEVEL

L-1.2 LANDSCAPE PLAN - LEVEL 2

L-1.3 LANDSCAPE PLAN - LEVEL 6

L-1.4 LANDSCAPE SECTIONS & PLANT PALETTE

L-1.5 EAST PROPERTY LINE SCREEN

CONCEPTUAL VIEW OF PROJECT LOOKING SOUTH ALONG SAN PABLO



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MIXED-USE**

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SHEET:
**GENERAL
INFORMATION**

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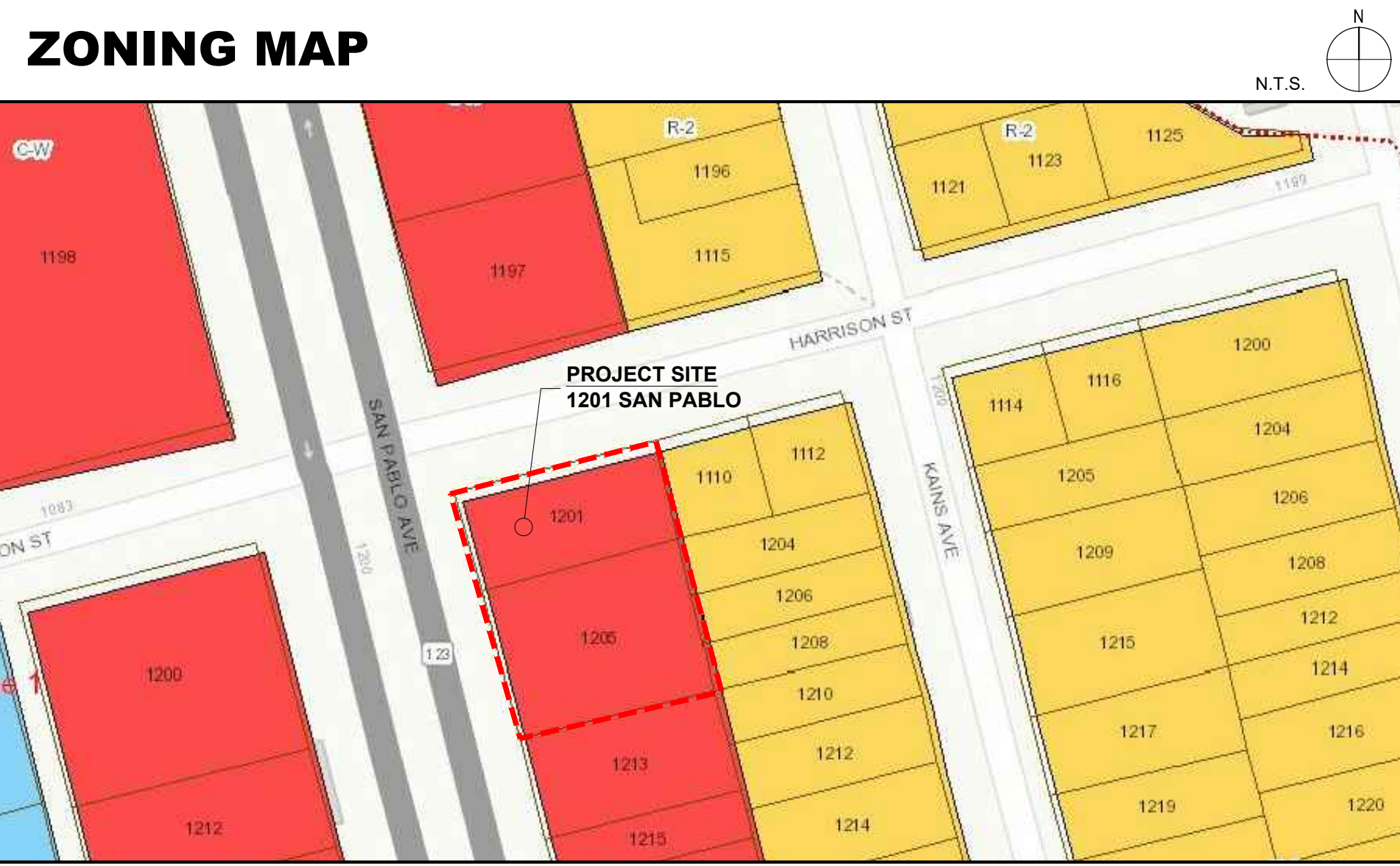
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ZONING DATA

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REFUSE AND RECYCLING

Waste and Recycling Calculation						
# of Bedrooms	Factor	Occupants	Total cuft required (.25cy or 50 gallons / 3)	Waste (40%)	Recycling (40%)	Organics (20%)
72	1.75	126	10.50 cy	2,100 gal	4.20 cuft	840 gal
Space Calculation			Container Quantities		Space Required	
			Space Required		150% Additional	
	Waste	Recycling	Organics	Factor/container	Space/Container	Required
2 cy bin (404 gal)	2	2		28 sf	112 sf	
96 gallon cart	1	1	5	7 sf	49 sf	
64 gallon cart				6 sf		
Total capacity	904 gal	904 gal	480 gal		161 sf	242 sf
						375



ZONING CODE DATA

CITY OF BERKELEY ZONING TABULATIONS

	PROPOSED	PERMITTED/REQUIRED	ALLOWABLE W/ 32.5% DENSITY BONUS
NUMBER OF DWELLING UNITS	66	N/A	N/A
COMMERCIAL AREA	1,680	N/A	N/A
PARKING	SEE TABLE	SEE TABLE	SEE TABLE
BIKE PARKING	68	28	N/A
FRONT YARD SETBACK (HARRISON)	0'	0'	N/A
STREET SIDE YARD SETBACK (SAN PABLO)	VARIABLES; 5' TO 14'-0"	VARIABLES; 0' TO 5'-0"	N/A
SIDE YARD SETBACK	VARIABLES; 5' TO 47'-0"	VARIABLES; 0' TO 5'-0"	N/A
REAR YARD SETBACK	VARIABLES; 0' TO 10'-0"	0'	N/A
BUILDING HEIGHT	68'-3" **	50'	70' **
BUILDING STORIES	6	4	6
LOT AREA	13,000	13,000	13,000
LOT AREA (ACRES)	0.30	0.30	0.30
GROSS FLOOR AREA (SEE TABLE)	46,996	N/A	51,740
BUILDING FOOTPRINT	12,056	13,000	N/A
LOT COVERAGE	93%	100%	N/A
USABLE OPEN SPACE (SEE TABLE)	SEE TABLE	SEE TABLE	SEE TABLE
PROJECT FAR	3.60 **	3.0	3.98 **

** Via Density Bonus Waiver

FAR CALCULATIONS

	BASE PROJECT ALLOWABLE	ALLOWABLE W/ 35% DENSITY BONUS	PROPOSED W/ DENSITY BONUS
SITE AREA	13,000	13,000	13,000
FAR	3.00	4.05	3.62
FLOOR AREA	39,000	52,650	46,996

PROPOSED FLOOR AREA WITH DENSITY BONUS

	COMMERCIAL	RESIDENTIAL	MECH.	TOTAL
LEVEL 6		6,303		6,303
LEVEL 5		7,526		7,526
LEVEL 4		9,244		9,244
LEVEL 3		9,244		9,244
LEVEL 2		9,244		9,244
GROUND LEVEL (EXCLUDES PARKING)	1,680	2,906	849	5,435
TOTAL FLOOR AREA W/ DENSITY BONUS	1,680	44,467		46,996
FAR (FLOOR AREA RATIO)				3.62
PARKING				6,583
TOTAL WITH PARKING				53,579

UNIT COUNTS

UNIT TYPE	STUDIO	1-BED	2-BED	TOTAL
LEVEL 6	2	5	2	9
LEVEL 5	5	5	2	12
LEVEL 4	5	8	2	15
LEVEL 3	5	8	2	15
LEVEL 2	5	8	2	15
GROUND LEVEL				
TOTAL	22	34	10	66
PERCENT OF TOTAL	33%	52%	15%	
TOTAL BEDROOM COUNT	22	34	20	76

OPEN SPACE TABLE

	UNITS	RATIO	TOTAL	LANDSCAPE AREA
TOTAL UNITS	66	40	2,640	
TOTAL REQUIRED			2,640	
TOTAL CONCESSION REQUESTED			126	
TOTAL AREA PROVIDED			2,514	1,346
PODIUM LEVEL GARDEN			1,640	902
PODIUM LEVEL PATIOS			120	115
LEVEL 6 ROOF DECK			754	329

BICYCLE PARKING CALCULATIONS

	UNITS/SF	SPACES PER BEDROOM/SF	TOTAL REQ	PROVIDED
NEW COMMERCIAL	1,680	1/2000	2	2
RESIDENTIAL (LONG TERM)	76	0.33	26	64
RESIDENTIAL (SHORT TERM)	76	0.025	2	6
TOTAL PARKING			28	66

PARKING TABLE

	UNITS/SF	MIN.	MAX (.5/UNIT)	PROPOSED
RESIDENTIAL	66	0	33	UP TO 13-24"
COMMERCIAL	1680	2/1000 SF	N/A	4

* ON A VOLUNTARY BASIS, THE PROJECT PROPOSES TO PROVIDE UP TO 17 STANDARD NON-LIFT SPACES OR UP TO 28-SPACES IN DOUBLE-LIFTS.

ROOFTOP ARCHITECTURAL ELEMENTS CALCS

AVERAGE AREA	8936
TOTAL AREA OF ROOFTOP ELEMENTS	392
% AREA OF ROOFTOP ARCH. FEATURES	4.4%
ALLOWABLE % (PER 23E.04.020C)	15.0%

DENSITY BONUS TABLE

Base Project	Base	Base # Units	% VLI units	# VLI Units	# VLI Units	Bonus %	# DB Units	# DB Units	Maximum DB Project
sq. ft. - see calc. below	base project area / avg. unit size	Units/Max. Residential Density (rounded up)	VLI = Very Low Income <50% AMI	% VLI x Base # Units			% Bonus x Base # Units	% Bonus x Base # Units (rounded up)	% Bonus x Base # Units (rounded up)
32,865	49.46	50	10%	5.00	5.00	32.5%	16,2500	17	67

Base Project Res. Area	Floor	Proposed Project Res. Area	%VLI	%DB
	Sixth	6,303	5%	20.00%
	Fifth	7,526	6%	22.50%
10,190	Fourth	9,244	7%	25.00%
10,190	Third	9,244	8%	27.50%
10,190	Second	9,244	9%	30.00%
2,295	Ground	2,295	10%	32.50%
32,865		43,856	11%	35.00%

Base Project # of Units	Floor	Proposed Project # of Units
	Sixth	9
	Fifth	12
16	Fourth	15
17	Third	15
17	Second	15
	Ground	
Total		66

BASE PROJECT ZONING COMPLIANCE CHECKS

Base Project - FAR

	Res. Area	Commercial	Total GFA
GFA	32,865	1720	34,585
Site Area			13,000
FAR			2.660

Base Project - Open Space

	Units	Ratio	Total Area
Base Units	50	40	2000
Total Provided Open Space			2447
Podium Open Space			1692
Roof Deck			755

Base Project - Parking

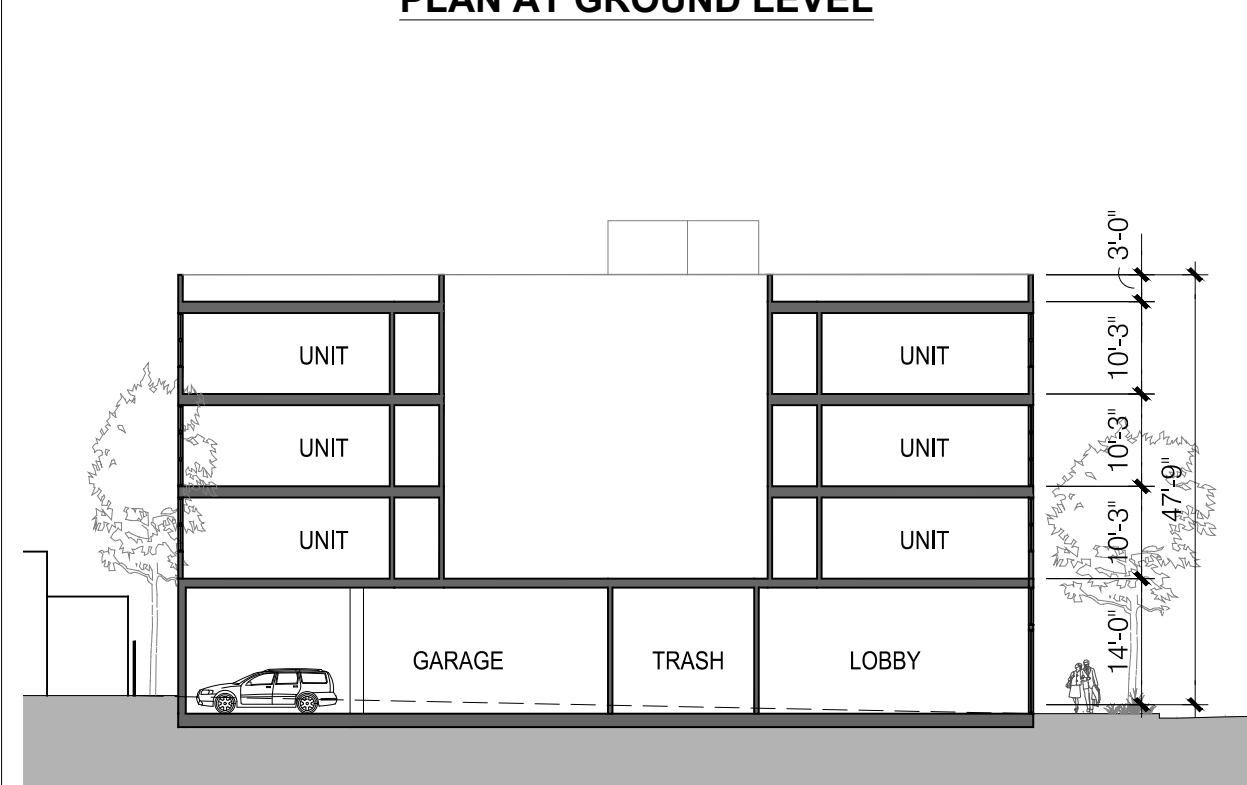
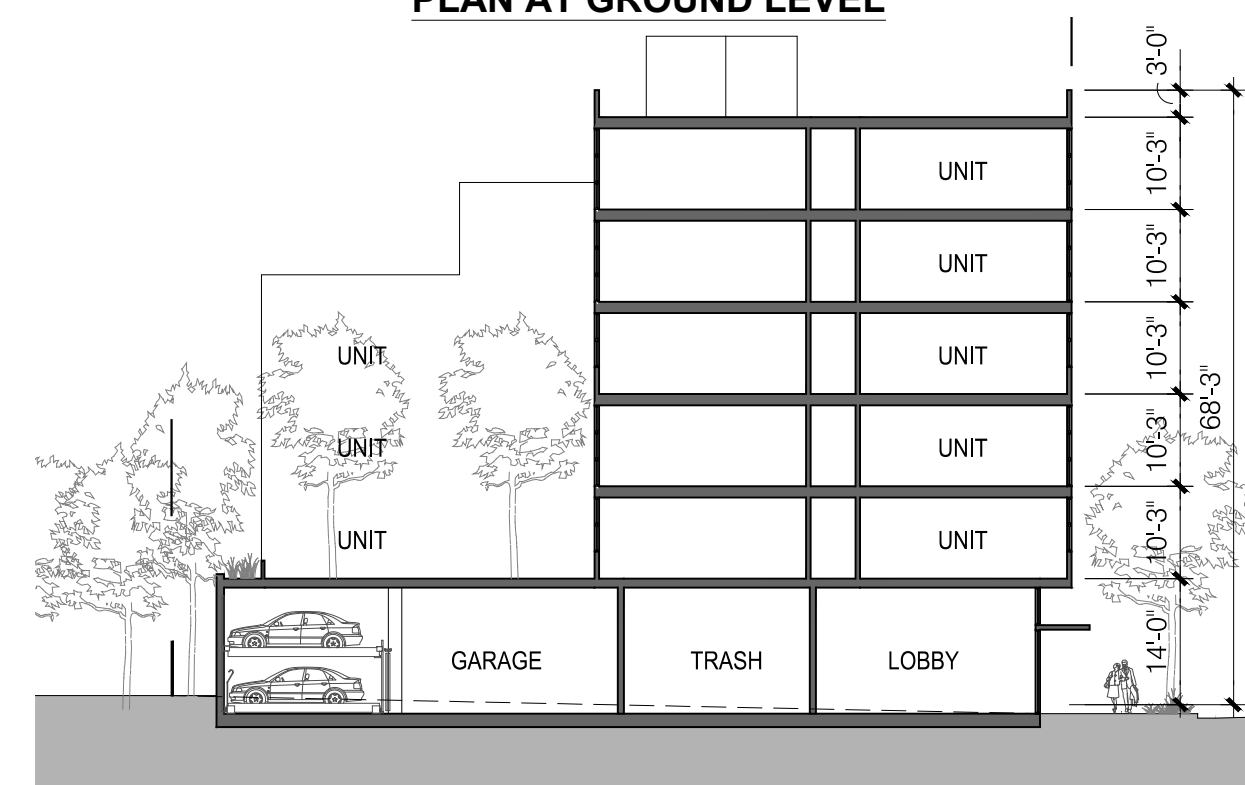
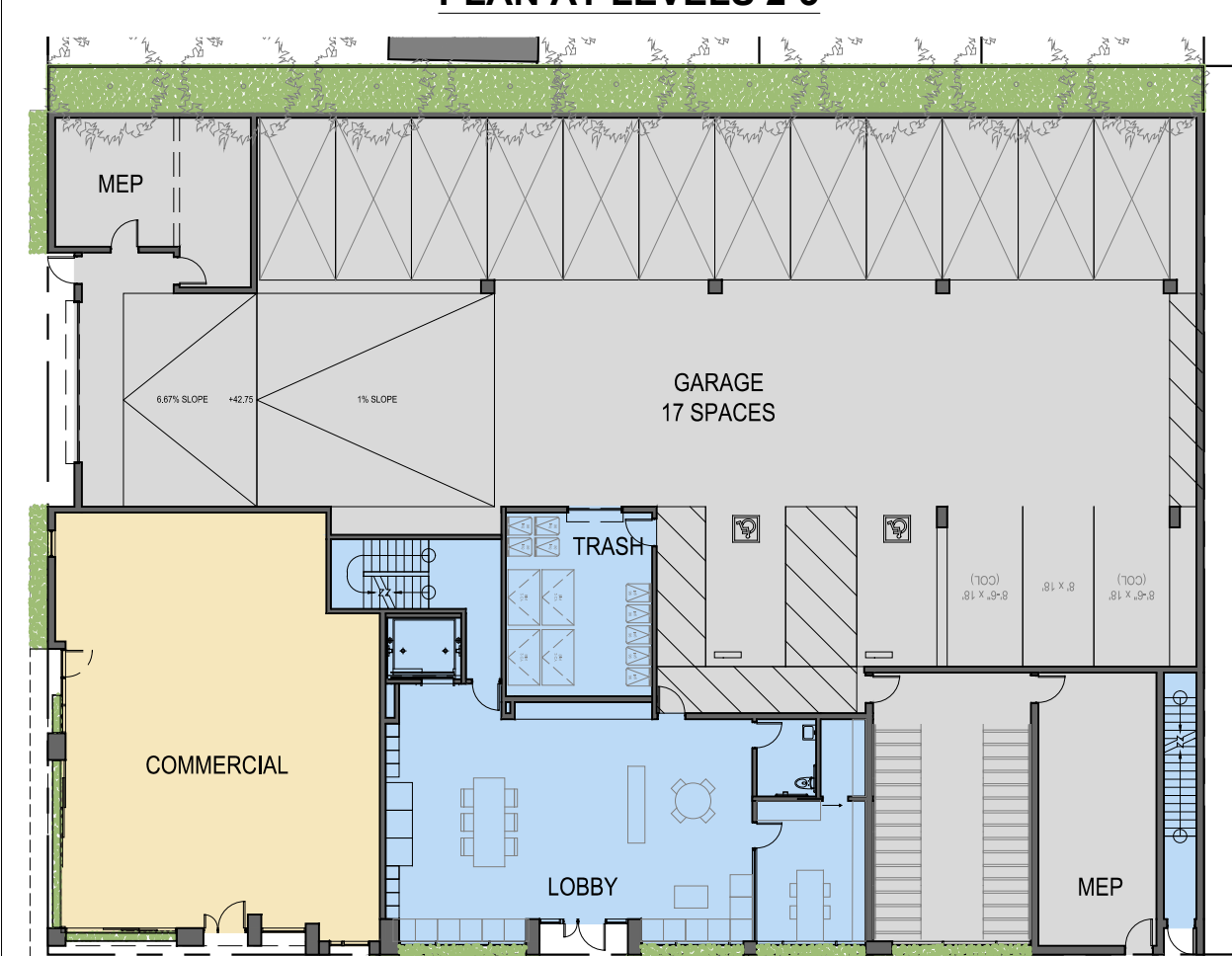
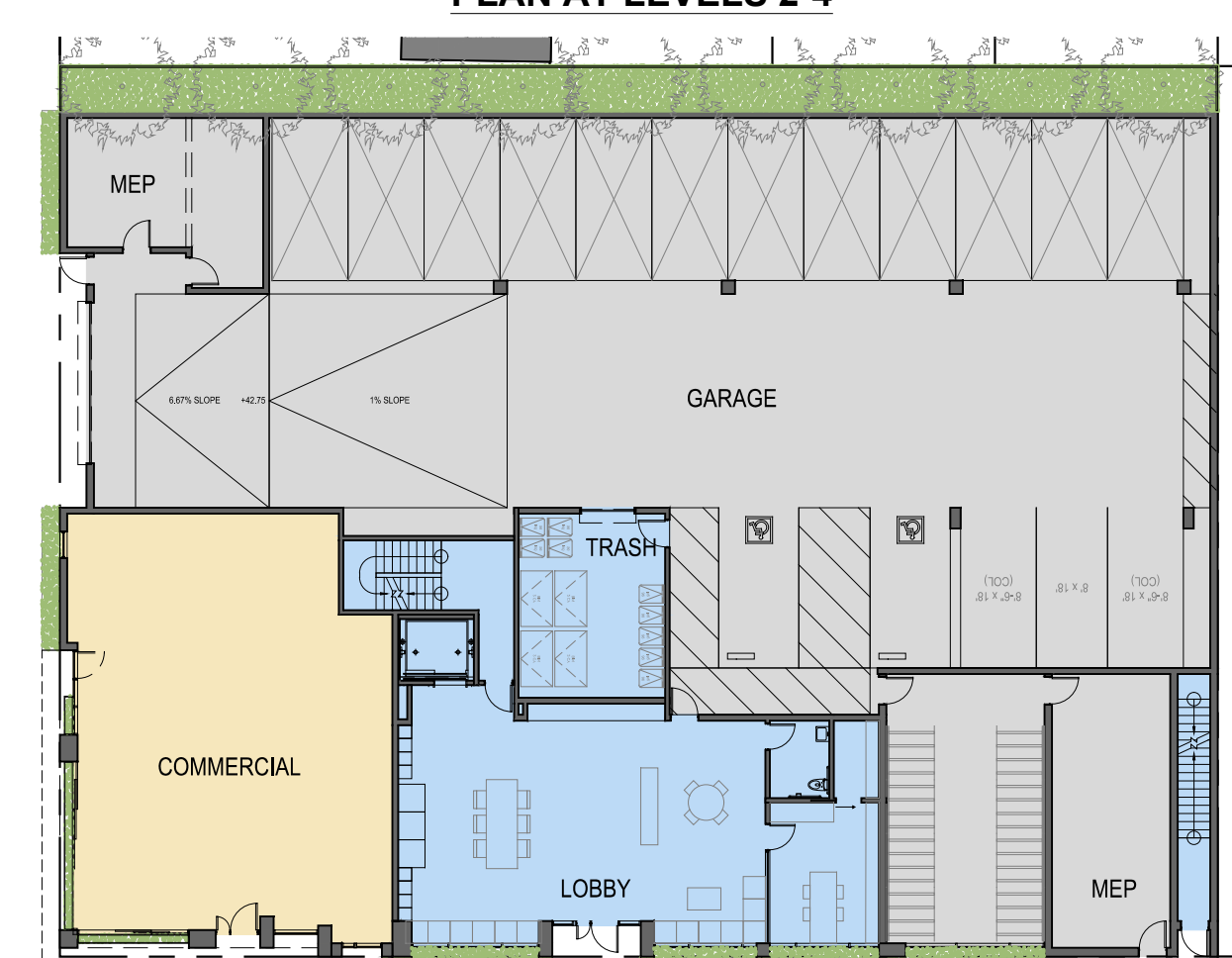
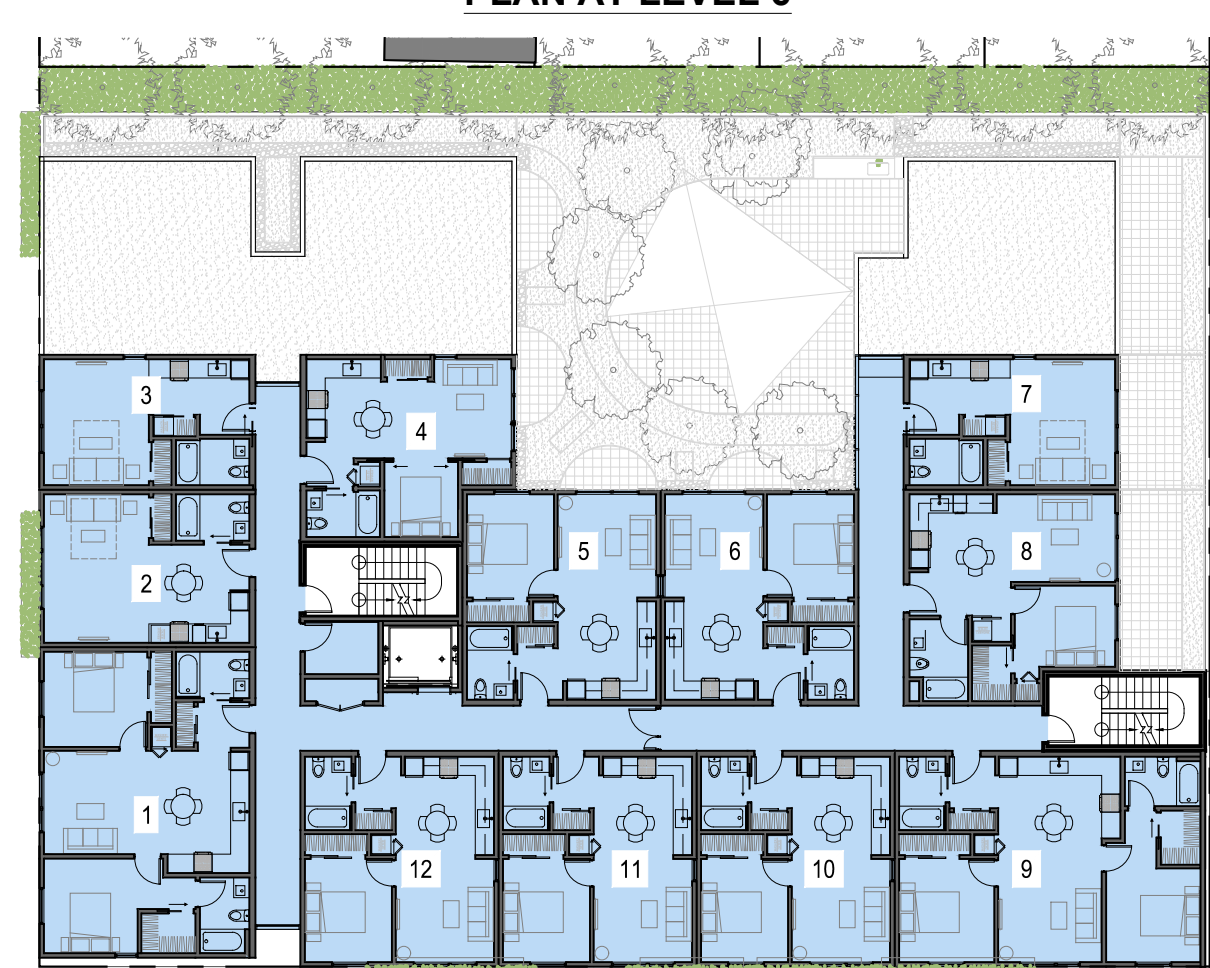
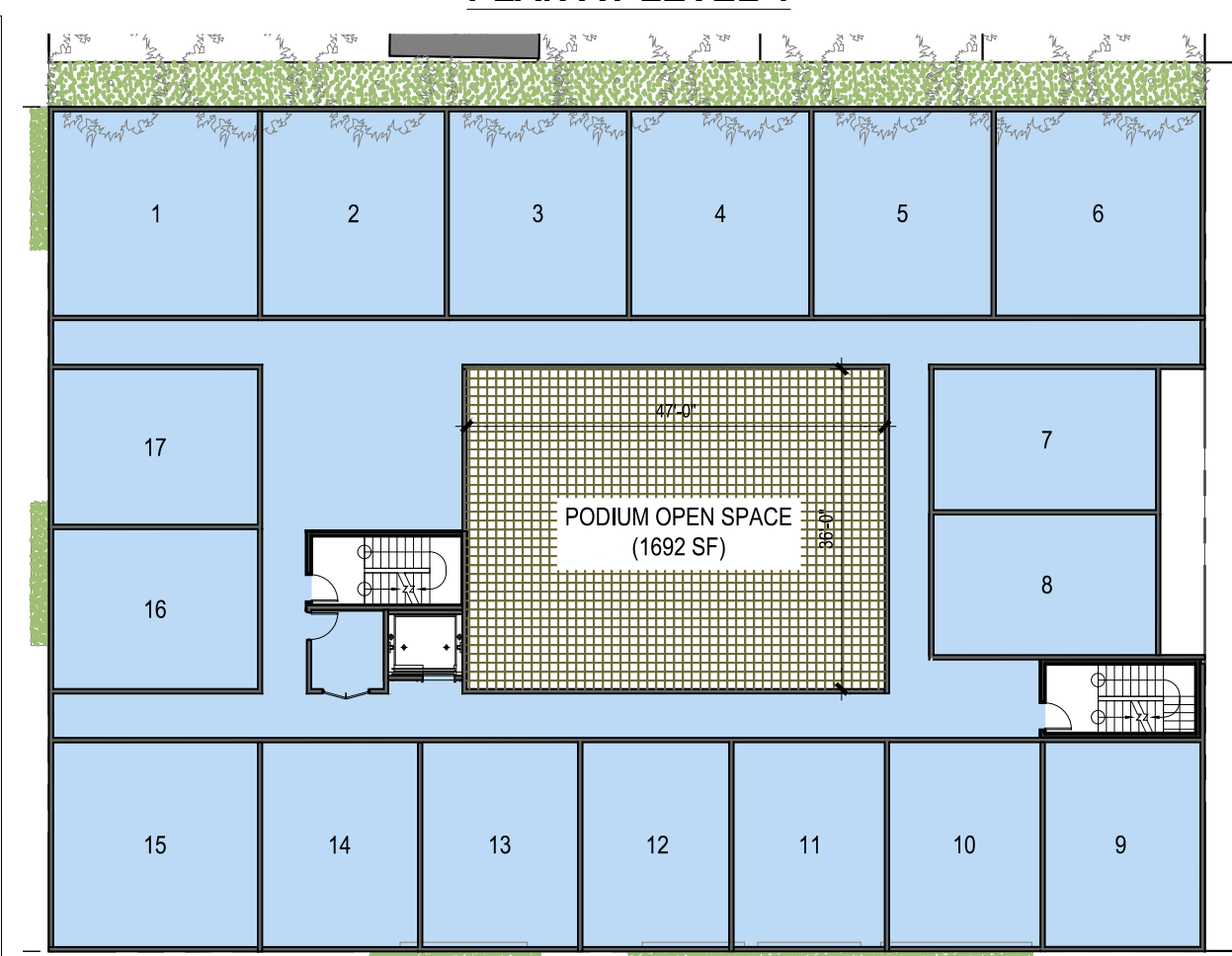
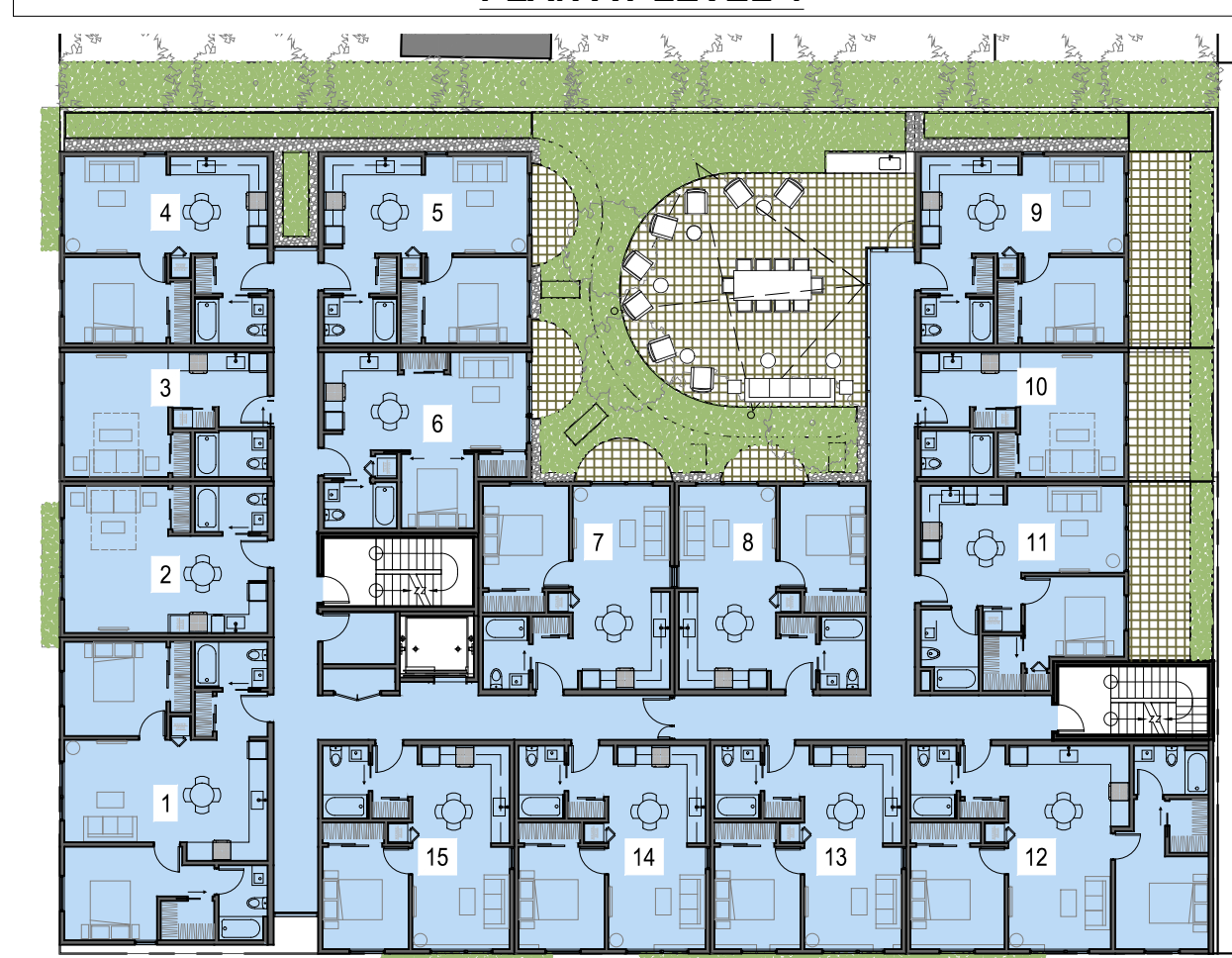
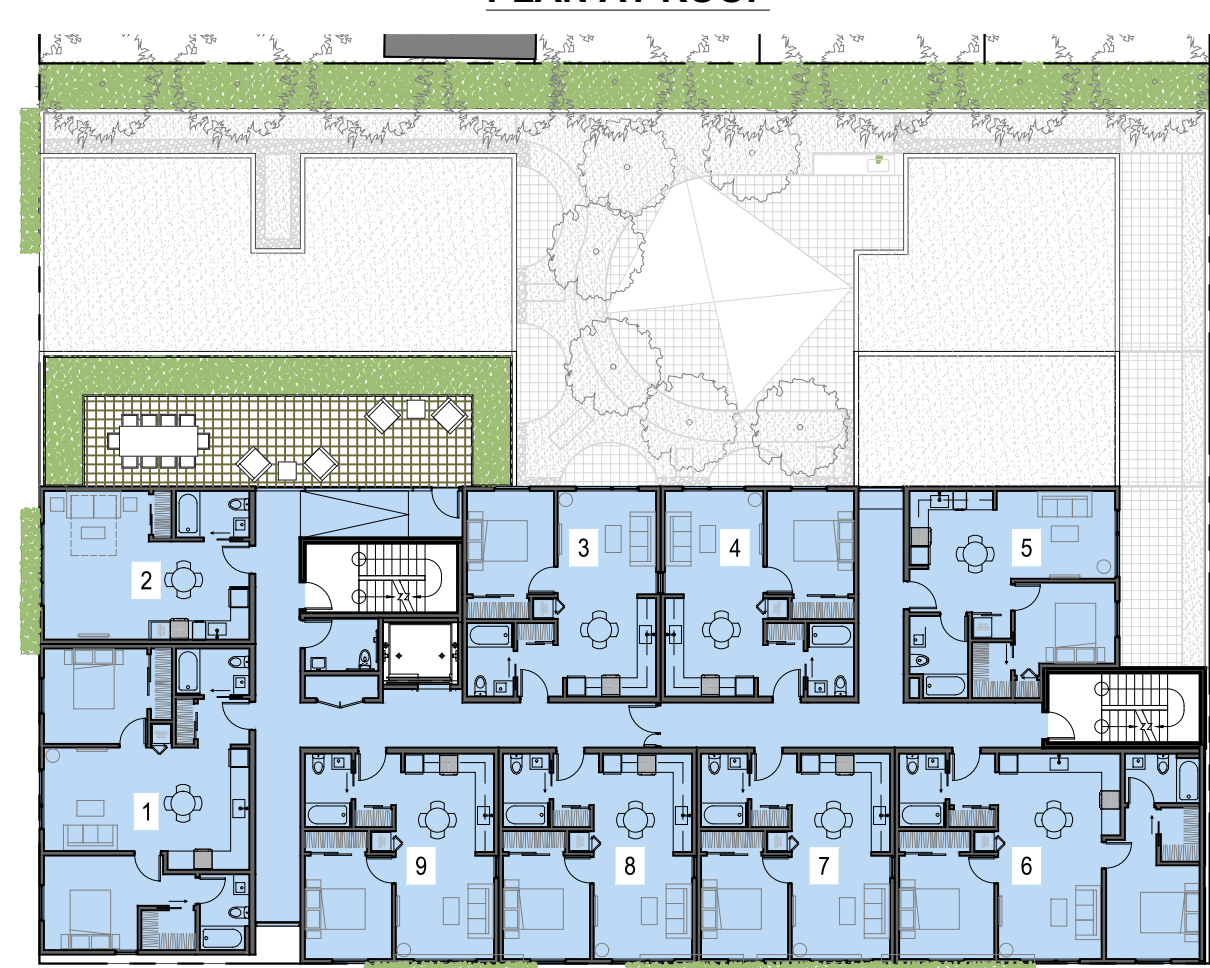
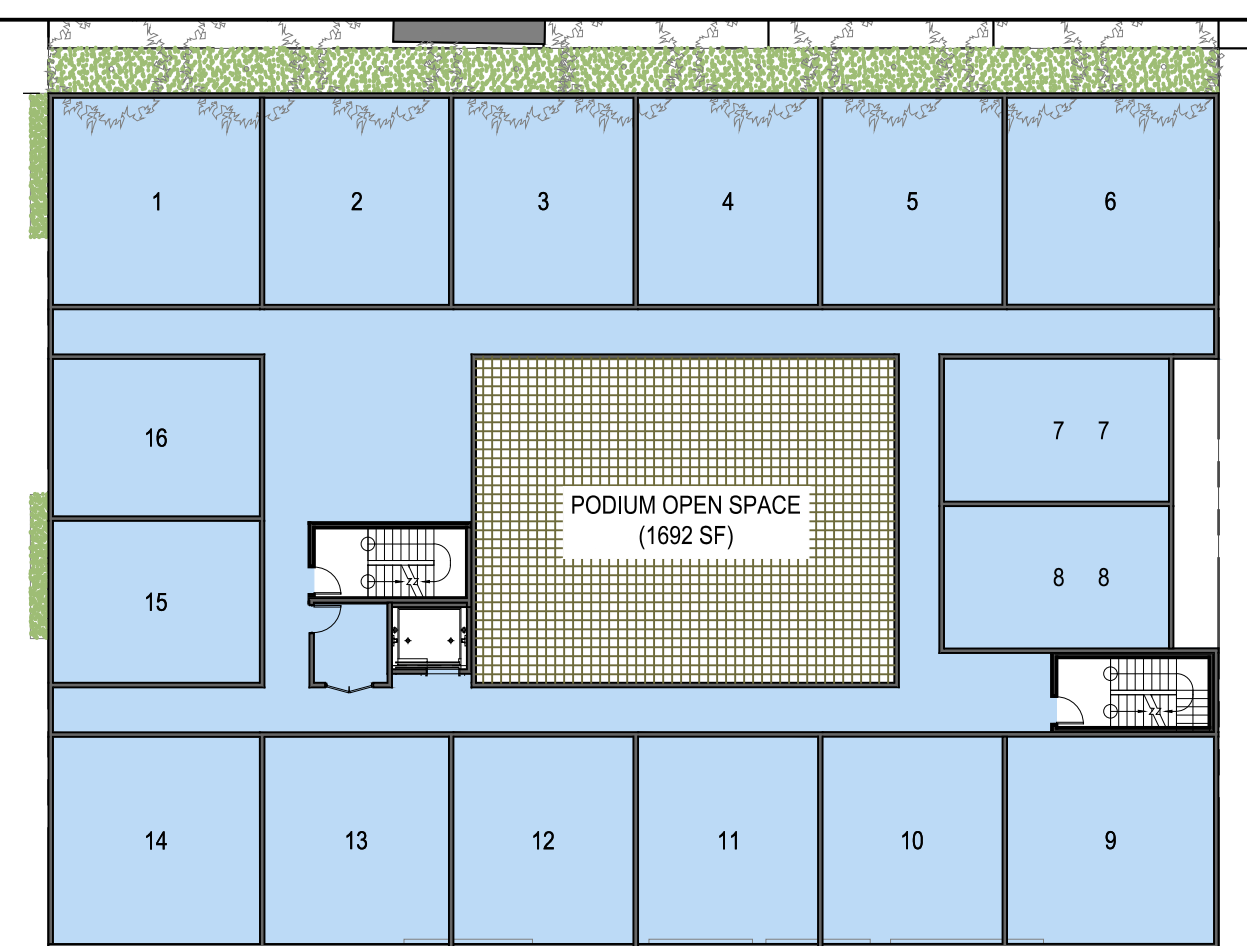
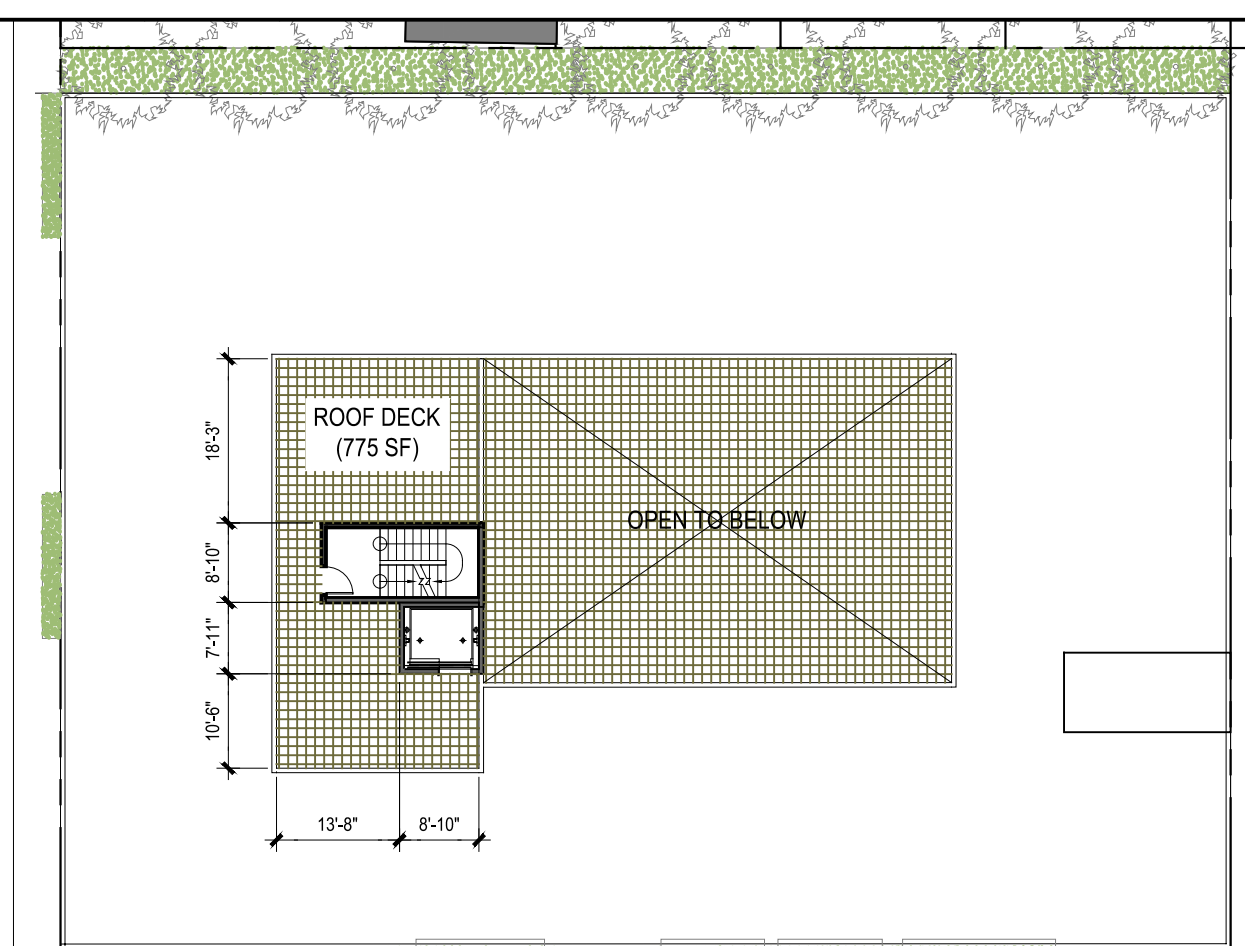
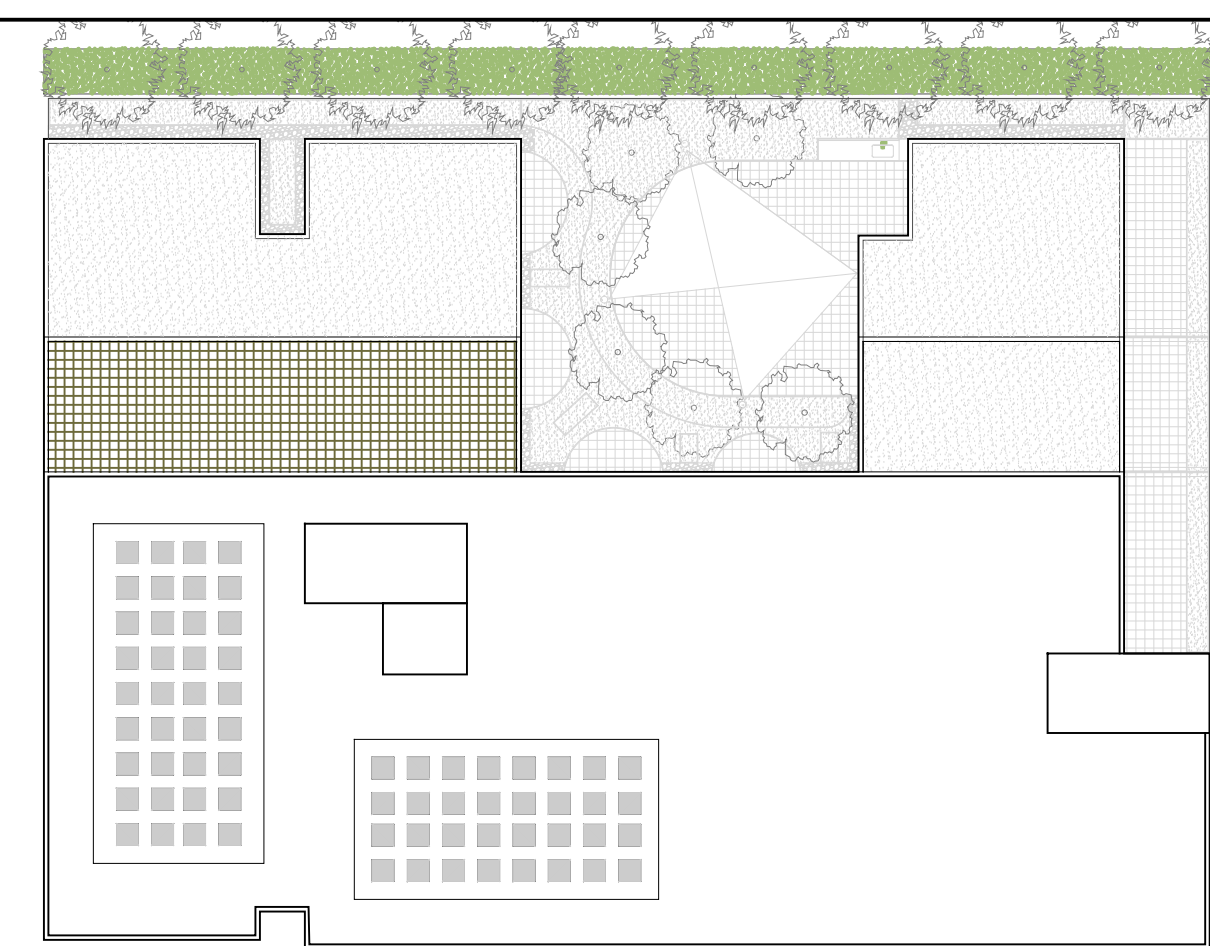
	Units/SF	Bedrooms	Ratio	Total Req.	Provided
Residential				0	13
Commercial	1,680	N/A	2/1000 SF	4	4

Base Project -Bicycle Parking

	Units/SF	Bedrooms	Ratio	Total Req.	Provided
New Comm.	1,680		1/2000	2	2
Res. (Long)		58	0.33	19	64
Res (Short)		58	0.025	1	6

Base Project - Stormwater

	Roof Area	%	Required	Provided
Base Units	13361	4%	534	534



PROPOSED DENSITY BONUS PROJECT
SCALE: 3/64" = 1'-0" @ 24 X 36

BASE PROJECT
SCALE: 3/64" = 1'-0" @ 24 X 36

TRACHTENBERG ARCHITECTS

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DENSITY BONUS DIAGRAMS

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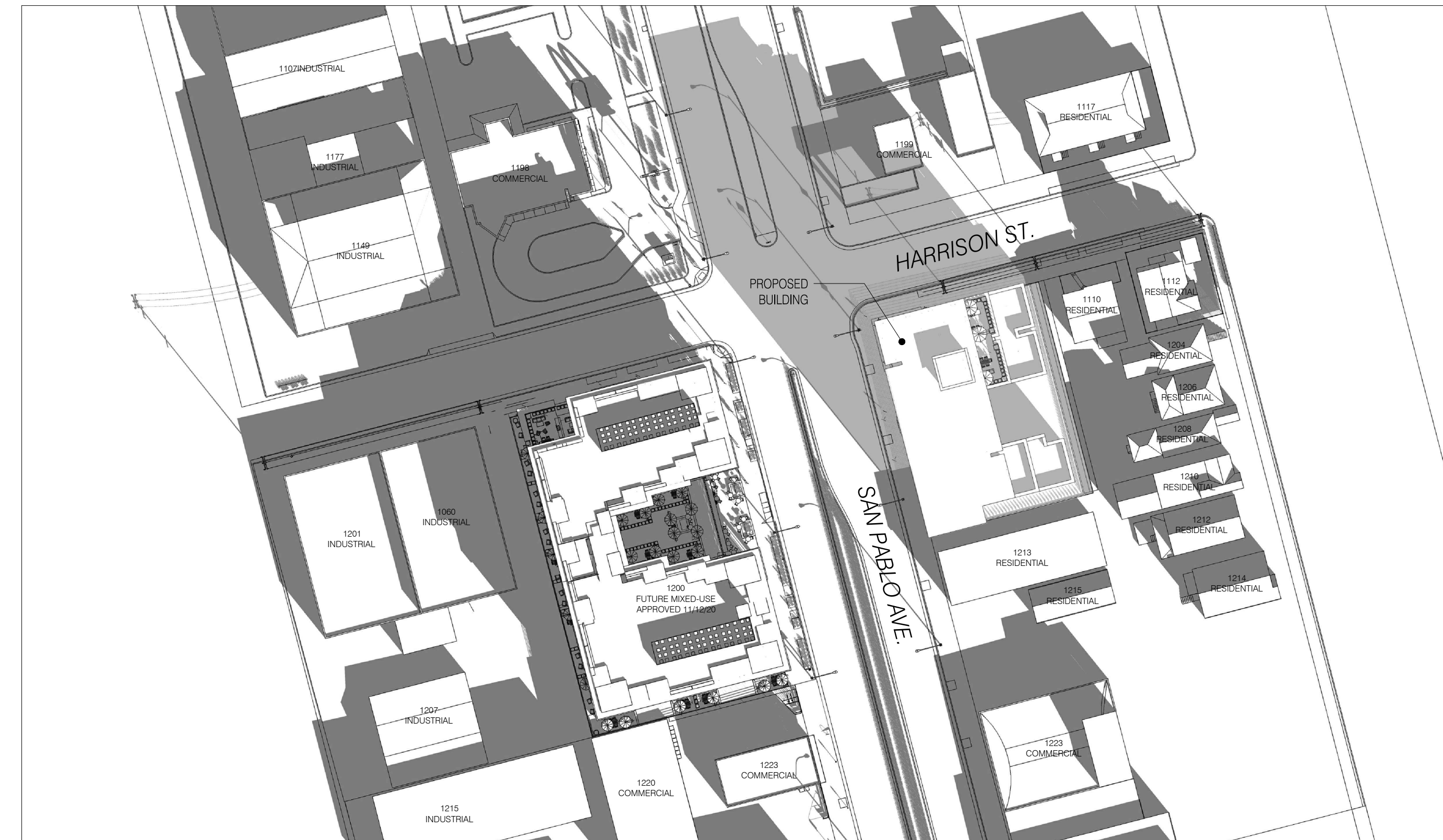
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SHADOW STUDIES
DECEMBER 21ST

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4 SHADOW STUDY AXONOMETRIC - DEC 21: 2-HRS AFTER SUNRISE
NTS



2 SHADOW STUDY - DECEMBER 21: 2 HRS AFTER SUNRISE
1:100 @ 11X17 1:50 @ 24X36



3 SHADOW STUDY - DECEMBER 21: NOON
1:100 @ 11X17 1:50 @ 24X36



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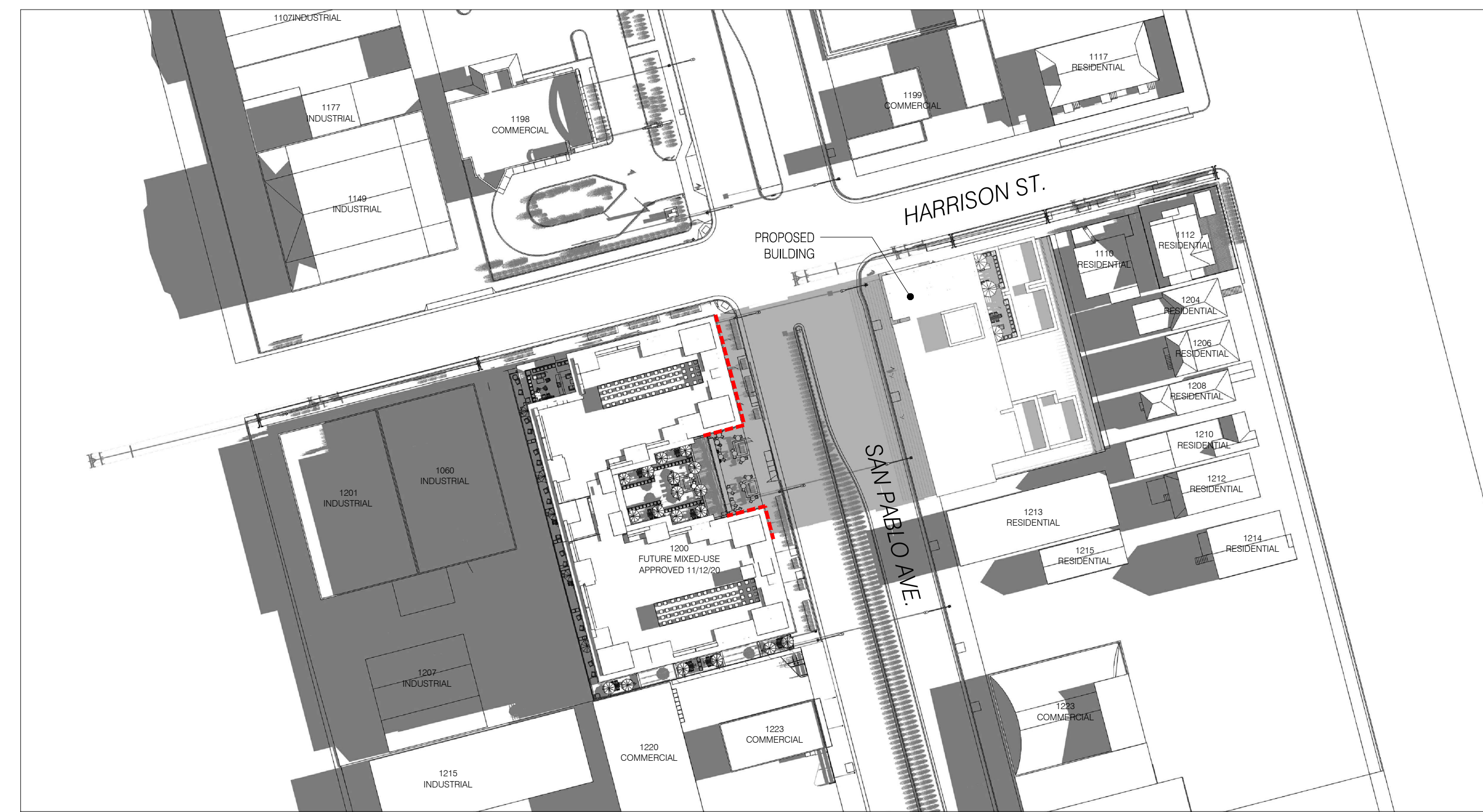
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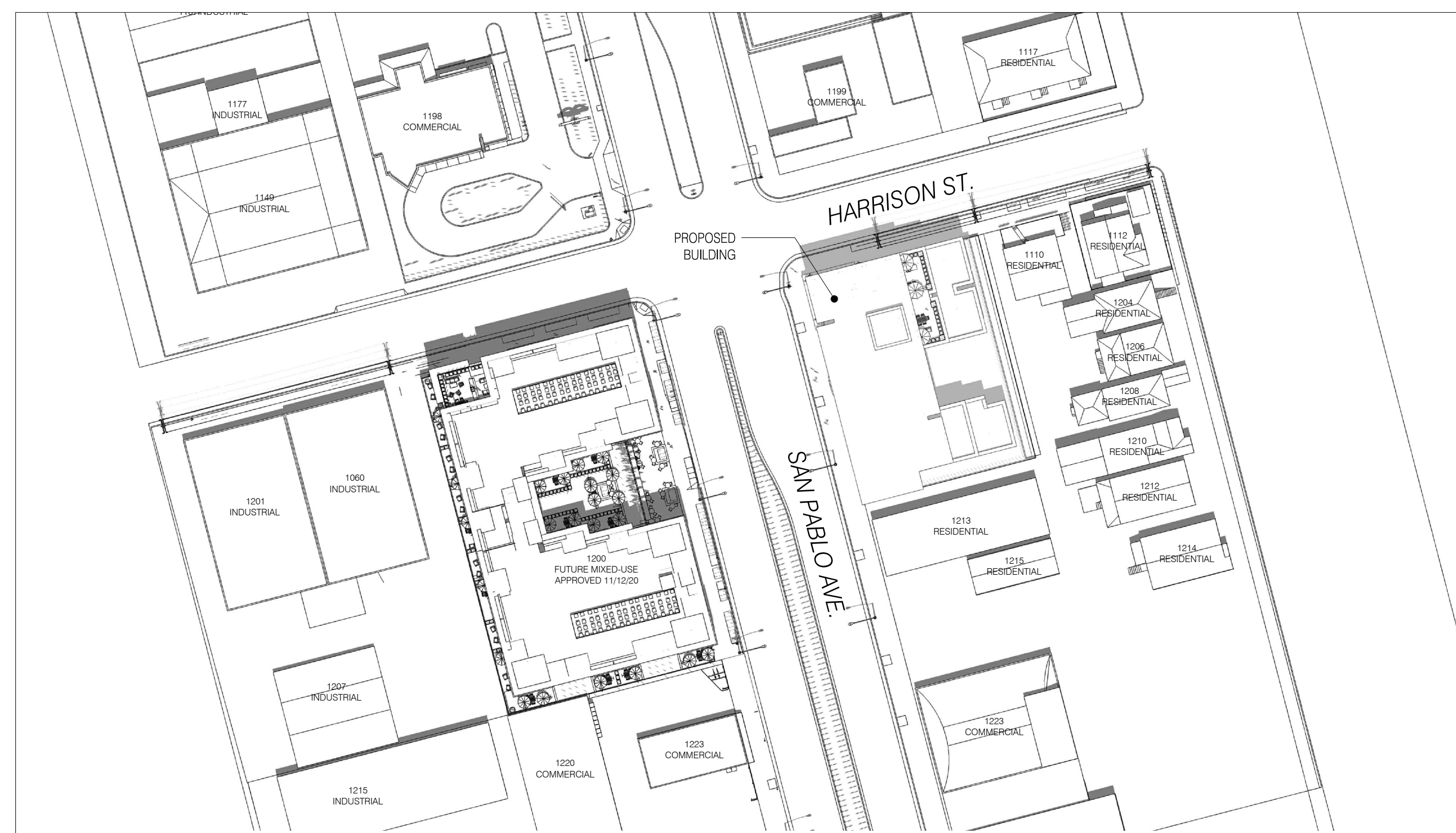
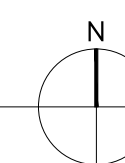
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SHADOW STUDIES
JUNE 21ST

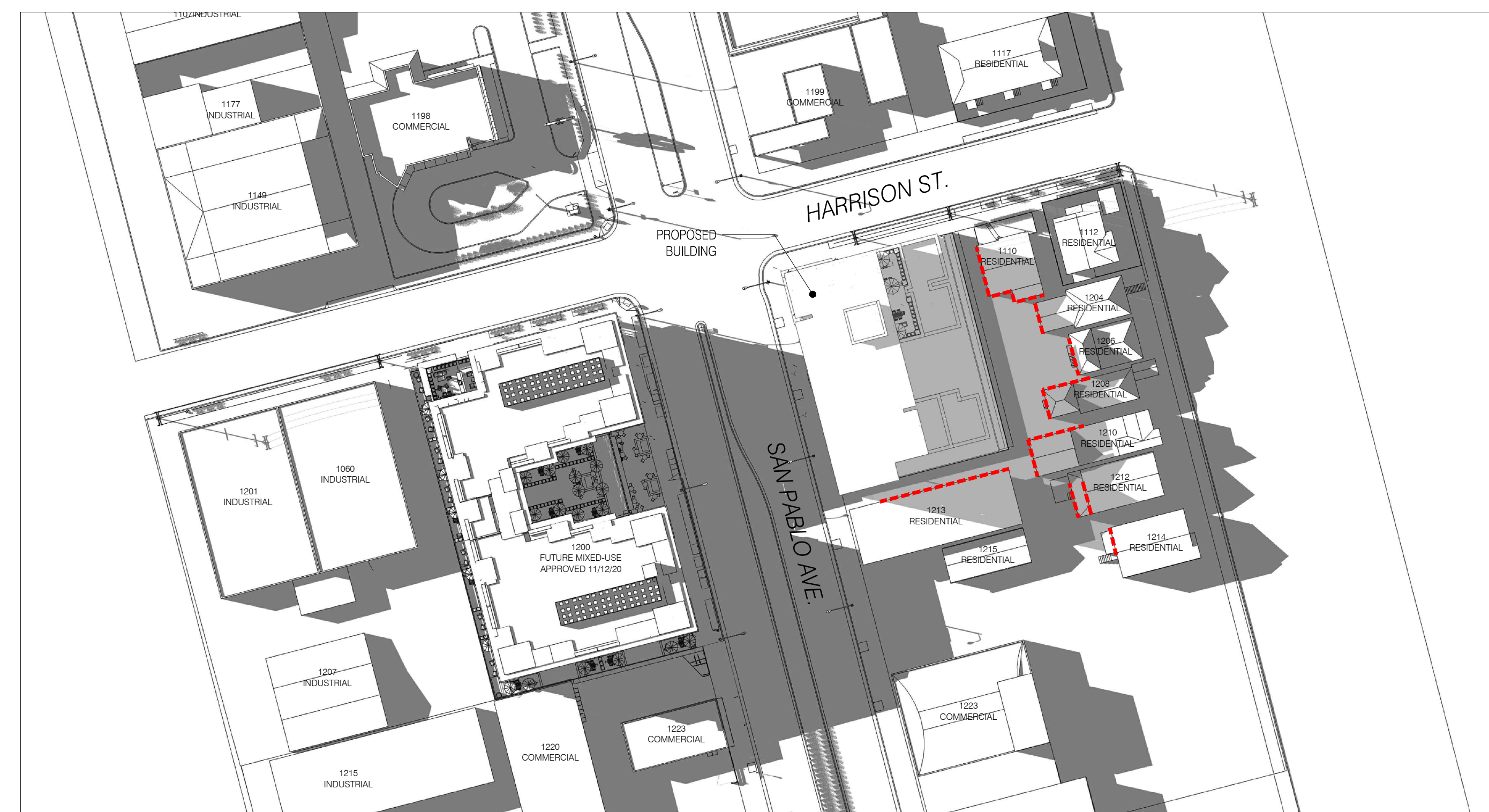
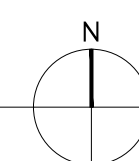
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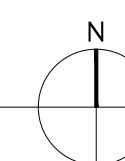
2 SHADOW STUDY - JUNE 21: 2 HRS AFTER SUNRISE
1:100 @ 11X17 1:50 @ 24X36



3 SHADOW STUDY - JUNE 21: NOON
1:100 @ 11X17 1:50 @ 24X36



1 SHADOW STUDY - JUNE 21: 2-HRS BEFORE SUNSET
1:100 @ 11X17 1:50 @ 24X36



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2 SHADOW STUDY AXONOMETRIC - JUN 21: 2-HRS BEFORE SUNSET
NTS



3 SHADOW STUDY AXONOMETRIC - JUNE 21: 2 HRS AFTER SUNRISE
1:100 @ 11X17 1:50 @ 24X36



1 SHADOW STUDY AXONOMETRIC - JUN 21: 2-HRS BEFORE SUNSET
NTS

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JOB: 1928

SHEET:

SHADOW STUDIES
JUNE 21ST

A0.4C

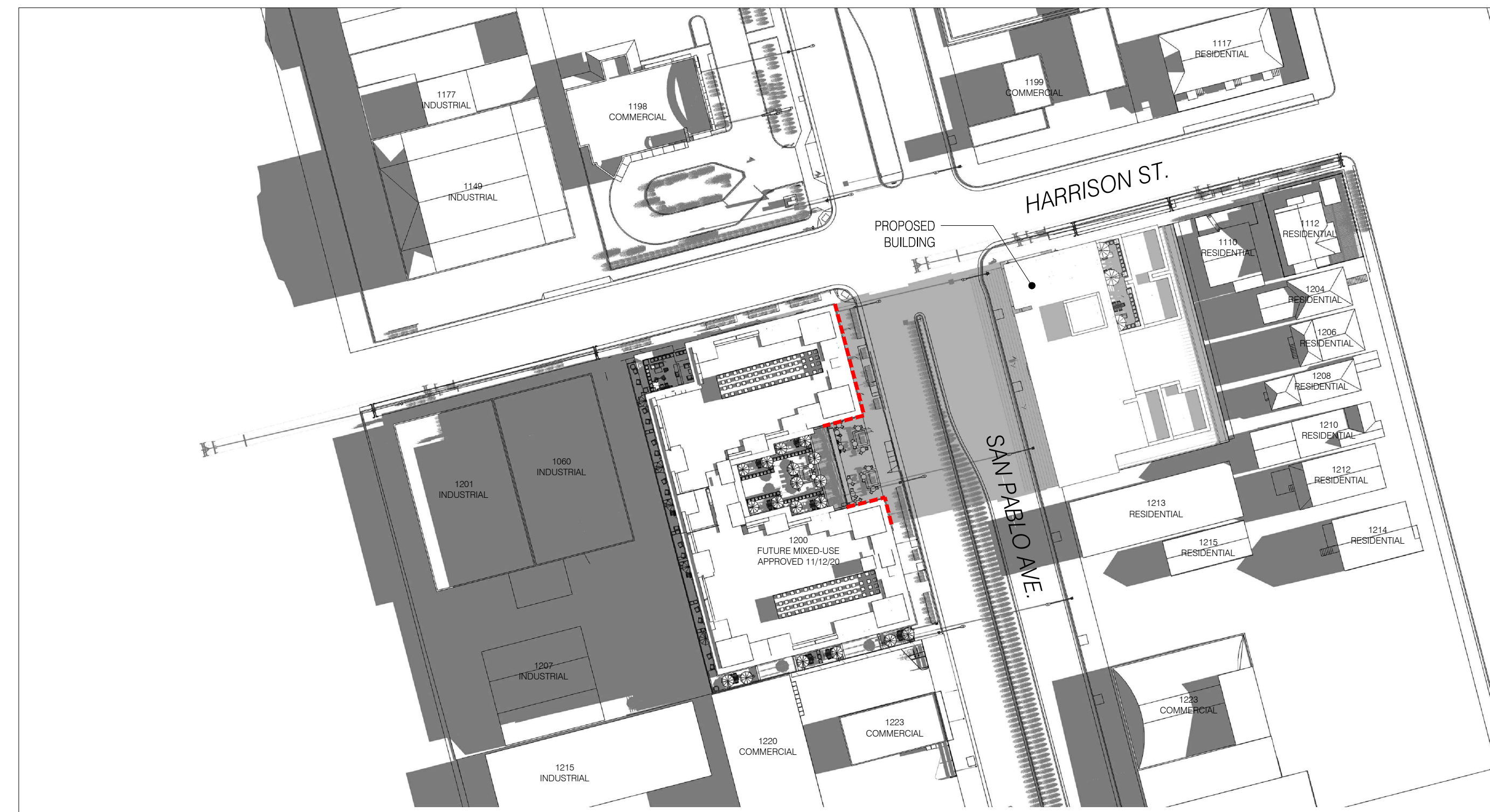
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2 SHADOW STUDY - JULY 2: 2 HRS AFTER SUNRISE
1:100 @ 11X17 1:50 @ 24X36

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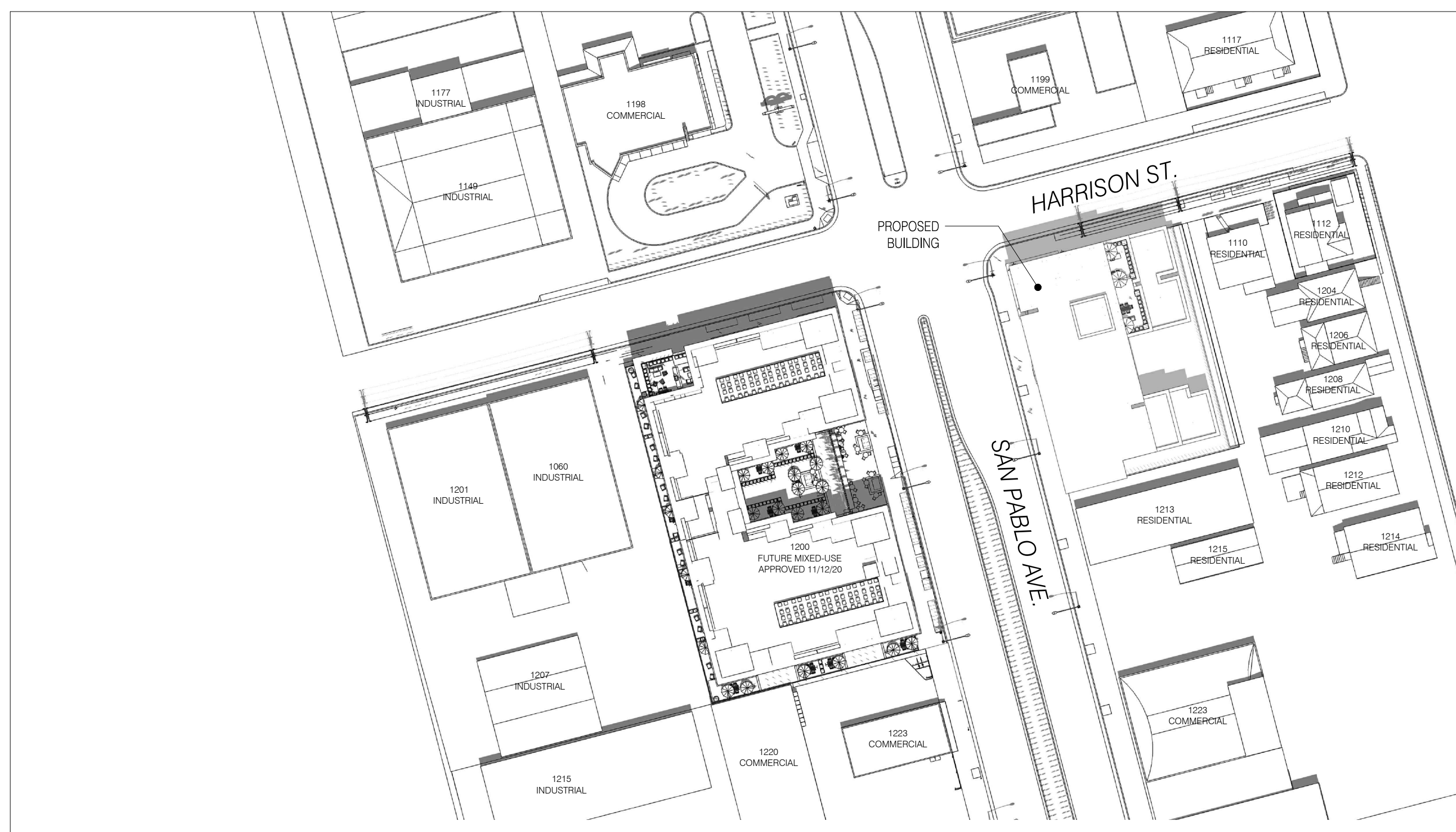
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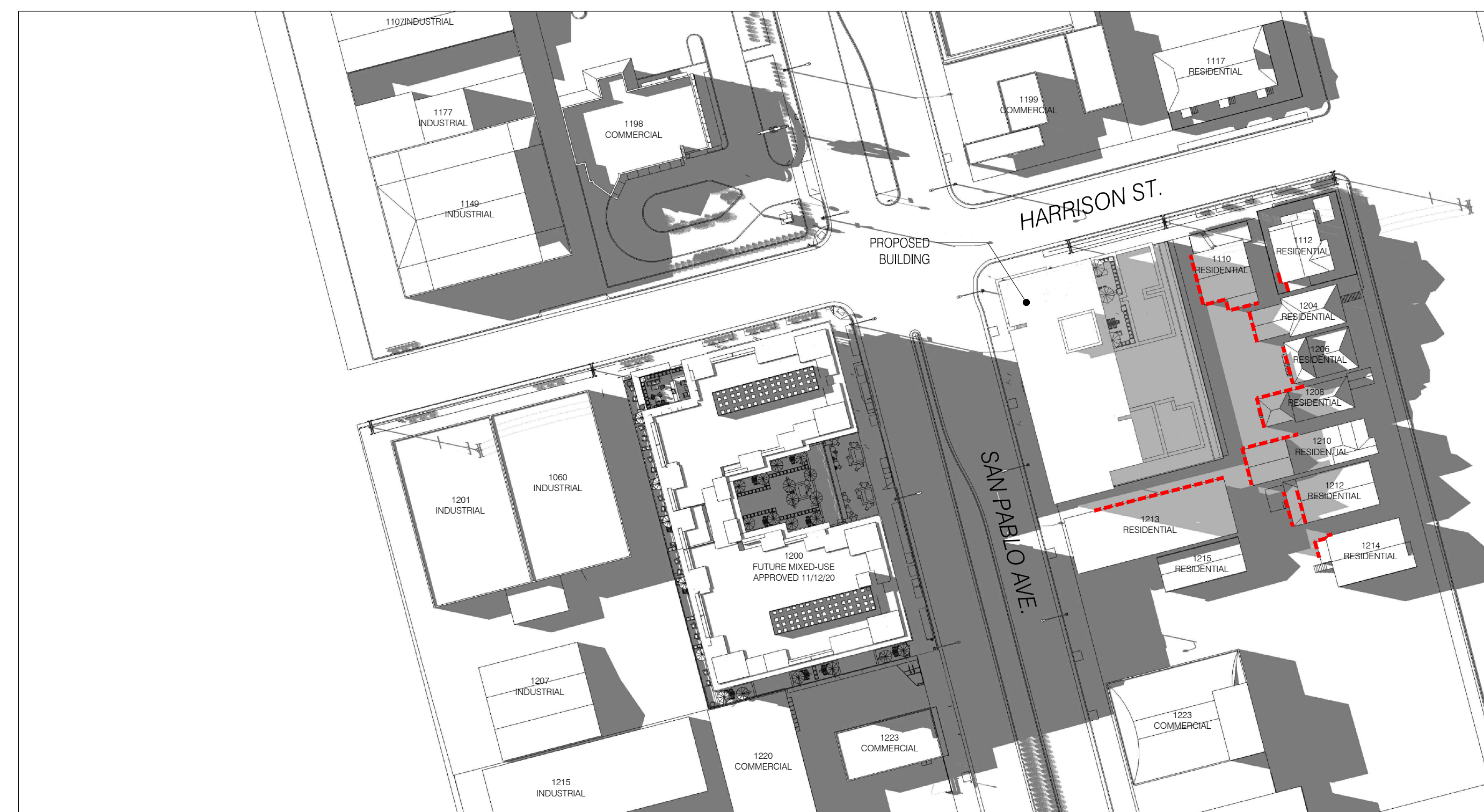
SHEET:

SHADOW STUDIES
JULY 2ND

A0.4D



3 SHADOW STUDY - JULY 2: NOON
1:100 @ 11X17 1:50 @ 24X36



1 SHADOW STUDY - JULY 2: 2-HRS BEFORE SUNSET
1:100 @ 11X17 1:50 @ 24X36

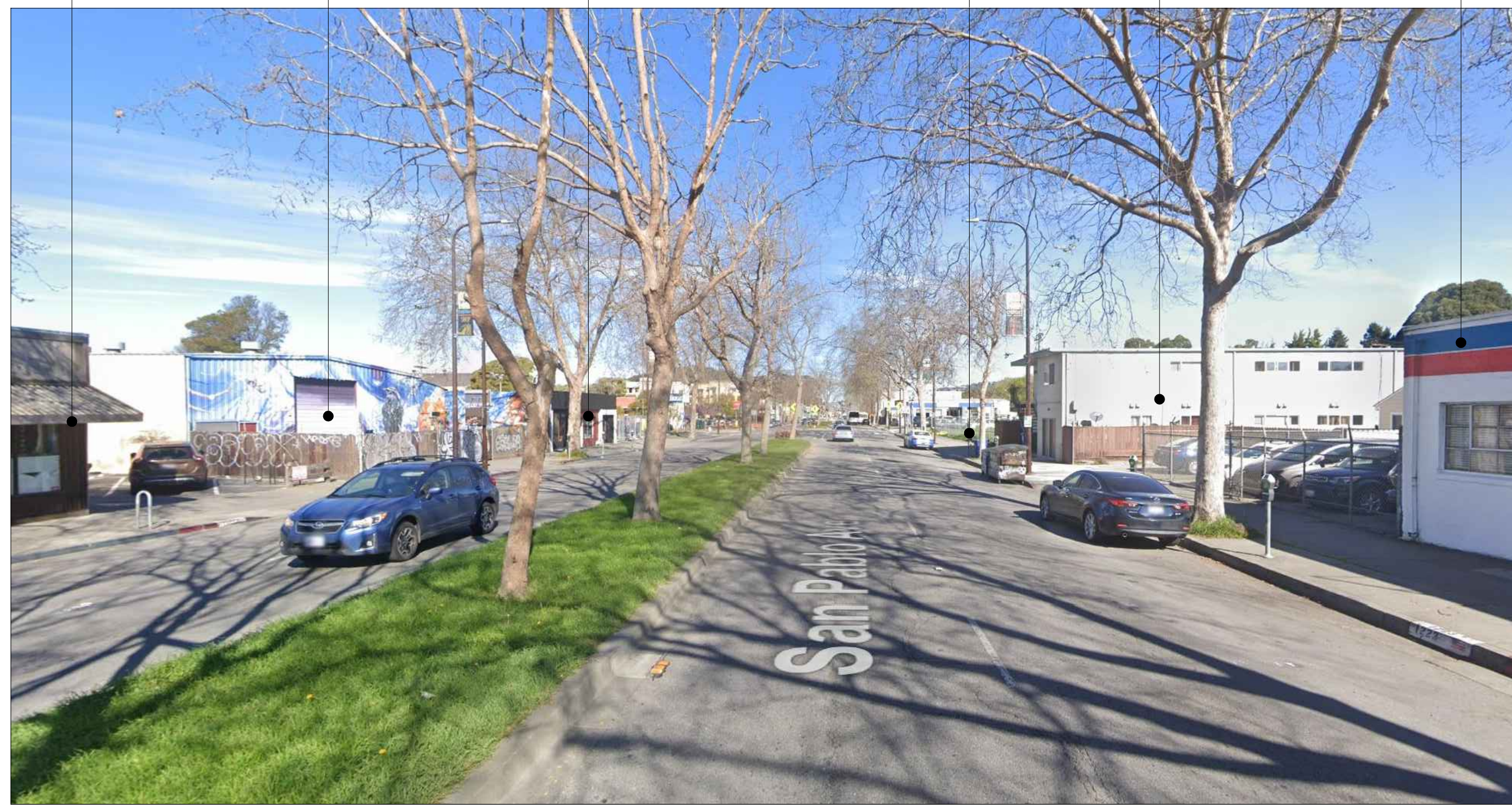
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1197 SAN PABLO (GILMAN AUTO) 1110 HARRISON SINGLE FAMILY RESIDENCE PROJECT SITE 1201 SAN PABLO 1213 SAN PABLO (2-STORY MULTIFAMILY) 1200 - 1212 SAN PABLO (FUTURE 6-STORY MIXED-USE)



4 VIEW FROM HARRISON LOOKING EAST

1220 SAN PABLO (TOKYO FISH MARKET) 1200 - 1212 SAN PABLO (FUTURE 6-STORY MIXED-USE) 1200 - 1212 SAN PABLO (FUTURE 6-STORY MIXED-USE) PROJECT SITE 1201 SAN PABLO 1213 SAN PABLO (2-STORY MULTIFAMILY) 1223 SAN PABLO (101 AUTOBODY)



2 VIEW FROM SAN PABLO LOOKING NORTH

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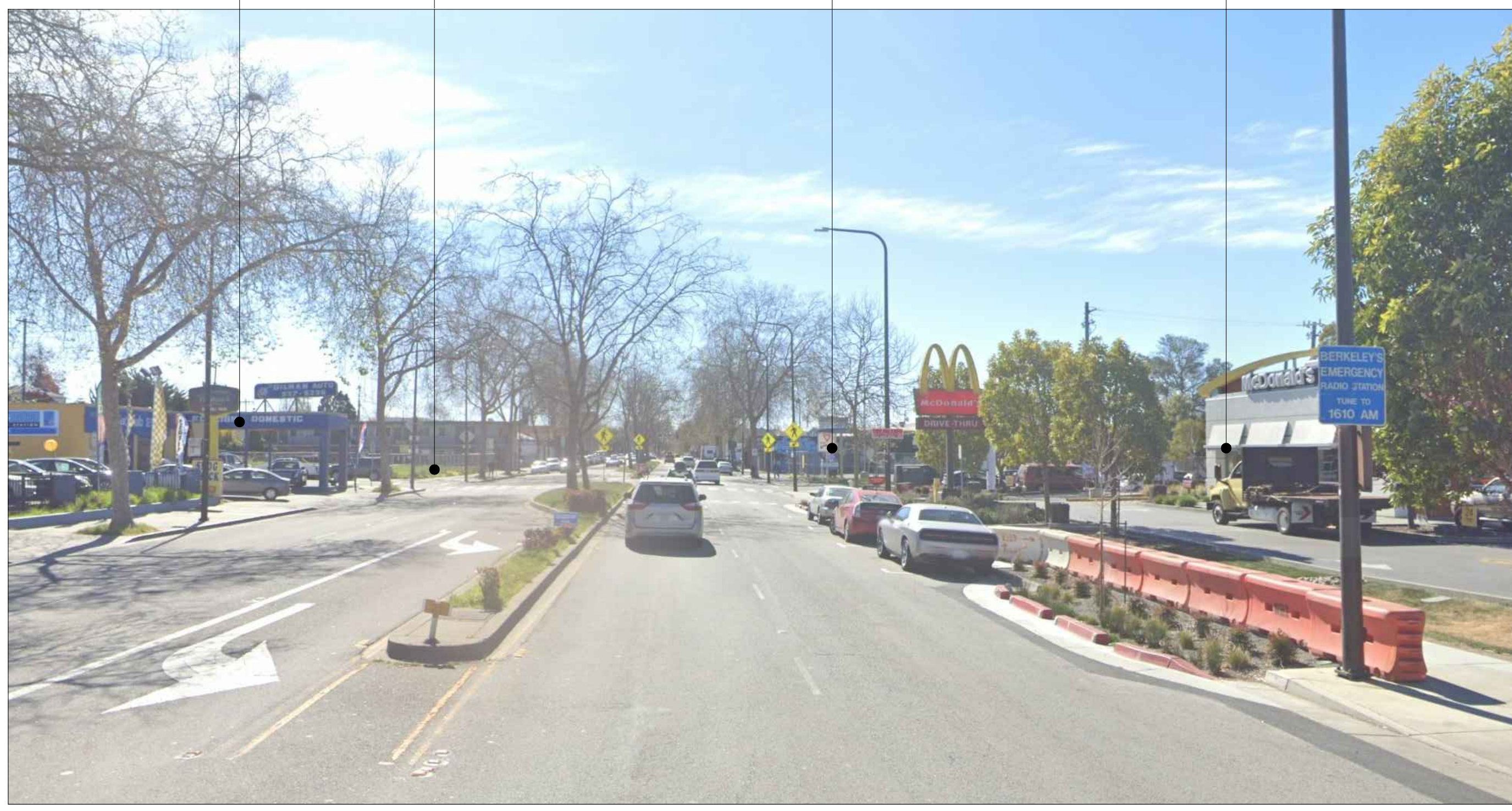
JOB: 1928

SHEET:

SITE CONTEXT
PHOTOS

A0.5

1197 SAN PABLO (GILMAN AUTO) PROJECT SITE 1201 SAN PABLO 1200 - 1212 SAN PABLO (FUTURE 6-STORY MIXED-USE) 1198 SAN PABLO (MCDONALD'S)



3 VIEW FROM SAN PABLO LOOKING SOUTH

PROJECT SITE 1201 SAN PABLO



1 GOOGLE EARTH BIRD'S EYE CONTEXT VIEW

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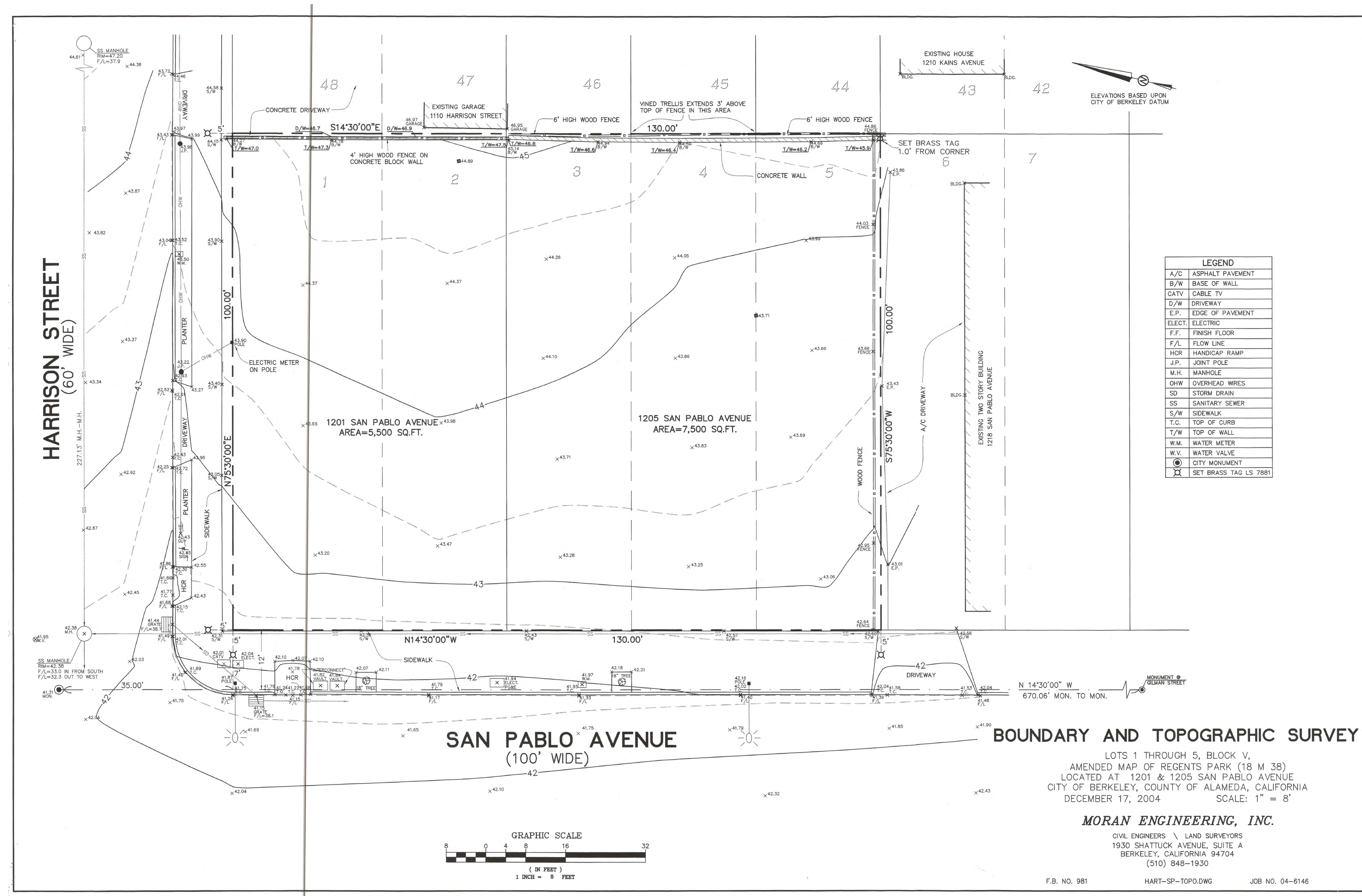
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JOB: 1928

SHEET:

SURVEY

A1.0



1 SURVEY
1" = 20' @ 11X17 1" = 10' @ 24X36

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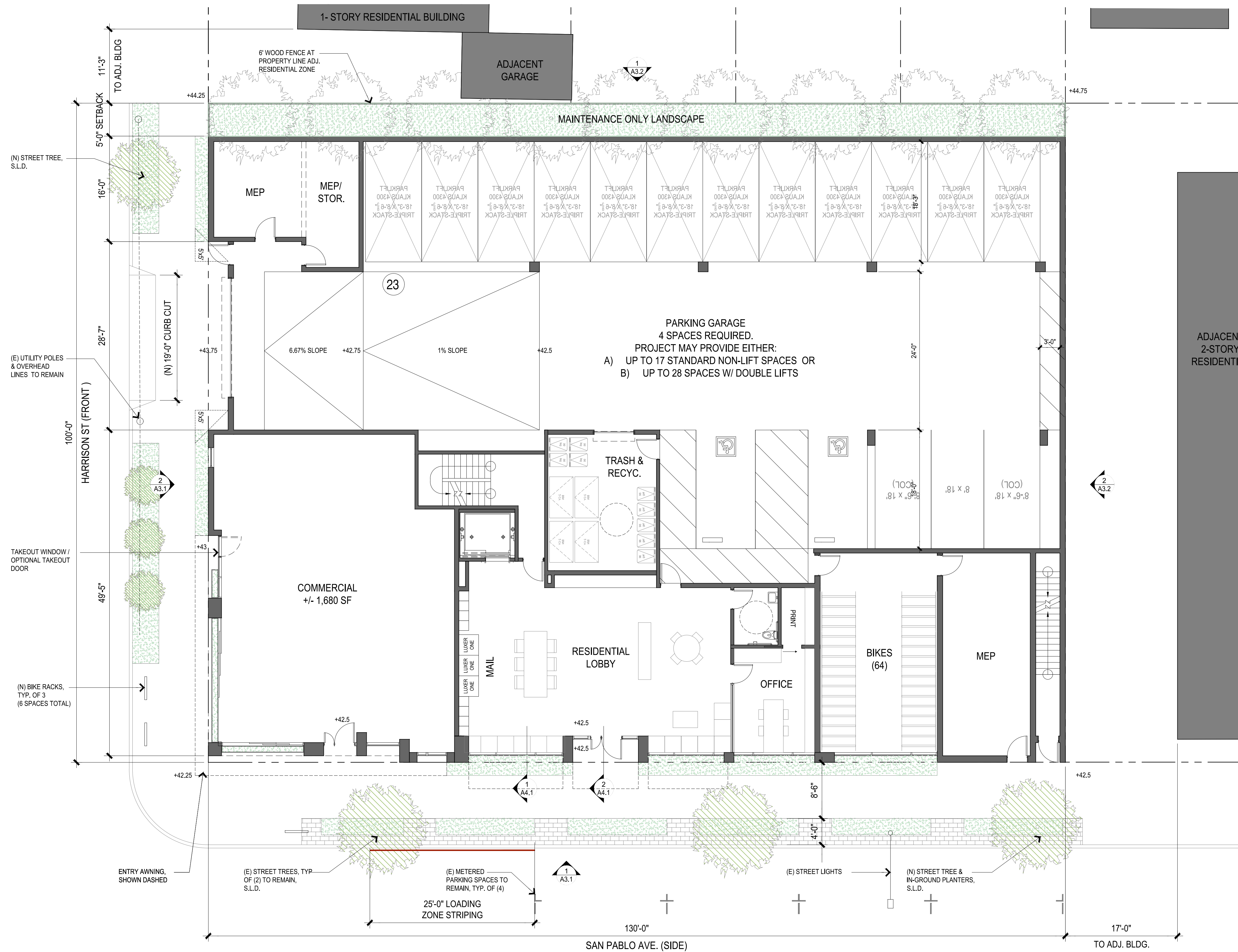
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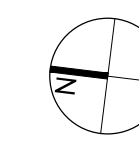
SHEET:

PLAN AT
GROUND LEVEL/
SITE PLAN

A2.1



1 SITE PLAN / GROUND LEVEL PLAN
1/16" = 1'-0" @ 11X17 1/8" = 1'-0" @ 24X36



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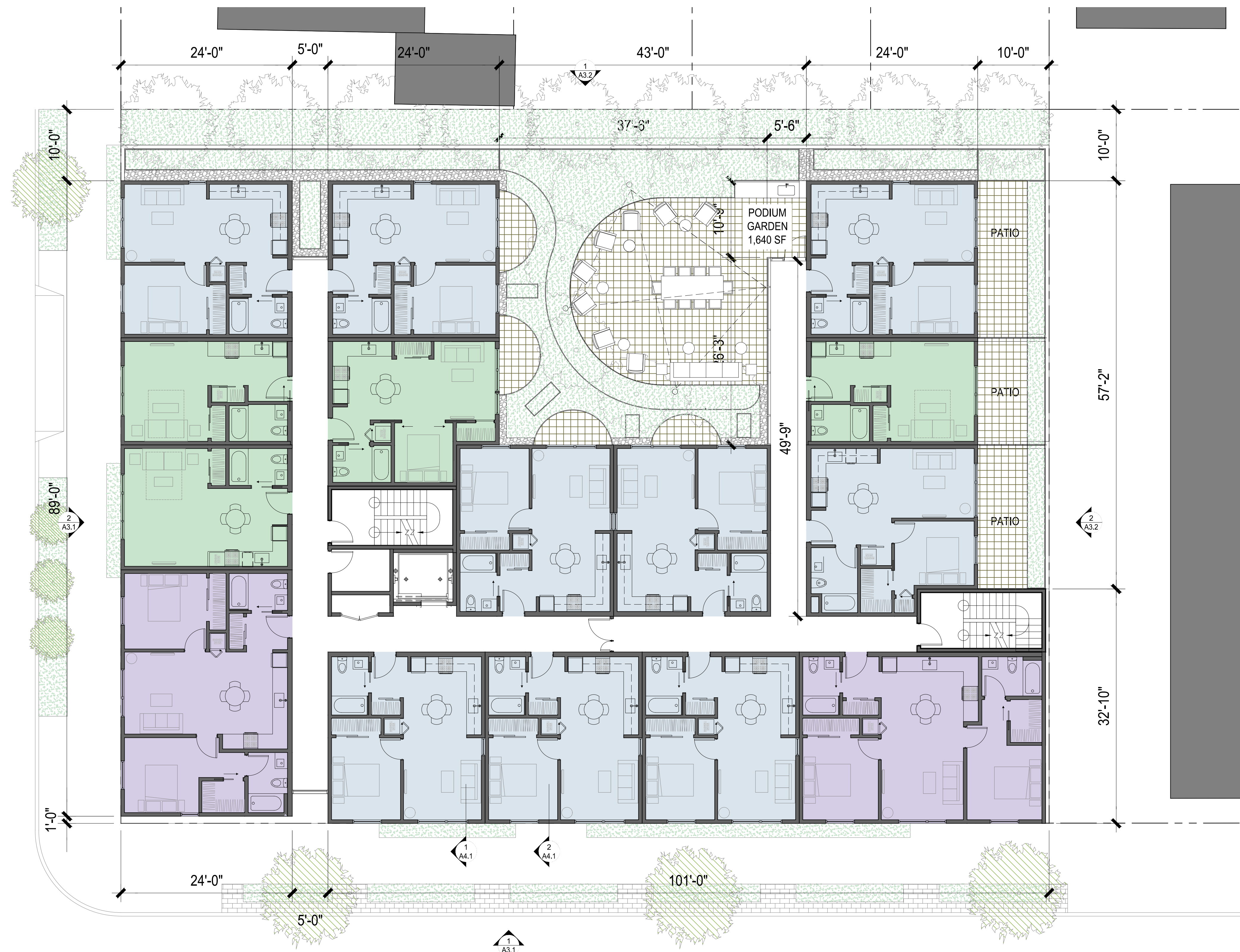
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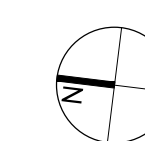
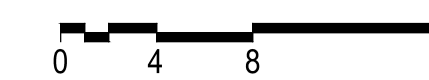
SHEET:

PLAN AT
LEVELS 2 - 4

A2.2



1 PLAN AT LEVELS 2 - 4
1/16" = 1'-0" @ 11X17 1/8" = 1'-0" @ 24X36



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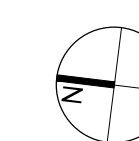
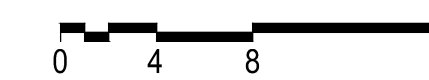
SHEET:

PLAN AT
LEVEL 5

A2.3



1
PLAN AT LEVEL 5
1/16" = 1'-0" @ 11X17 1/8" = 1'-0" @ 24X36



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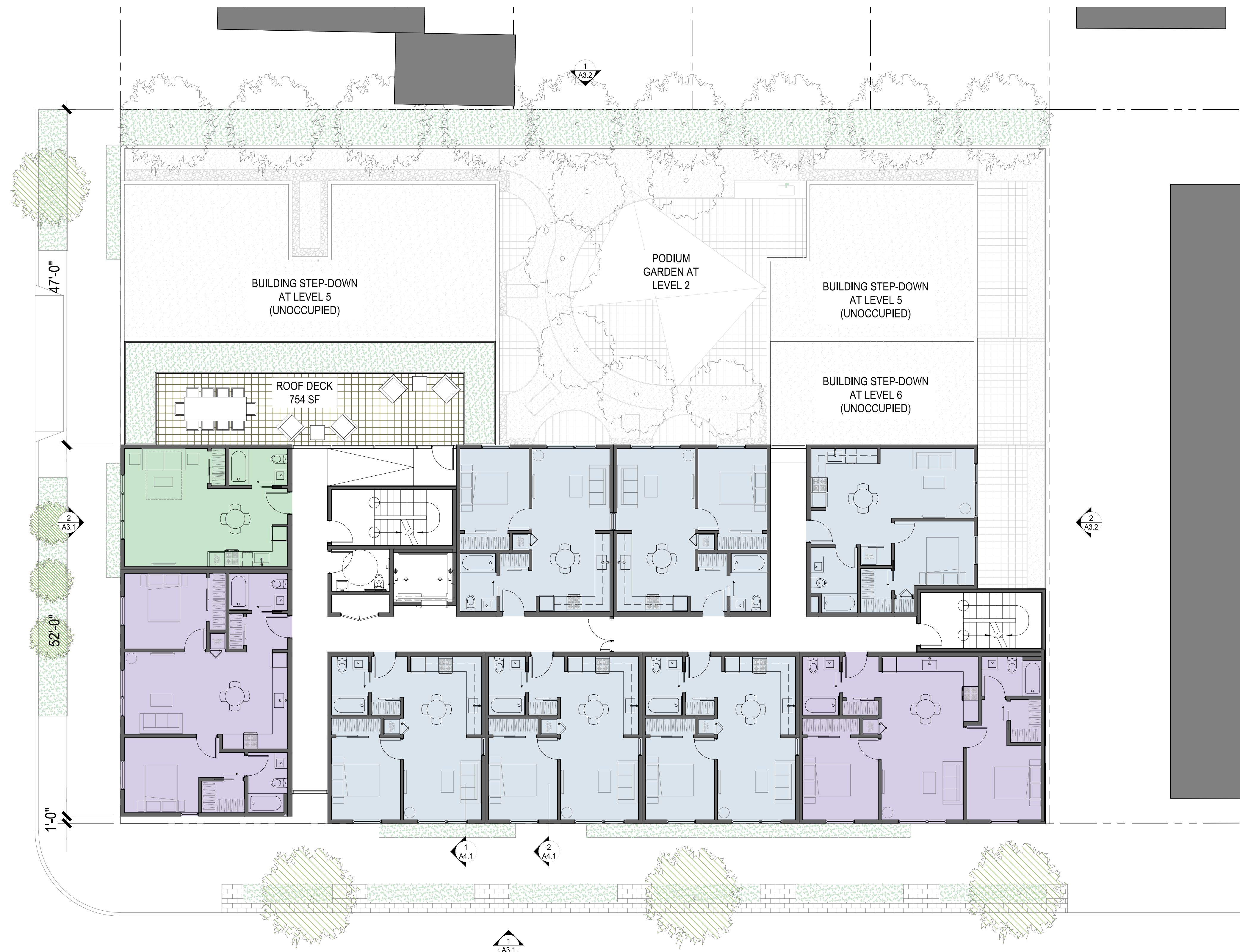
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JOB: 1928

SHEET:

PLAN AT
LEVEL 6

A2.4



1
PLAN AT LEVEL 6
1/16" = 1'-0" @ 11X17 1/8" = 1'-0" @ 24X36



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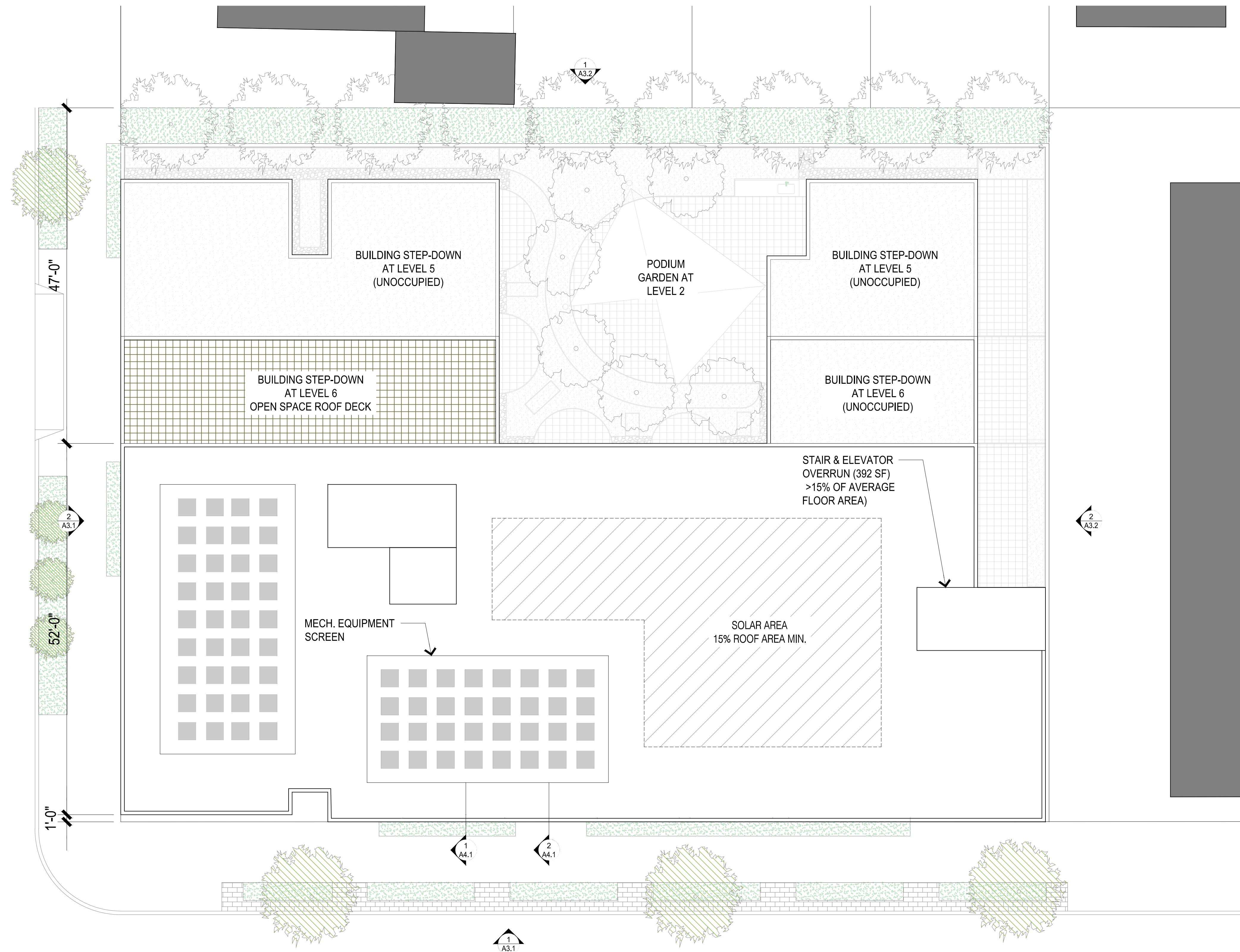
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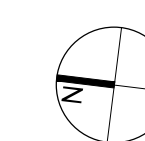
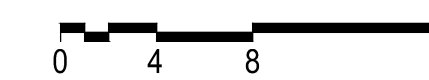
SHEET:

PLAN AT
ROOF

A2.5



1 PLAN AT ROOF
1/16" = 1'-0" @ 11X17 1/8" = 1'-0" @ 24X36



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JOB: 1928

SHEET:

BUILDING
ELEVATIONS

A3.1



1 WEST ELEVATION
3/32" = 1'-0" @ 11X17 3/16" = 1'-0" @ 24X36 0 4 8 16

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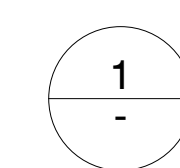
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SHEET:

BUILDING
ELEVATIONS

A3.2



NORTH ELEVATION

3/32" = 1'-0" @ 11X17 3/16" = 1'-0" @ 24X36



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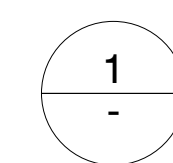
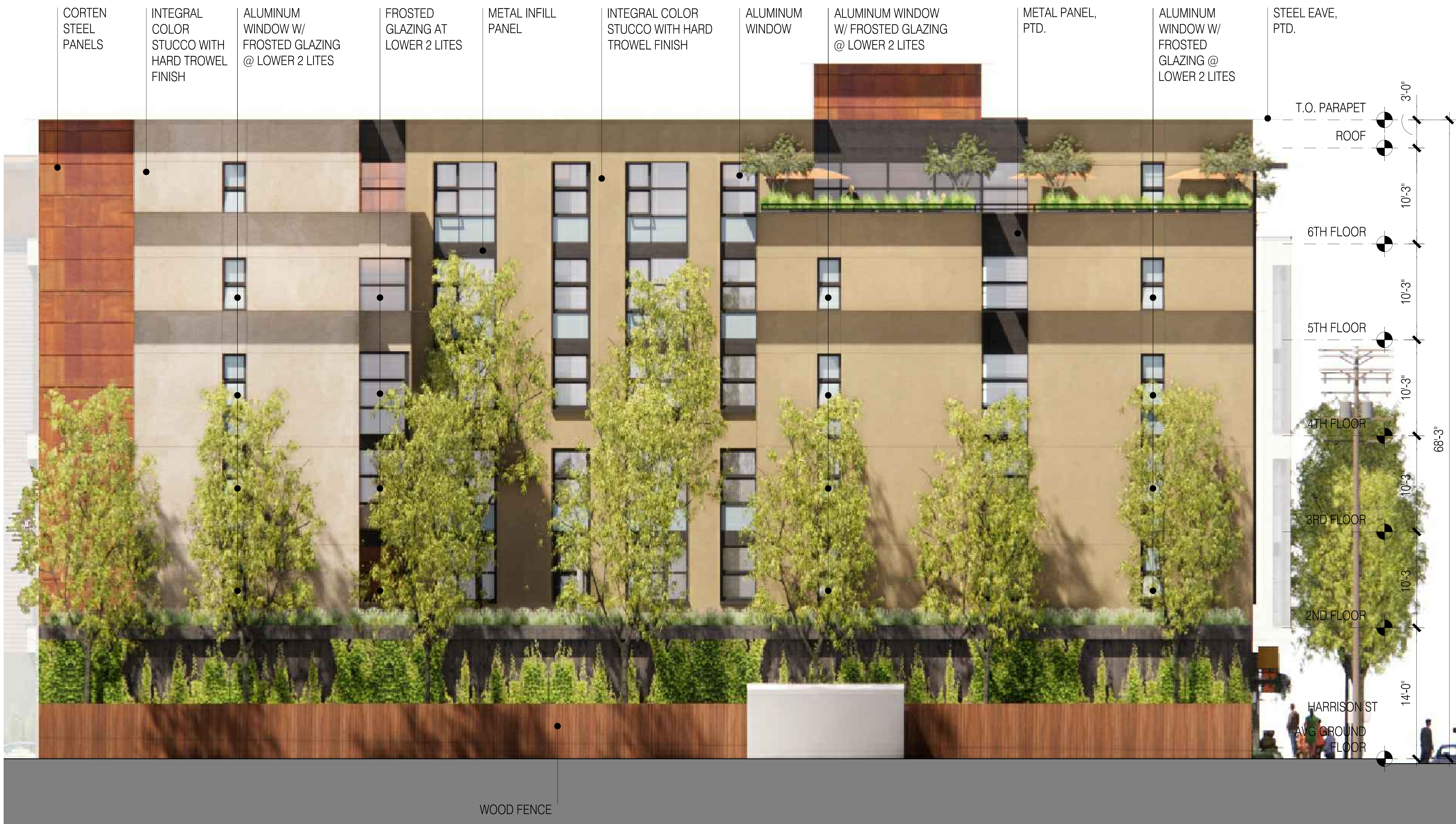
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SHEET:

BUILDING
ELEVATIONS

A3.3



EAST ELEVATION

3/32" = 1'-0" @ 11X17 3/16" = 1'-0" @ 24X36



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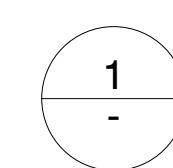
SHEET:

BUILDING
ELEVATIONS

A3.4



CAST IN PLACE CONCRETE



SOUTH ELEVATION

3/32" = 1'-0" @ 11X17 3/16" = 1'-0" @ 24X36



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JOB: 1928

SHEET:

STREET STRIP
ELEVATIONS

A3.5



2 STREET STRIP ELEVATION @ HARRISON ST.
1/32" = 1'-0" @ 11X17 1/16" = 1'-0" @ 24X36 0 4 8 16 32



1 STREET STRIP ELEVATION @ SAN PABLO AVE.
1/32" = 1'-0" @ 11X17 1/16" = 1'-0" @ 24X36 0 4 8 16 32

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JOB: 1928

SHEET:

PERSPECTIVE
VIEWS

A3.6



1
-
VIEW ALONG SAN PABLO - LOOKING SOUTH

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SHEET:

PERSPECTIVE
VIEWS

A3.7



1 VIEW ALONG HARRISON - LOOKING EAST

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SHEET:

PERSPECTIVE
VIEWS

A3.8



1 - VIEW ALONG HARRISON - LOOKING WEST

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JOB: 1928

SHEET:

PERSPECTIVE
VIEWS

A3.9



1 - VIEW ALONG SAN PABLO - LOOKING EAST

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SHEET:

PERSPECTIVE
VIEWS

A3.10



1 VIEW AT SAN PABLO INTERSECTION

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JOB: 1928

SHEET:

PERSPECTIVE
VIEWS

A3.11



1 CLOSE UP VIEW ALONG SAN PABLO

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PERSPECTIVE
VIEWS

A3.12



1
-

SHATTUCK LOOKING NORTH

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SHEET:

PERSPECTIVE
VIEWS

A3.13



1
-
CLOSE UP VIEW ALONG SAN PABLO



4 HARRISON LOOKING EAST - AFTER



2 SAN PABLO LOOKING SOUTH - AFTER



3 HARRISON LOOKING EAST - BEFORE



1 SAN PABLO LOOKING SOUTH - BEFORE

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PHOTO MATCH
PERSPECTIVES

A3.12

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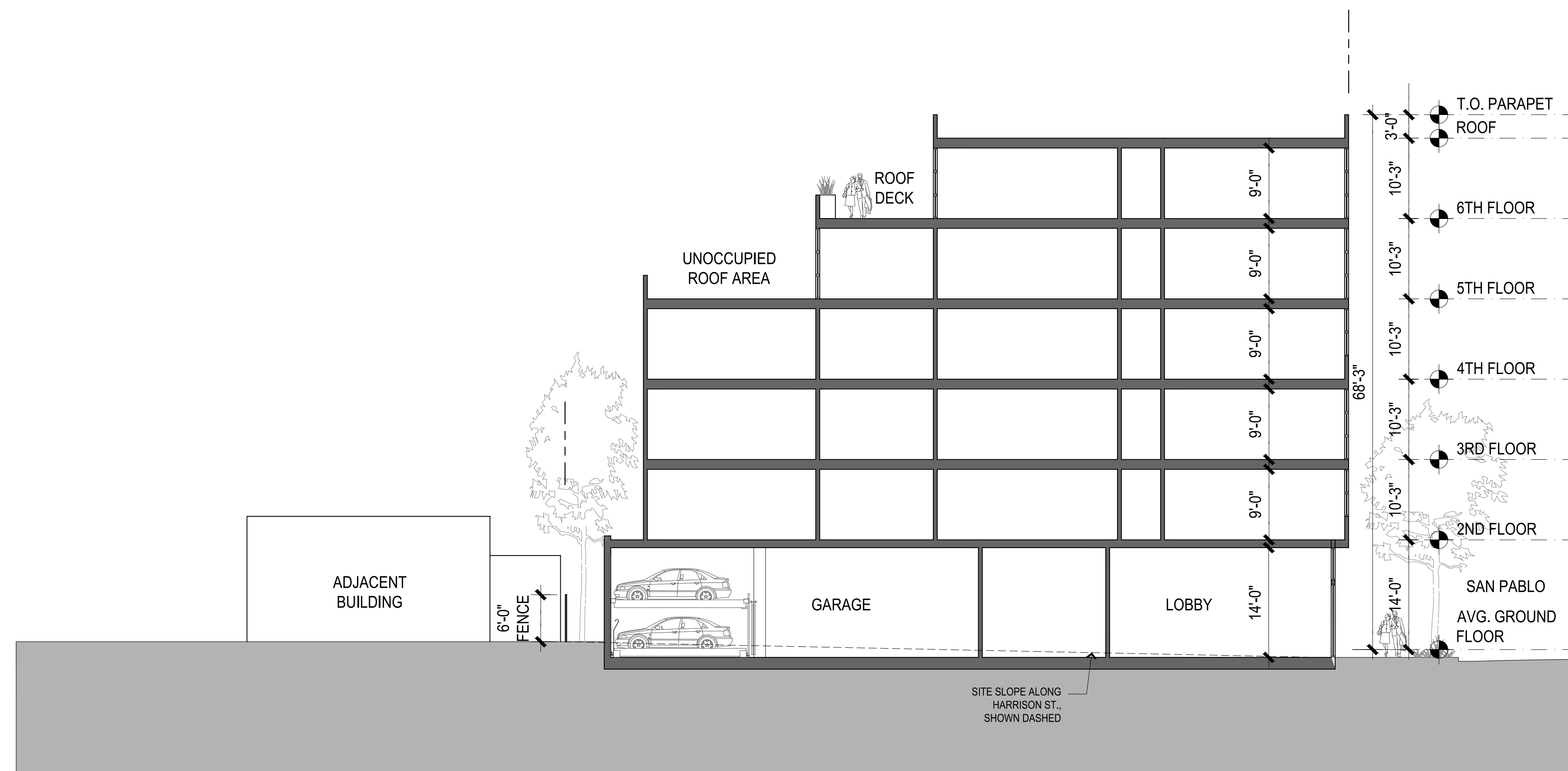
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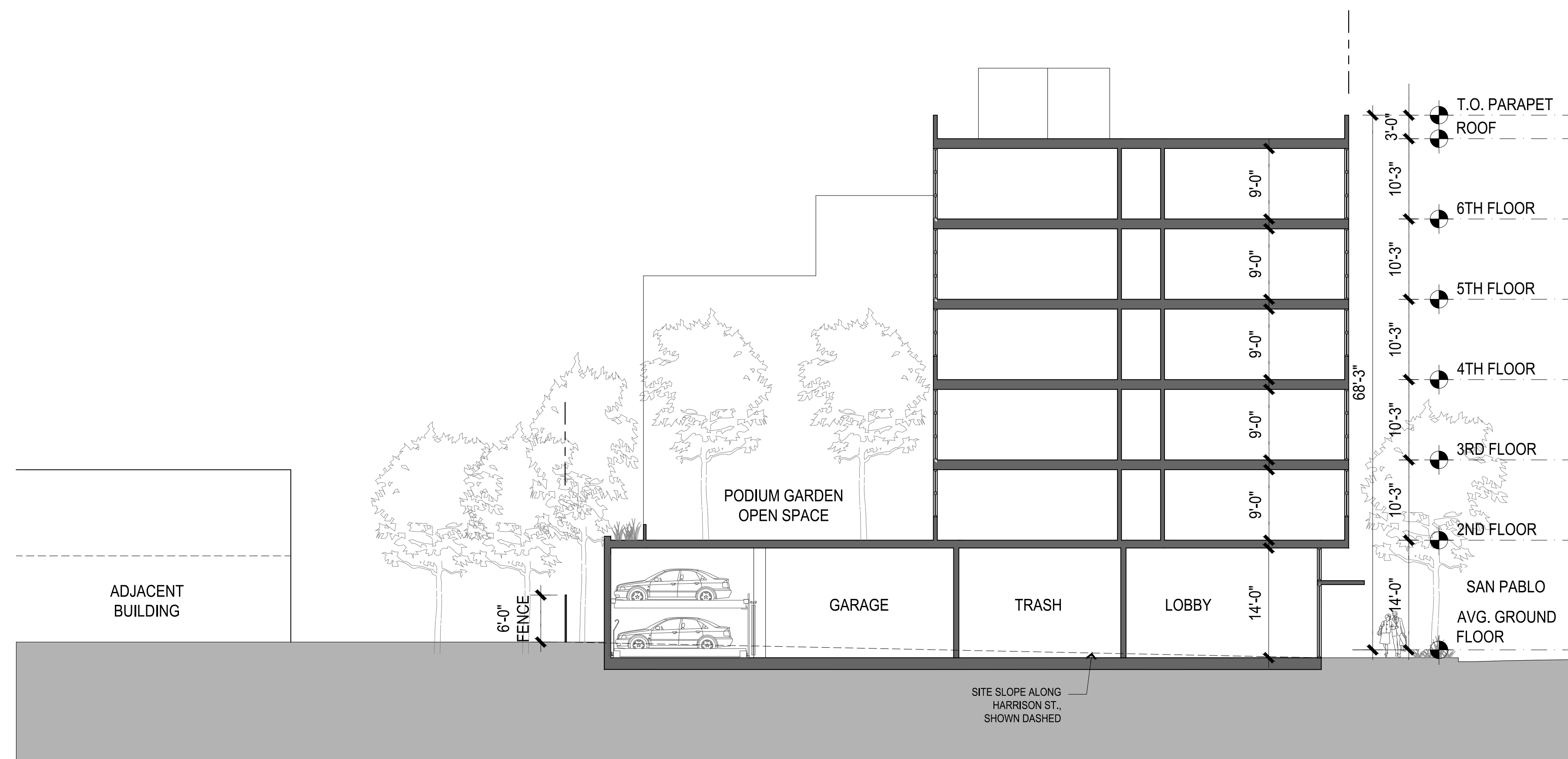
SHEET:

BUILDING
SECTION

A4.1



2 E-W SECTION THROUGH PODIUM GARDEN
 3/64"=1'-0" @ 11X17 3/32"=1'-0" @ 24X36 0 2 4 8 16



1 E-W SECTION
 3/64"=1'-0" @ 11X17 3/32"=1'-0" @ 24X36 0 2 4 8 16

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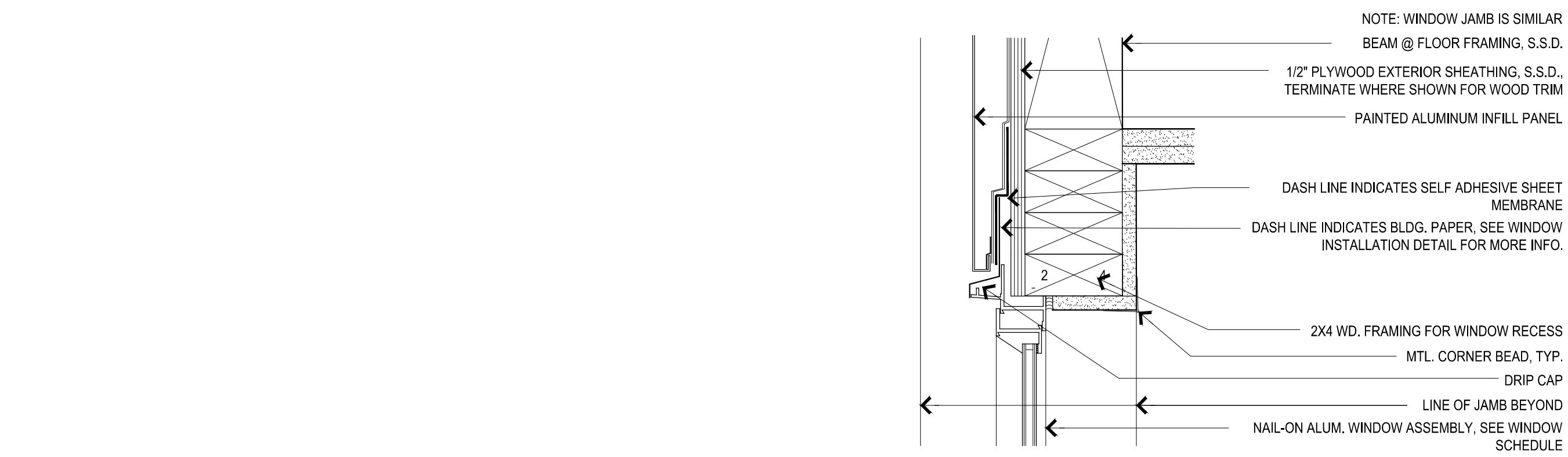
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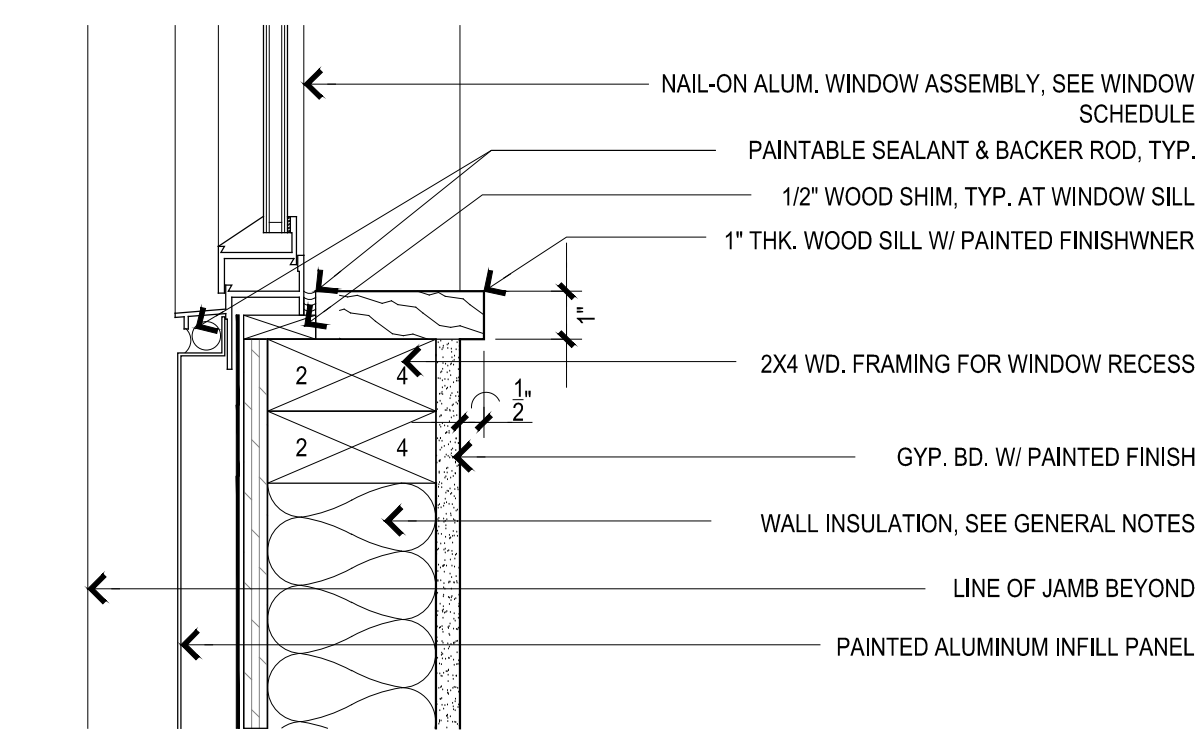
SHEET:

**WALL SECTIONS &
DETAILS**

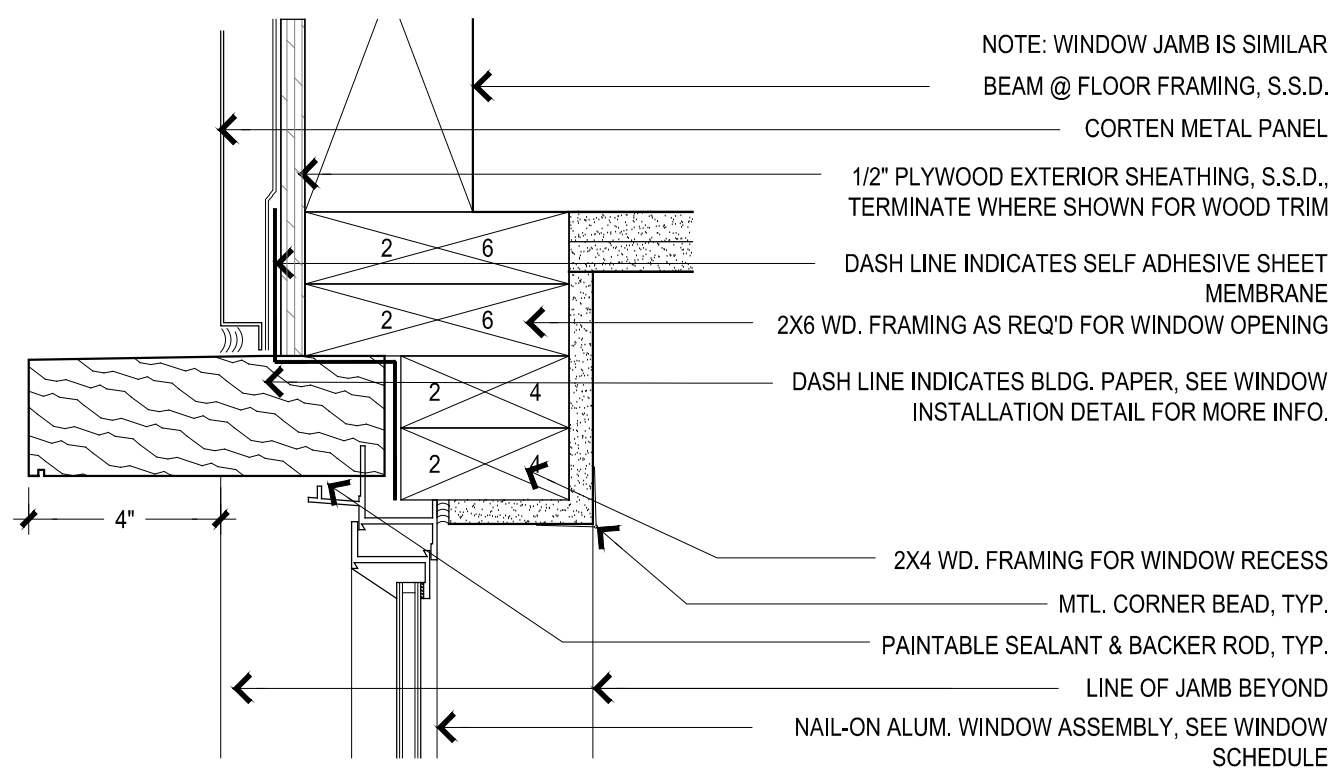
A4.2



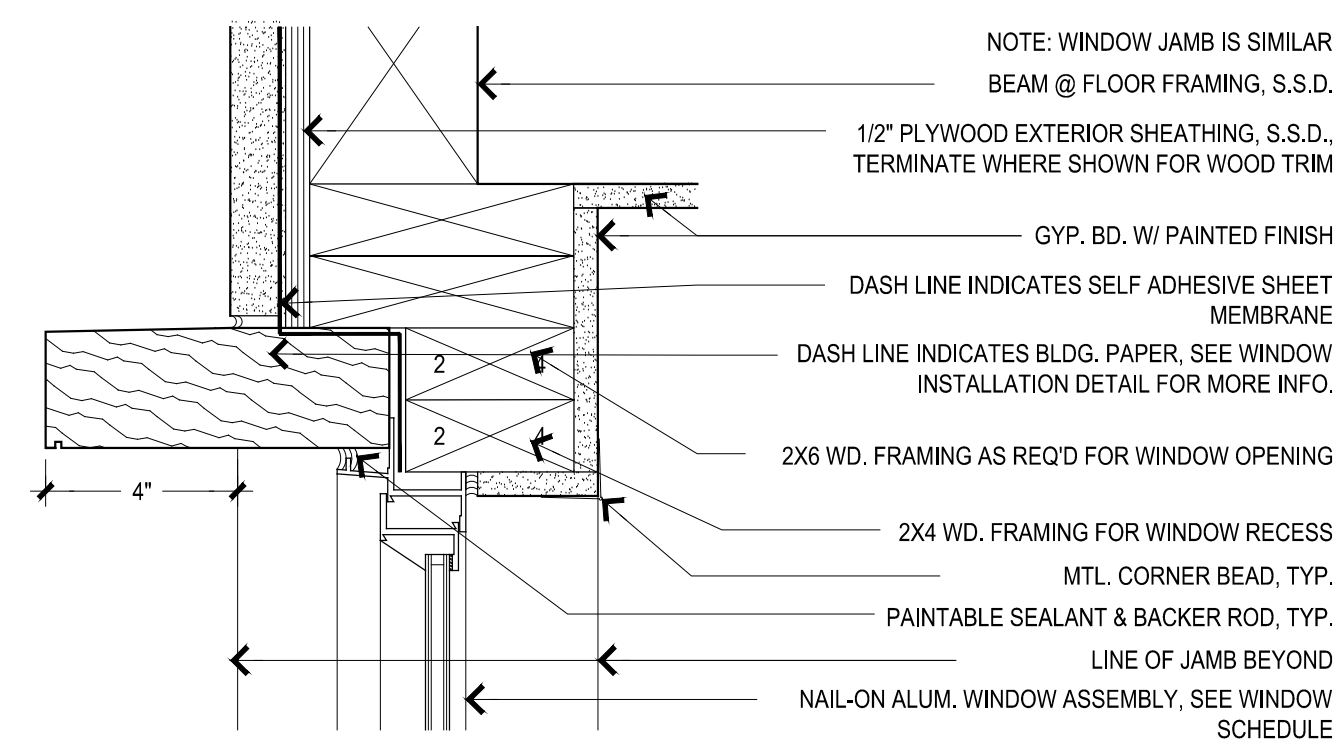
8 HEAD @ FILL PANEL
3"=1'-0"



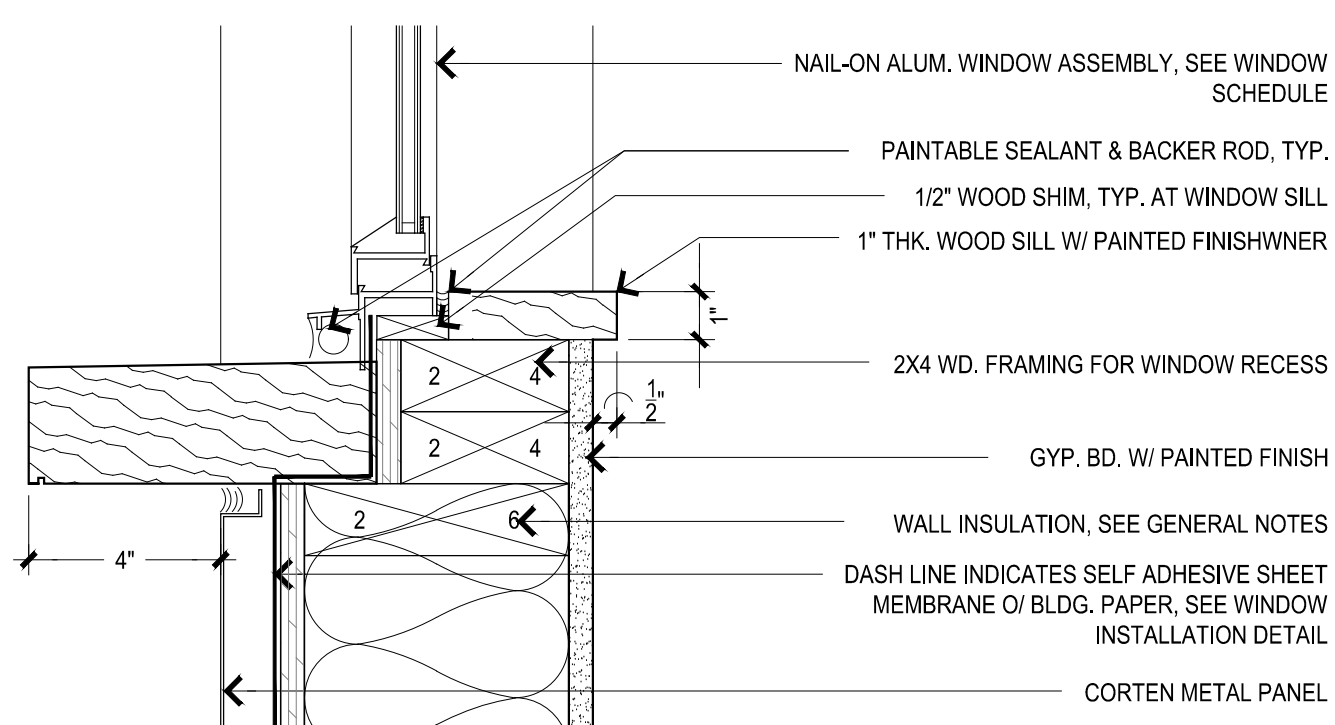
7 SILL AT FILL PANEL
3"=1'-0"



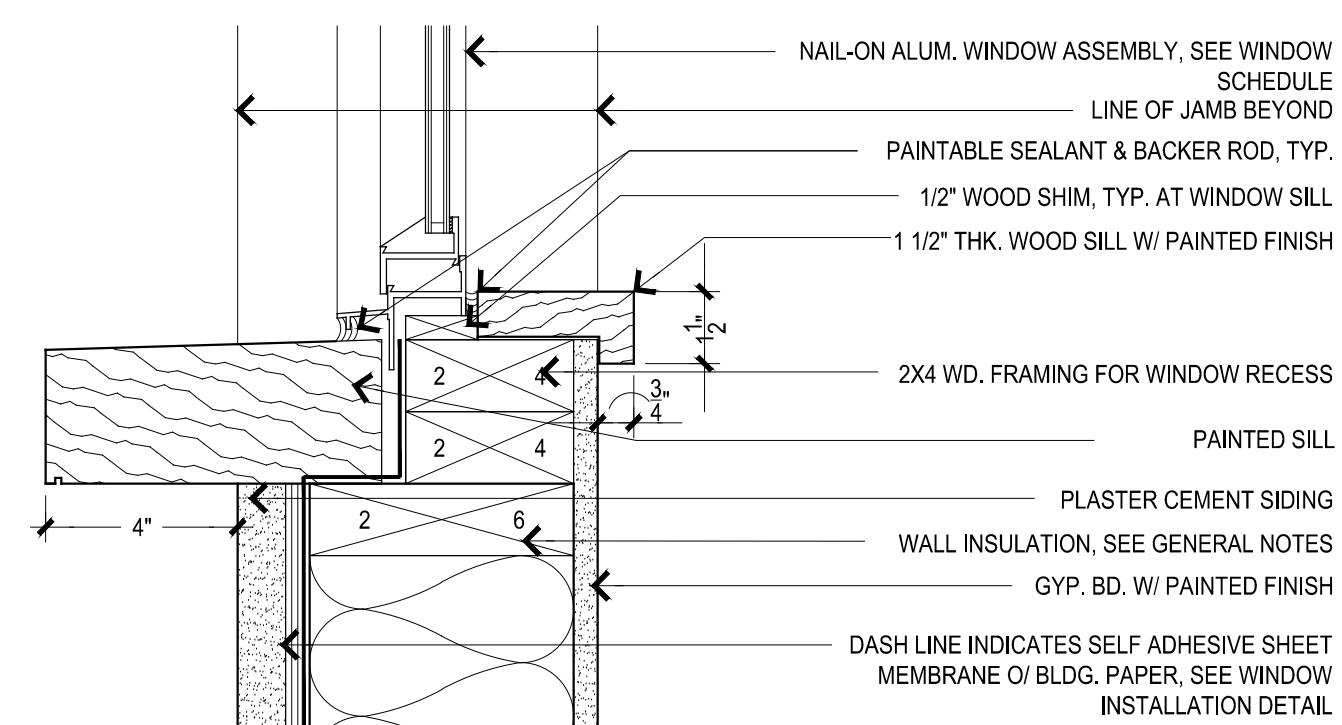
10 TYP. HEAD @ CORTEN
3"=1'-0"



6 TYP. STUCCO HEAD / JAMB
3"=1'-0"



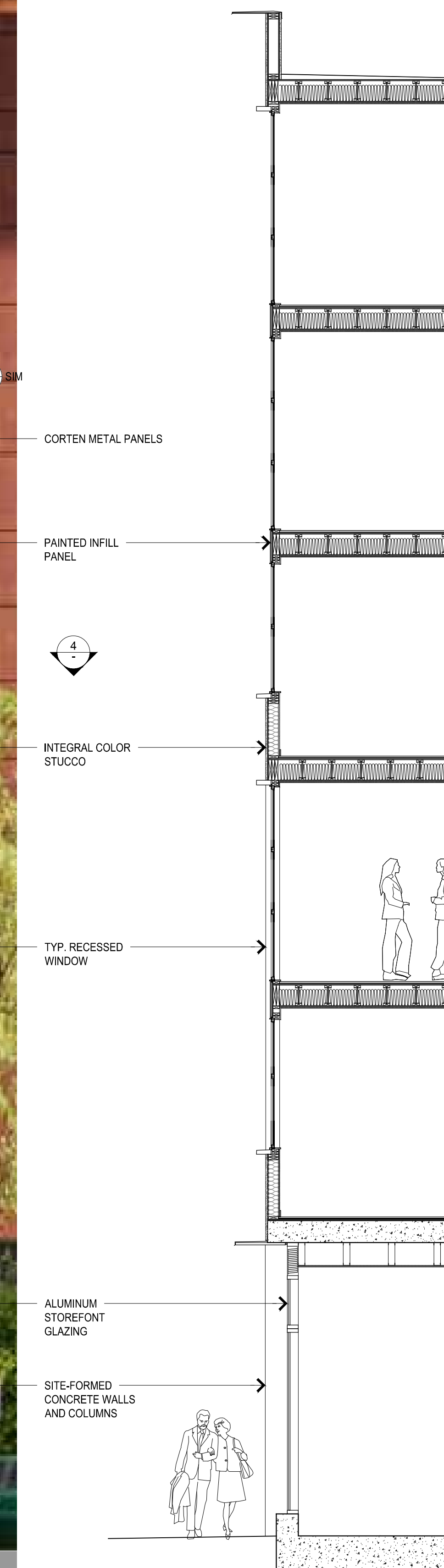
9 TYP. SILL @ CORTEN
3"=1'-0"



5 TYP. STUCCO SILL
3"=1'-0"



2 ELEVATION DETAIL
1/8"=1'-0" @ 11X17 1/4"=1'-0" @ 24X36



1 SECTION
1/8"=1'-0" @ 11X17 1/4"=1'-0" @ 24X36

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SHEET:

MATERIAL
BOARD

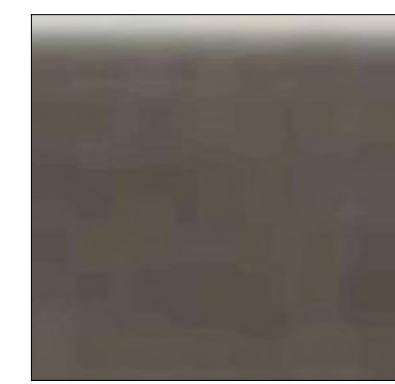
MAT



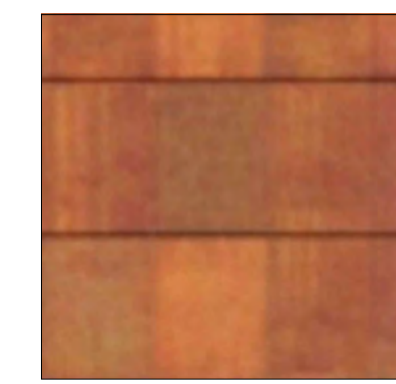
INTEGRAL COLOR STUCCO
W/ SMOOTH TROWEL FINISH



INTEGRAL COLOR STUCCO
W/ SMOOTH TROWEL FINISH



METAL INFILL PANEL



CORTEN METAL
PANEL

INTEGRAL COLOR
STUCCO W/ SMOOTH
TROWEL FINISH

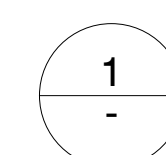
CORTEN METAL PANELS

ALUMINUM
STOREFRONT

METAL INFILL
PANEL

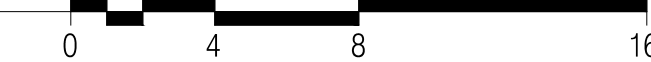
CAST-IN-PLACE
CONCRETE

STEEL EAVE, PTD.



WEST ELEVATION

3/32"=1'-0" @ 11X17 3/16" = 1'-0" @ 24X36





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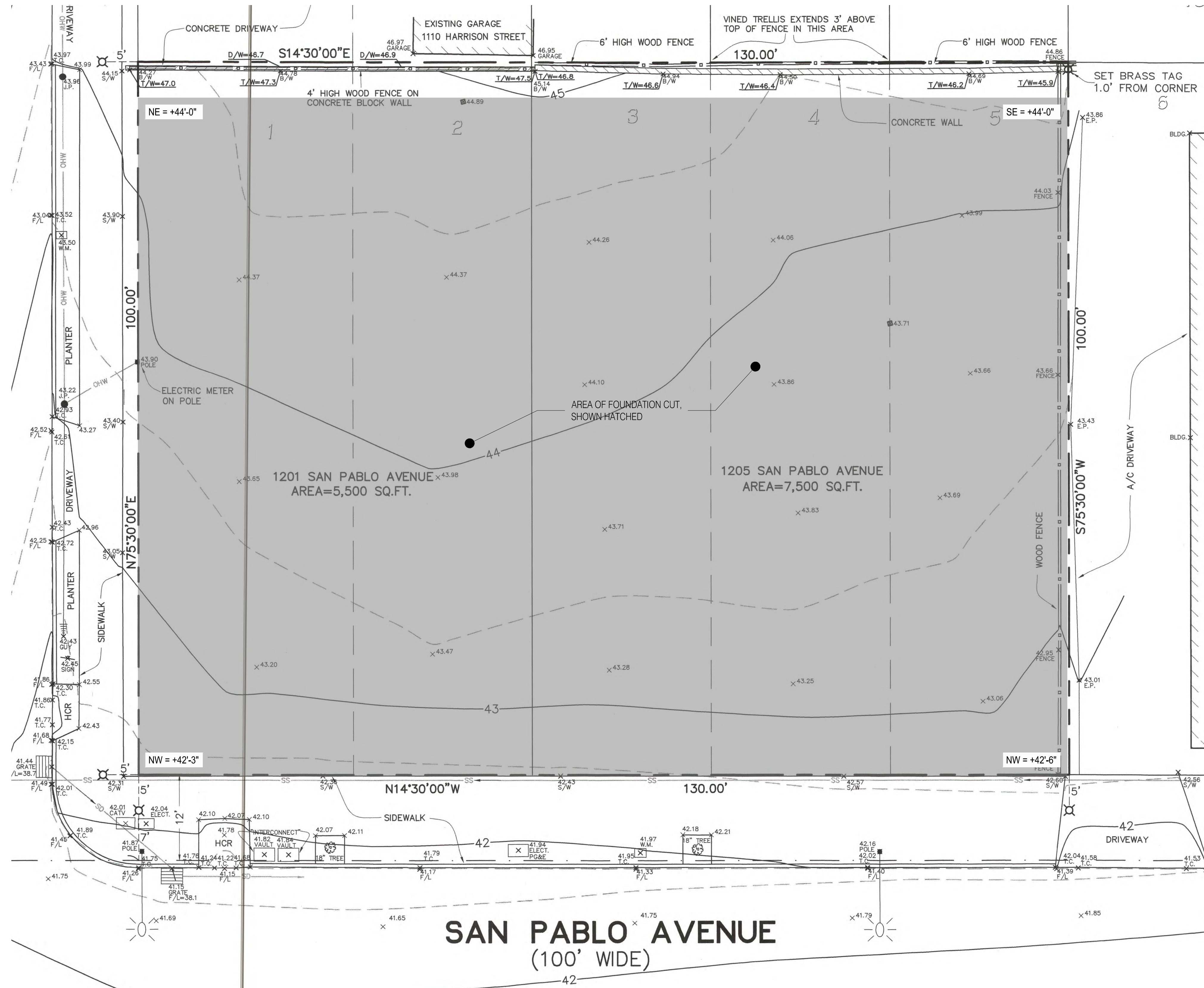
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CONCEPTUAL GRADING PLAN

G-01

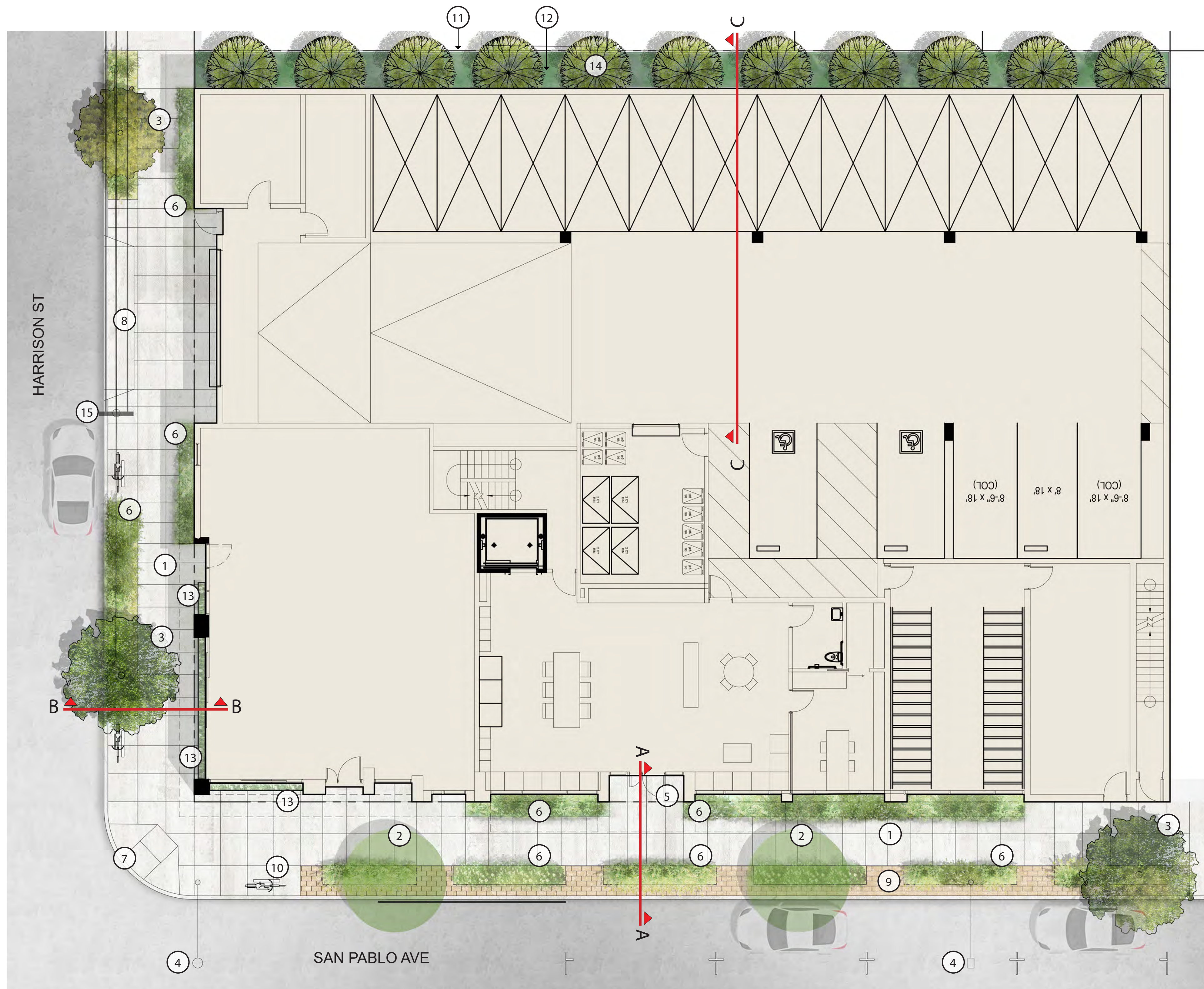


ESTIMATED QUANTITIES AND LOCATIONS OF FOUNDATION CUTS

	FEET	YARDS
TOTAL CUBIC YARDS OF CUT		1115 (CUBIC YARDS)
TOTAL AREA OF CUT	12346	1372 (SQUARE YARDS)
AVERAGE DEPTH OF CUT	2.4375	0.81 (YARDS)
CORNER 1 - NW	42.25	0.5 (YARDS)
CORNER 2 - NE	44	1.083333 (YARDS)
CORNER 3 - SE	44	1.08 (YARDS)
CORNER 4 - SW	42.5	0.583333 (YARDS)

2 ESTIMATED CUT/FILL DATA

1 CONCEPTUAL GRADING PLAN
1/16" = 1'-0" @ 11X17 1/8" = 1'-0" @ 24X36



LEGEND

1. CONCRETE SIDEWALK PAVING
2. EXISTING STREET TREE
3. NEW 24" BOX STREET TREE, TYP. OF (3)
4. EXISTING STREET LIGHT
5. ENTRY TO LOBBY
6. AT-GRADE PLANTING
7. CURB RAMP
8. DRIVEWAY TO GARAGE
9. UNIT PAVERS SET ON PLANTING AREA SUB GRADE
10. NEW BIKE RACKS, TYP. OF (3)
11. 6' HIGH WOOD NEIGHBOR FENCE
12. LANDSCAPE MAINTENANCE AREA
13. 30" HIGH METAL PLANTER
14. EVERGREEN PRIVACY SCREEN
15. EXISTING JOINT POLE, GUY AND OVERHEAD LINES

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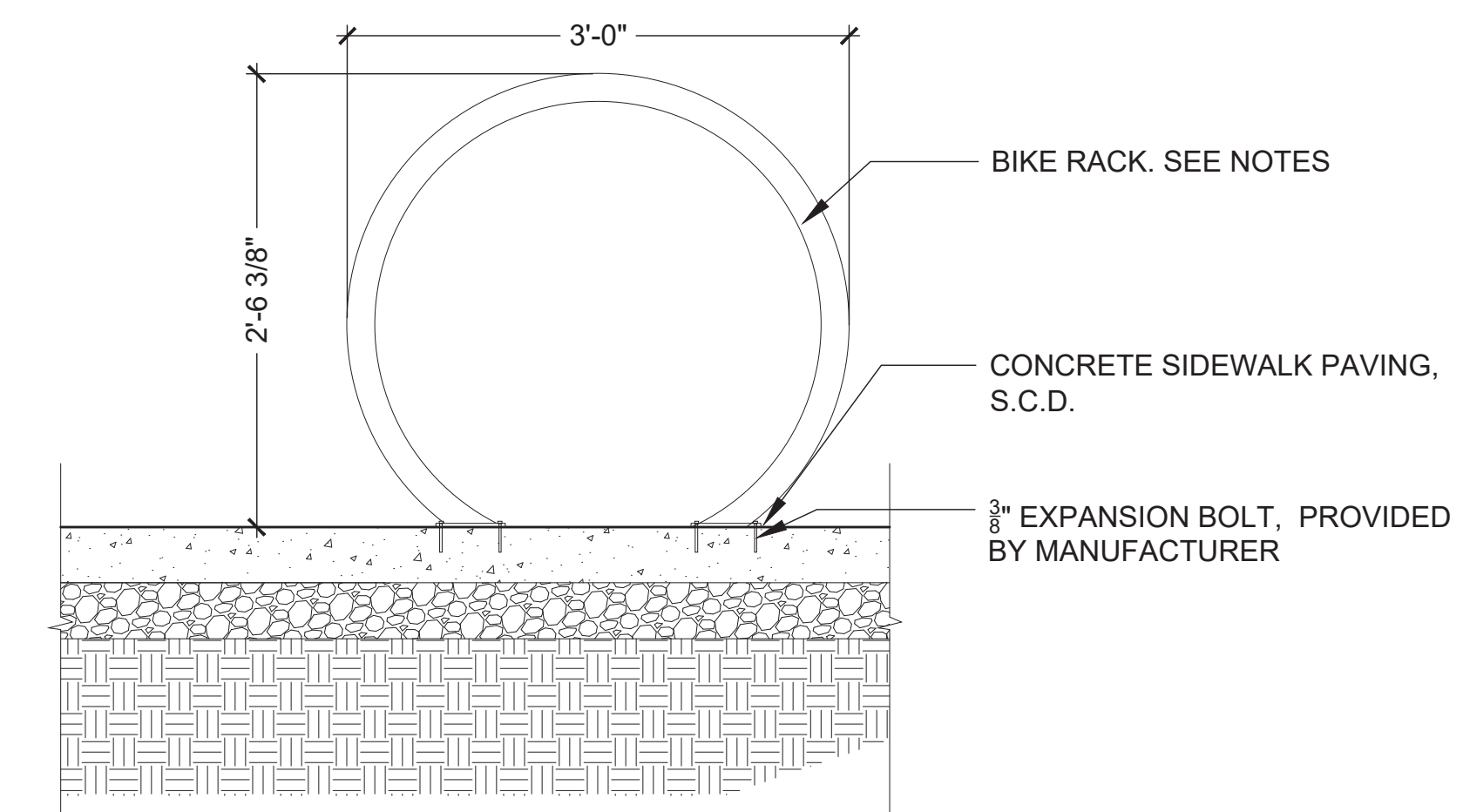
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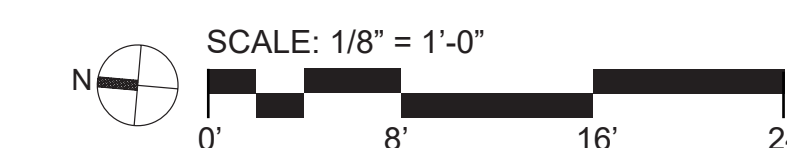


BIKE RACK



BIKE RACK: 'WELLE' CIRCULAR, SQUARE TUBE, HOT-DIPPED GALVANIZED FINISH, SURFACE MOUNT, MODEL: WCR02-SQ-SF-G.

BIKE RACK DETAIL



PLANTING NOTES

1. PLANT SPECIES SELECTED FOR DROUGHT TOLERANCE, ECOLOGICAL BENEFIT AND SITE SUITABILITY IN TERMS OF SIZE, SHADE/SUN-TOLERANCE, AND MAINTENANCE NEEDS. PLANT MATERIAL FROM VARIOUS CALIFORNIA HABITATS HAS BEEN EMPHASIZED.
2. BAY-FRIENDLY BEST PRACTICES REGARDING MULCHING AND SOIL HEALTH WILL BE IMPLEMENTED TO FACILITATE PLANT GROWTH, INCLUDING SPECIFICATION OF ORGANIC SOIL AMENDMENTS AND COMPOST.
3. THE PLANTING DESIGN WILL GROUP PLANTS WITH SIMILAR EVAPOTRANSPIRATION FACTORS WITHIN LEGIBLE ZONES. EVAPOTRANSPIRATION WILL BE ASSIGNED PER WUCOLS VERSION IV.
4. THE LANDSCAPE ARCHITECT WILL PROVIDE PLANT AND SOIL MAINTENANCE RECOMMENDATIONS AS PART OF THE PROJECT SPECIFICATIONS.
5. LAWN AND TURF AREAS WILL NOT BE INCLUDED IN THE PROJECT.

IRRIGATION NOTES

1. THE IRRIGATION SYSTEM WILL BE DESIGNED BY A LICENSED IRRIGATION PROFESSIONAL.
2. A DEDICATED EBMUD METER OR SUBMETER WILL BE PROVIDED FOR THE IRRIGATION SYSTEM DESIGN WITH LOCATION AND POINT OF CONNECTION NOTED.
3. A MANUAL SHUTOFF VALVE, REDUCED PRESSURE BACKFLOW PREVENTER AND FLOW SENSOR WITH MASTER SHUT OFF VALVE WILL BE PROVIDED AFTER THE POINT OF CONNECTION.
4. WATER PRESSURE AND FLOW RATES AT POINT OF CONNECTION AND ALL REMOTE CONTROL VALVES WILL BE INDICATED ON IRRIGATION PLANS.
5. IRRIGATION PLANS WILL SHOW SCHEMATIC LOCATION FOR ALL MAINLINES, LATERALS, SLEEVES AND REMOTE CONTROL VALVES.
6. REMOTE CONTROL VALVES WILL BE OPERATED BY A SMART, WEATHER-BASED IRRIGATION CONTROLLER WITH RAIN SENSOR MOUNTED IN AN APPROPRIATE LOCATION.
7. ALL PLANTED AREAS WILL BE WATERED USING HIGH-EFFICIENCY IRRIGATION TECHNOLOGY, SUCH AS DRIP LINES AND BUBBLERS WITH FLUSH AND AIR RELIEF VALVES WHERE REQUIRED. ALL COMPONENTS SHALL HAVE FIXED FLOW RATES.
8. IRRIGATION ZONES WILL BE GROUPED BY WATER DEMAND AND THE OVERALL PLANTING PLAN WILL COMPLY WITH WATER USE LIMITATIONS OUTLINED IN THE LATEST WATER EFFICIENT LANDSCAPE ORDINANCE.

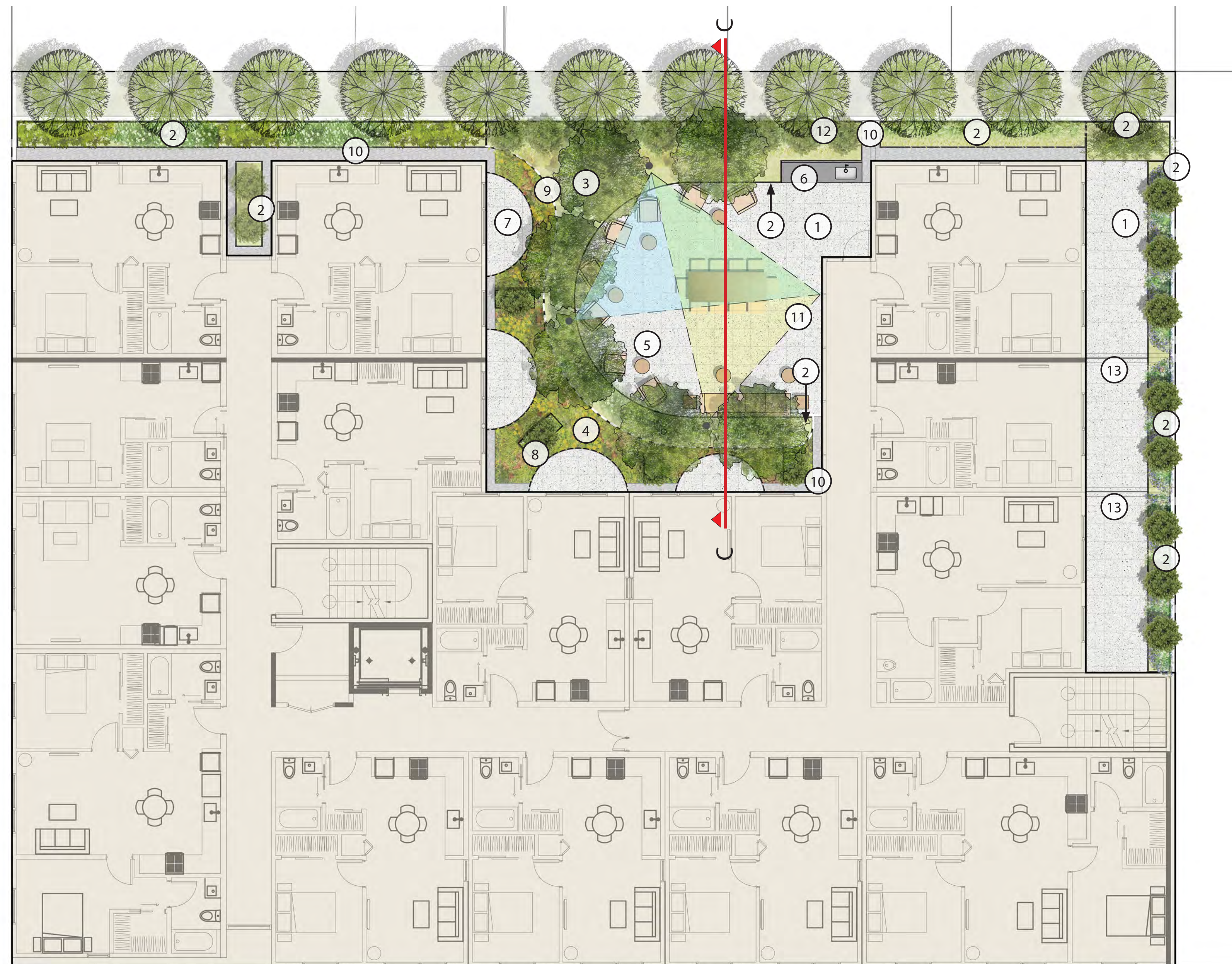
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LANDSCAPE PLANS GROUND LEVEL

L1.1



LEGEND

- 1. UNIT PAVERS ON PEDESTALS
- 2. RAISED METAL PLANTERS
- 3. 24" BOX TREES, TYP OF (6)
- 4. INTENSIVE VEGETATED ROOF
- 5. MOVABLE FURNITURE, TYP.
- 6. OUTDOOR COUNTER AND SINK
- 7. UNIT PATIO W/ METAL EDGE
- 8. SCREEN PLANTING IN RAISED METAL PLANTER
- 9. 48" HIGH PERFORATED METAL SCREEN
- 10. GRAVEL
- 11. SHADE SAILS
- 12. SCREEN PLANTING
- 13. WOOD NEIGHBOR SCREEN

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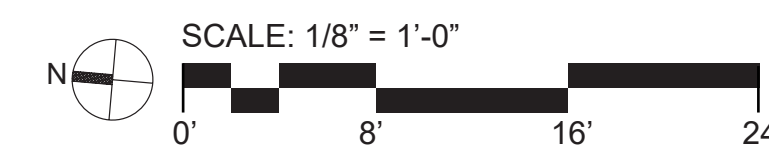
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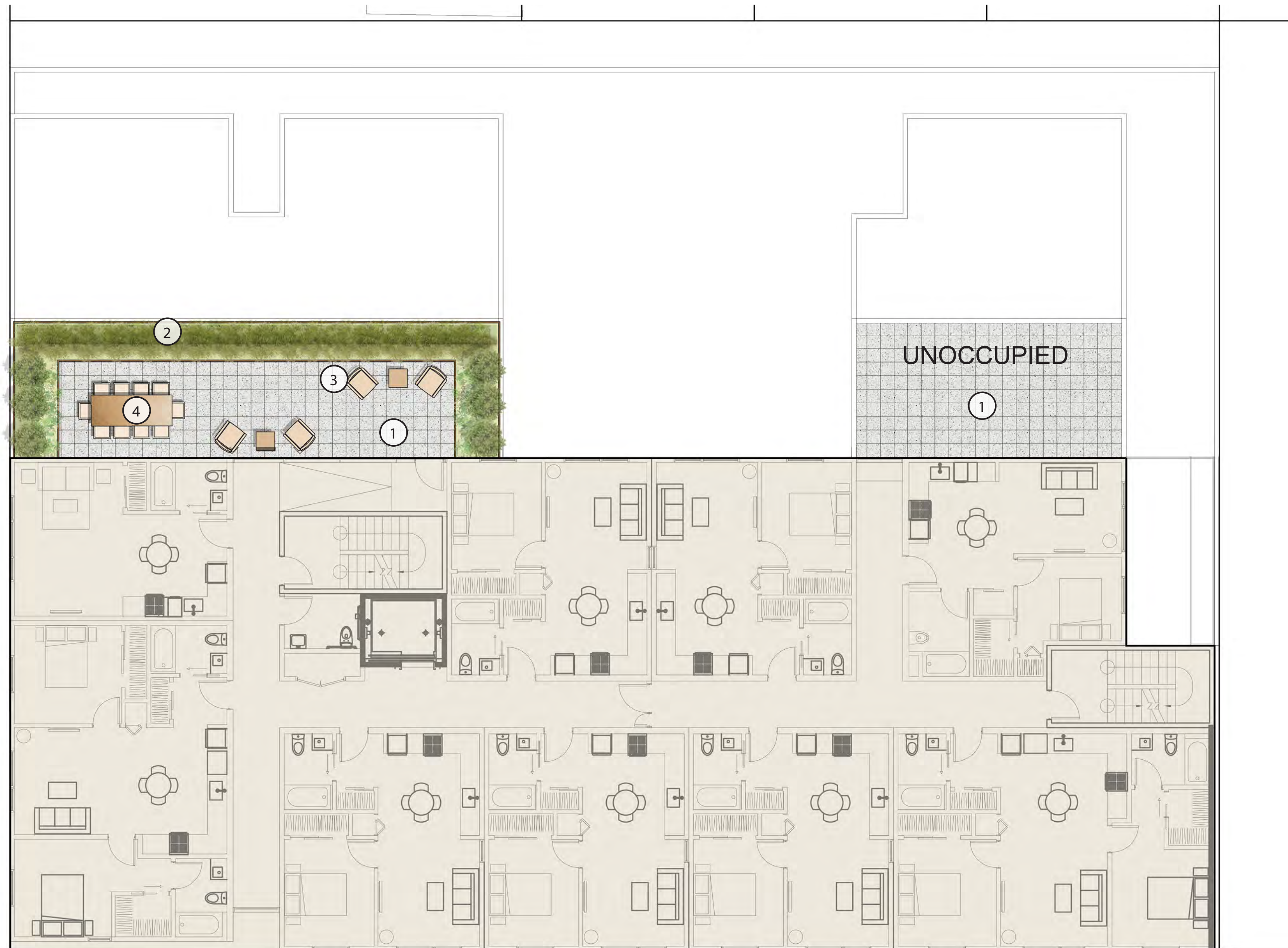
SHEET:

LANDSCAPE PLAN
LEVEL 2

L1.2

2ND LEVEL PLAN





LEGEND

- 1. UNIT PAVERS ON PEDESTALS
- 2. RAISED METAL PLANTERS
- 3. MOVABLE CHAIRS WITH SIDE TABLES
- 4. DINING TABLES AND CHAIRS

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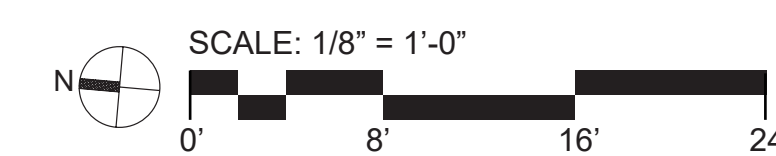
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6TH LEVEL PLAN



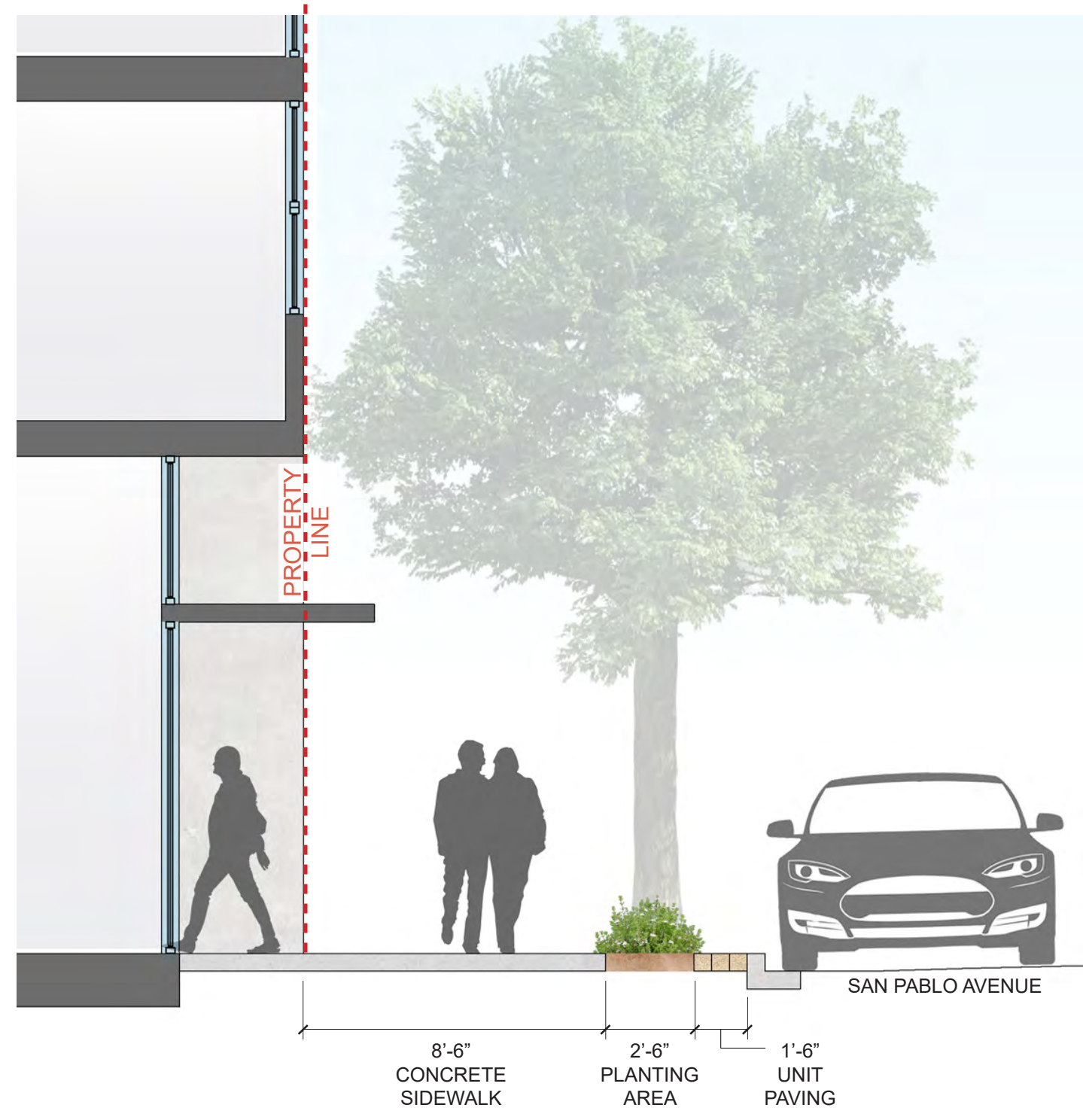
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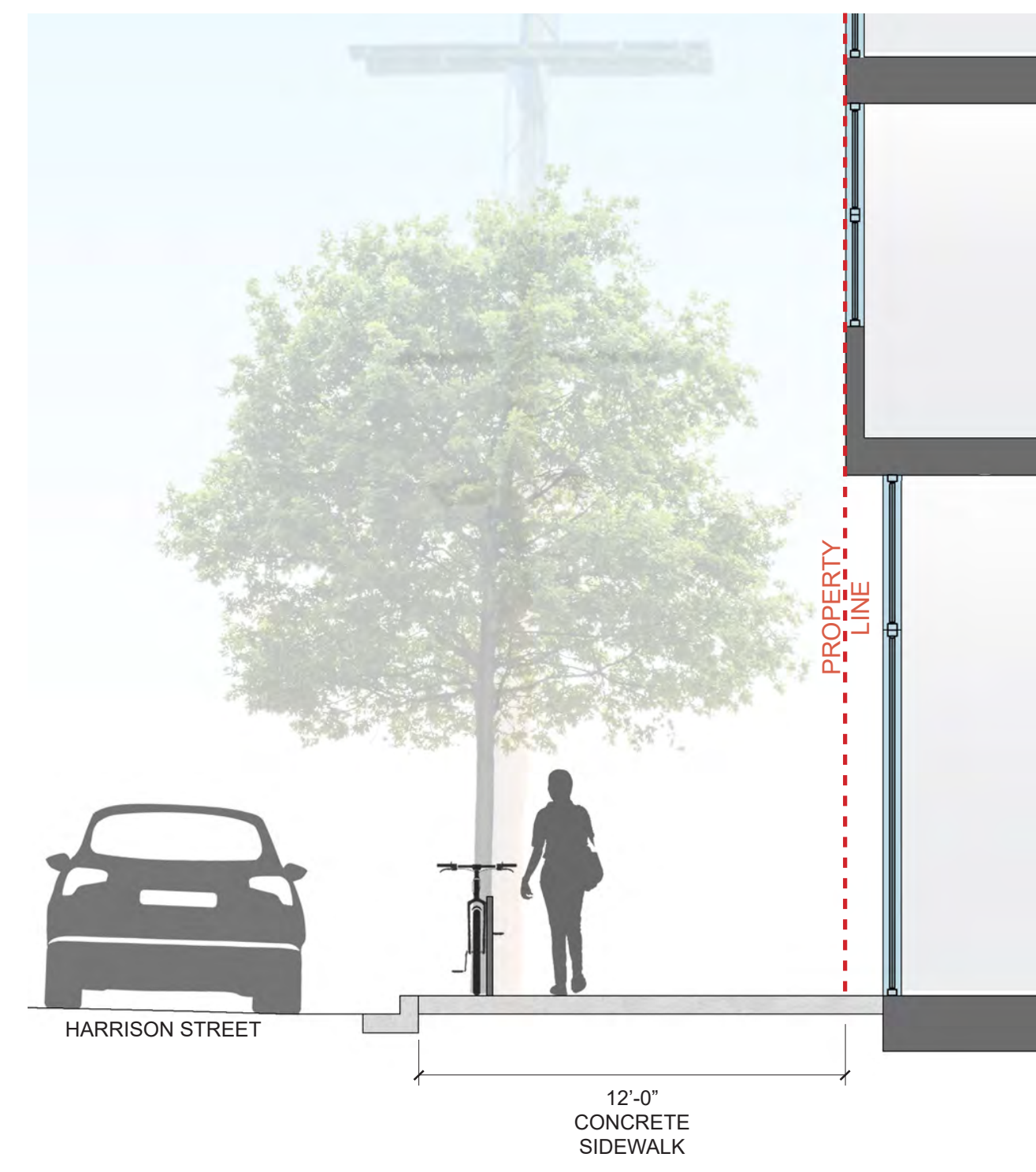
SHEET:

LANDSCAPE PLAN
LEVEL 6

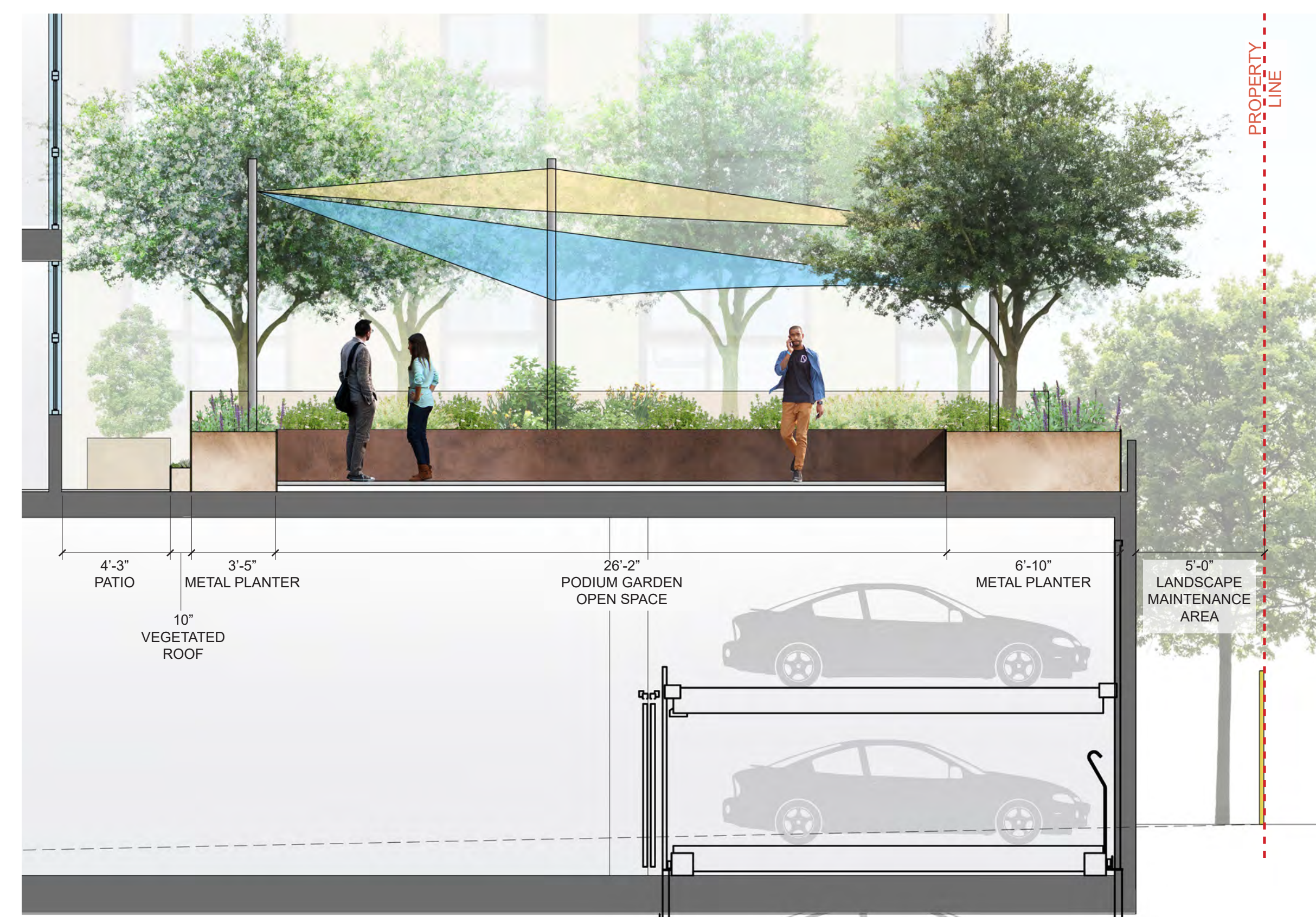
L1.3



SECTION A-A: SAN PABLO AVE



SECTION B-B: HARRISON ST



SECTION C-C: PODIUM GARDEN

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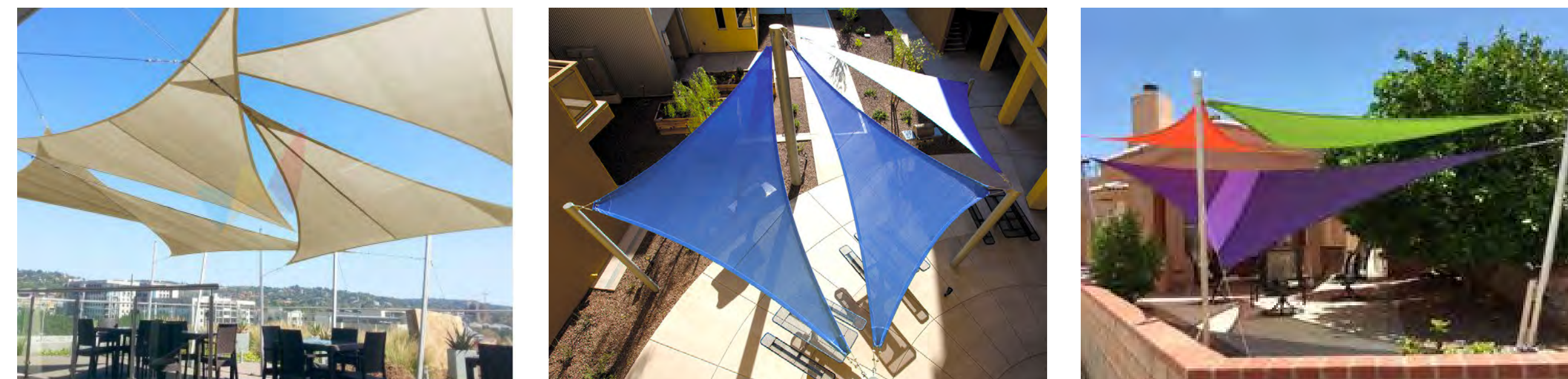
2022.03.15 DRC REVISIONS

2022.03.23 DRC REVISIONS

OPEN SPACE TABLE				
	UNITS	RATIO	TOTAL	LANDSCAPE AREA
TOTAL UNITS	66	40	2,640	
TOTAL AREA PROVIDED			2,514	1,346
PODIUM LEVEL GARDEN			1,640	902
PODIUM LEVEL PATIOS			120	115
LEVEL 6 ROOF DECK			754	329

TOTAL LANDSCAPED AREA ON EACH LEVEL

SHADE SAILS



STREET TREES

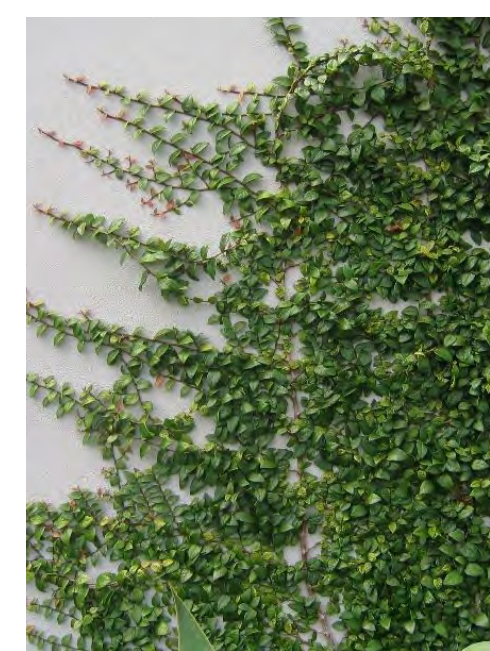


David Elm
Ulmus davidiana var.
japonica



Bronze Loquat
Eriobotrya deflexa

GROUND LEVEL



Creeping Fig
Ficus pumila



Stalked Bulbine
Bulbine frutescens



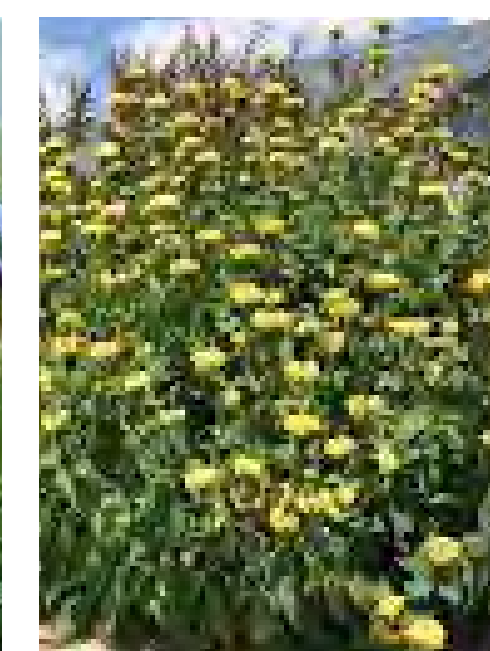
California Fuchsia
Epilobium canum



California Fescue
Festuca californica



Douglas Iris
Iris douglasiana



Jerusalem Sage
Phlomis fruticosa

UNIT PATIO SCREEN



Kohuhu
Pittosporum tenuifolium

2nd LEVEL PLANTER



Evergreen Dogwood
Cornus capitata



Dwarf Mahonia
Mahonia aquifolium repens



Coffeeberry (Podium Edge)
Frangula californica 'Seaview'



Giant Wildrye
Elymus condensatus



Island Alum Root
Heuchera maxima



Western Swordfern
Polystichum munitum

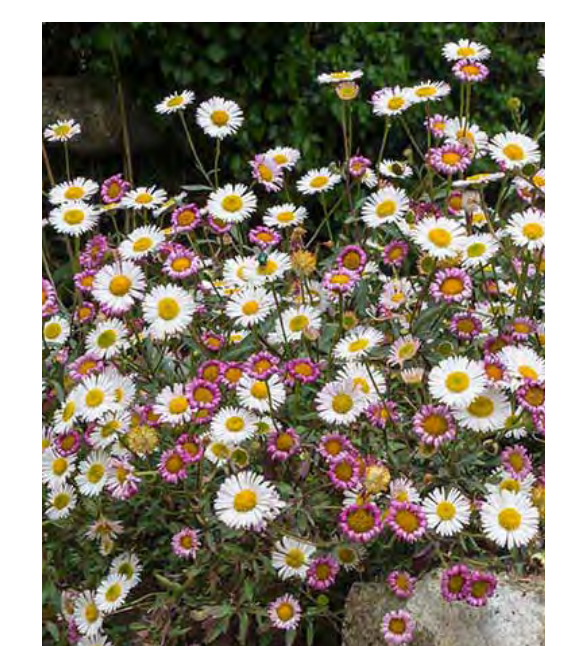


Hummingbird Sage
Salvia spathacea

6th LEVEL TERRACE



Point Molate
Mimulus aurantiacus 'Pt. Molate'



Santa Barbara Daisy
Erigeron karvinskianus

PLANT PALETTE

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LANDSCAPE
SECTIONS AND
PLANT PALETTE

L1.4

Sweet Shade

Hymenospermum Flavum
24" Box Installed Size

MAINTENANCE AREA TREE SELECTION

CHARACTERISTICS

Tree Shape: Conical or Rounded
Foliage Type: Evergreen

Maximum Height: 35 feet
Canopy Width: 15-20 feet
Growth Rate: ~12-24 inches/year

Flowers: Showy, Fragrant
Flower Color: Yellow
Flower Type: Both male and female parts (perfect)
Flowering Time: Spring or Summer

Fruit: Medium brown or mostly green capsule
Fruiting Time: Summer or Fall

Bark: Light Green or Light Gray, Rough

Litter: Dry Fruit, Flowers

SITE CONDITIONS

Planting Area: 5' to 10'

Sunset Zones: 8-9, 14-23

Sun Exposure: Partial Shade to Full Sun

Soil Texture: Loam or Sand

Soil pH: Slightly Acidic to Very Alkaline

Soil Salinity Tolerance: Coastal Moderate



TRACHTENBERG
ARCHITECTS

2421 Fourth Street
Berkeley, California 94710
510.649.1414
www.TrachtenbergArch.com

MILLER COMPANY
landscape architects

1585 FOLSOM ST. SAN FRANCISCO, CA 94103
415.252.7288 www.millercomp.com

1201
SAN PABLO
MIXED-USE

Berkeley, CA 94706

2022.03.15 DRC REVISIONS

2022.03.23 DRC REVISIONS

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING
HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED
WORK OF THE ARCHITECT AND MAY NOT BE
DUPLICATED, USED OR DISCLOSED WITHOUT WRITTEN
CONSENT OF TRACHTENBERG ARCHITECTS.

JOB: 1928

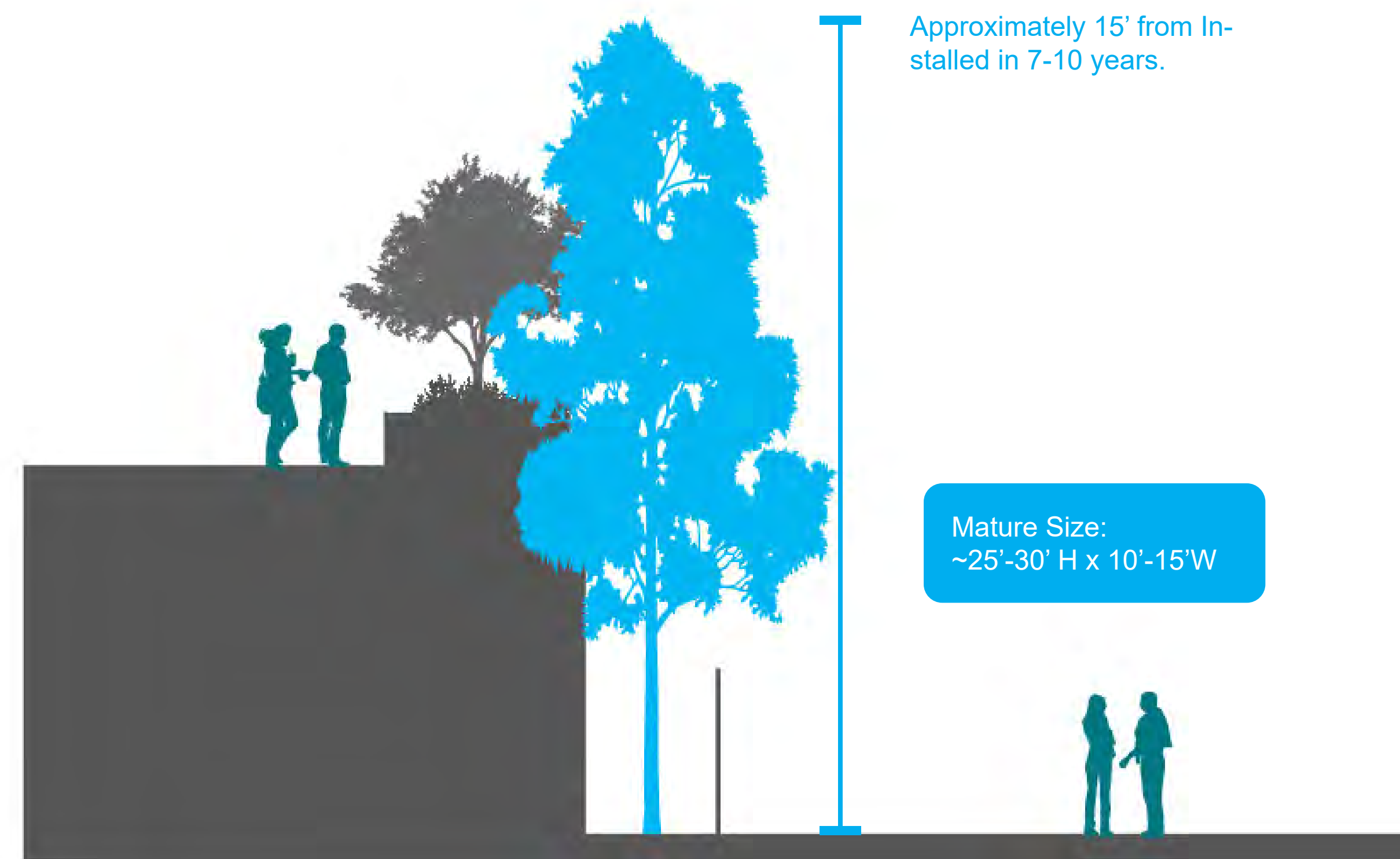
SHEET:

EAST PROPERTY
LINE SCREEN

L1.5



SECTION AT EAST PROPERTY LINE - APPROXIMATE INSTALLED CONDITION



SECTION AT EAST PROPERTY LINE - MATURE CONDITION

CITY OF BERKELEY - CITY CLERK
2022 MAY 19 PM2:56

To: Berkeley City Council

From: Concerned neighbors of 1201-1205 San Pablo Avenue Project

Date: May 18, 2022

Re: Formal appeal of the 1201-1205 San Pablo Ave. development project
(Use Permit #ZP2021-0070)

This letter is a formal appeal to the Berkeley City Council of the Berkeley Zoning Adjustment Board's approval for the development at 1201-1205 San Pablo Ave. We ask that you add the following as conditions of approval for the project. Each of these requests has been made previously and directly to the developer of the project, to the City of Berkeley planning staff, to City Council member Rashi Kesarwani, and to the Zoning Adjustment Board.

We have been in discussion with the developer about a number of these issues and if we are able to come to an agreement, we ask that those items be included as conditions of approval.

1. Relocate the parking garage entrance/exit of the project to San Pablo Avenue as a condition of approval for the project. We ask that the Berkeley City Council require the developer to work with CalTrans to formally move the garage entrance to San Pablo Ave. This will significantly improve traffic patterns within the adjacent neighborhood and will help mitigate the impact on neighbors directly affected by the project on surrounding streets, and prevent the neighbor at 1110 Harrison St (12 feet from project) from being subjected to 24/7 garage door noise.

2. Require the developer to complete an updated traffic study (including peak commute hour traffic), and for traffic mitigation measures to be implemented before completion of the project as a condition of approval for the project. We believe that the previous traffic study in the developer's previous application from 2017 is outdated and inadequate. As a condition of approval of the project, an updated traffic and parking study should be completed. Also, all necessary traffic mitigation measures should be implemented in advance of completion of construction (such as the installation of traffic barriers and traffic lights to reduce the impact of increased car traffic in the neighborhood).

3. Require the developer to compensate directly the adjacent neighbor at 1110 Harrison for impacts on their property as a condition for approval of the project. This includes compensating neighbor for the loss of natural light and privacy in home and in yard; explicitly committing to compensation for potential damage to existing home foundation, walls, and driveway during construction; and compensation for disruption of work in home office during construction (resident works from home as a writer.)

4. Require the developer to compensate directly adjacent neighbor at 1206 Kains Avenue for loss of ability to generate solar power as a condition of approval for the project. The proposed project will significantly impact the ability of the residents of 1206 Kains Avenue to capture and draw power from their solar panels. As a condition of approval we ask that the developer compensate the owners of 1206 Kains Avenue for this loss (e.g., to pay for installation of updated solar panels that capture more power with less hours of light).

5. Institute a parking permit program in the neighborhood as a condition of approval of the project. As part of the approval for the project, the City of Berkeley should implement a residential parking permit program for the surrounding neighborhood in advance of completion of construction.

6. Require the higher number of 28 parking spaces proposed in the existing plan as a condition of approval of the project. The developer has proposed installing either 17 or 28 parking spaces as part of the project. Requiring the higher number of 28 parking spaces will help mitigate the impact of parking on the surrounding community.

7. Correct the planted tree box size as a condition of approval of the project. A correction to item #16 in the "Finding and Conditions" section of ZAB's Notice of Decision. The planted tree box size should be amended to read (48" box minimum) instead of 24".

Finally, it should be known that there was no initial outreach to us, the neighbors, at the outset of the project proposal, as is mandated by the City of Berkeley, and all communication between the neighbors and the architect and the developer were initiated by individual neighbors.

During the subsequent ZAB hearings and Design Review Committee hearings, there was only very limited engagement with the neighbors and consideration of our concerns. At several points during these hearings, ZAB members simply threw up their hands and stated that they were powerless to address any of our concerns.

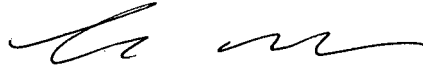
Together, it is clear that the process as it currently stands leaves no meaningful way for neighbors to have a voice. Had this not been the case, this appeal might not have been necessary, as these issues may have been resolved.

Yvette Bozzini
Yvette Bozzini
4110 Harrison St

Dan Hayes
Dan Hayes
1116 HARRISON ST

We the undersigned support the appeal of ZAB approval of the 1201-1205 San Pablo Ave. development project.

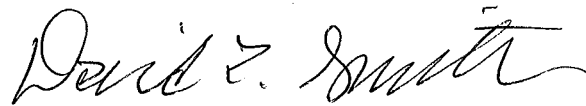
Libby Black
1208 Kains Ave



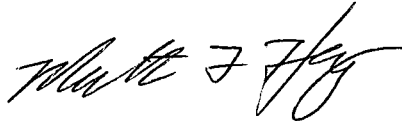
Mary Mulvehill
1205 Kains Ave



David A Smith
1205 Kains Ave



Matthew Hardy
1206 Kains Ave.



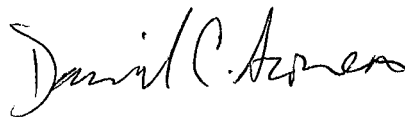
Kate O'Hara
1206 Kains Ave
Guy Cash
1224 KAINS



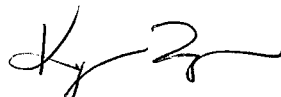
Renee gentler
1217 KAINS AVE
BERKELEY, CA
94706



DANIEL ARONEN
1214 KAINS AVE
BERKELEY, CA 94706



Kazumi Taniguchi
1214 Kains Ave.
Berkeley, CA 94706



We the undersigned support the appeal of ZAB approval of the 1201-1205 San Pablo Ave. development project.

ALAN WESTIOTT 1119 Harrison

~~Alan Westiott~~

DORIS M. BURLESON

1125 HARRISON ST

~~Doris M. Burleson~~

Adrian Shore 1192 Kains Ave APT #

~~Adrian Shore~~

Terry Reader 1213 San Pablo 105

Terry Y. Reader

Terence Ratchford 1213 San Pablo 207

~~Terence Ratchford~~

Eric Danysh 1212 Stannage

Eric Danysh

Ava Charney-Danysh 1212 Stannage Ave.

Ava Charney-Danysh

We the undersigned support the appeal of ZAB approval of the 1201-1205 San Pablo Ave. development project.

Rebecca M. Dalton
~~Rebecca M. Dalton~~

and

DONALD C. BURNS




1225 Kains

Margaret Pitt

1231 Kains

Mariko de Mantuffe

1226 KAINS AVE, 94706.

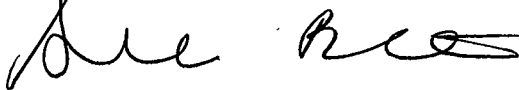
Elise Obolensky  1116 Harrison Street

TERRY WALTERS  1223 Kains Ave

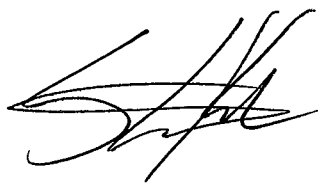
Fiona Rhea  1223 Kains Ave.


Holly Turner  1114 Harrison St.

Susan Alderman
1209 Kains Ave




STEVE KOSACH
1209 KAINS AVE



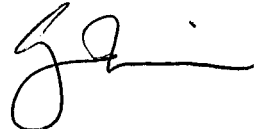
Christina Turner

1196 KAINS

We the undersigned support the appeal of ZAB approval of the 1201-1205 San Pablo Ave. development project.

Terri Fashing
1112 Harrison St.

 5/18/2022


Gabriel Winer
1112 Harrison St

 5/18/2022

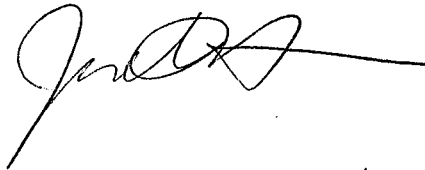
Manuela Delnevo
1219 Kains Ave.

 5/18/2022

Dani Rozman
1219 Kains Ave

 5/18/2022

Juliette Aamer
1219 Kains Ave




Michael Ketema
1204 Kains Ave.

 5/19/2022

We the undersigned support the appeal of ZAB approval of the 1201-1205 San Pablo Ave. development project.

Asahiko Kikuchi

 5/19/22

1175 Kains ^{Ave.}, Berkeley, CA 94706

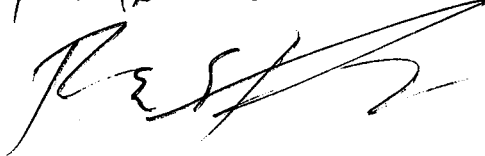
Nick Shapiro



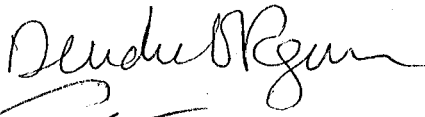
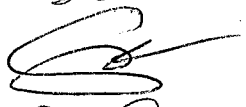




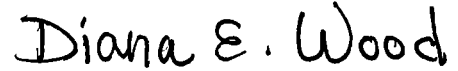
11/4 Harrison

RICHARD STECHER

1208 STANFORD AVE
BERKELEY 94706.



We the undersigned support the appeal of ZAB approval of the 1201-1205 San Pablo Ave. development project.

Signature	Printed Name	Street Address
	Deirdre O'Regan	1134 Stannage Ave
	Sarah Allen	1229 Stannage Ave
	DORIS IARDOLI	1123 HARRISON ST.
	Betty Yu	1235 Kains Ave.
	LINDA SIKORSKI	1223 STANNAGE
	TERRENCE DILLON	1223 STANNAGE &
	DIANA E. WOOD	1139 Gilman St.

We the undersigned support the appeal of ZAB approval of the 1201-1205 San Pablo Ave. development project.

Erika Lamm Ruby Samm 1209 Stannage

EVA O'CONNELL [Signature] 1217 STANNAGE

AJITH MASCARENHAS [Signature] 1235 STANNAGE

Gail Kurtz [Signature] 1232 Stannage

Jill Churchman Jill Churchman 1141 Stannage

Hairganoush Preisler HK Preisler 1125 Kains Ave

Sheila Cynthia Krikorian [Signature] 1123 Kains Ave

Jocelyn Newell [Signature] 1123 Kains Ave

Jean Molestky-Poz JM Poz 1220 Stannage Ave

Marilyn P. Poz [Signature] 1220 Stannage Ave

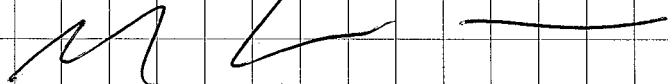
We, the undersigned, support the Formal Appeal of
1201-1205 San Pablo Development project
Use Permit # EP2021-0070

	Name	Address	Signature
*	Mary Wyand	1206 Stannage Ave	Mary Wyand
*	Paul Vellutini	1206 Stannage Ave	Paul Vellutini
*	Leslie Barbarotte	1200 Stannage Ave	Leslie Barbarotte
*	Jason Morgan	800 Stannage Ave	Jason Morgan
	Carlos Blanco	1203 Stannage	Carlos Blanco
	Melissa Blanco	1203 Stannage	Melissa Blanco
*	SUSAN COHEN	1214 Stannage	Susan Cohen

* address within 300' of Proposed Project

1115 Harrison St
Berkeley CA 94706

Mikhail Jebraial



Sadun Faybukhsh

~~1197 San Pablo Ave~~

M. FATHIAN FAROOQ

1199 San Pablo Ave



Z O N I N G A D J U S T M E N T S B O A R D S T A F F R E P O R T

FOR BOARD ACTION
APRIL 28, 2022

1201-1205 San Pablo Avenue

Use Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units (including five Very Low-Income units), 1,680 square feet of commercial space, 2,514 square feet of usable open space, and 17 to 28 ground-level parking spaces.

I. Background

A. Land Use Designations:

- General Plan: AC – Avenue Commercial
- Zoning: C-W–West Berkeley Commercial District, Gilman and San Pablo Designated Node

B. Zoning Permits Required:

- Administrative Use Permit under Berkeley Municipal Code (BMC) §23D.04.020.C¹ to construct rooftop projections, such as mechanical appurtenances or architectural elements which exceed the maximum average height limit for the district;
- Use Permit under BMC §23E.64.030.A to construct a mixed-use development with floor area of more than 9,000 square feet;
- Use Permit under BMC §23E.64.030.A to construct new dwelling units; and
- Use Permit under BMC §23E.64.050.B, to create new gross floor area of 5,000 square feet or more.

C. Waivers/Concessions Pursuant to State Density Bonus Law:

- Waiver of BMC §23E.64.070.A to increase maximum FAR to 3.6 where 3.0 is the limit;
- Waiver of BMC §23E.64.070.B to increase maximum average building height to be 68'-3", where 50' is the limit for a mixed-use building;
- Waiver of BMC §23E.64.070.B to increase maximum number of stories to be 6 stories, where 4 stories is the limit for a mixed-use building; and

¹ The prior Zoning Ordinance was in effect at the time this application was deemed complete. The version of the BMC Title 23, Zoning Ordinance, that was in effect at the time this application was deemed complete is available online: [https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Zoning_Ordinance_Revision_Project_\(ZOR_P\).aspx](https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Zoning_Ordinance_Revision_Project_(ZOR_P).aspx)

- Concession to reduce the Usable Open Space requirement from 2,640 to 2,514 square feet.

D. CEQA Recommendation: It is staff's recommendation to ZAB that the project is categorically exempt pursuant to §15332 ("In-Fill Development Projects") of the CEQA Guidelines. The determination is made by ZAB.

The project meets all of the requirements of this exemption, as follows:

- The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
- The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
- The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
- The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by City Transportation Division which concurred with the findings of less than significant impacts. Standard Conditions of Approval would address potential impacts related to traffic, noise, air quality, and water quality.
- The site can be adequately served by all required utilities and public services.

Furthermore, none of the exceptions in CEQA Guidelines §15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code §65962.5, and (f) the project would not affect any historical resource. See Section III.E for discussion of the project's CEQA review.

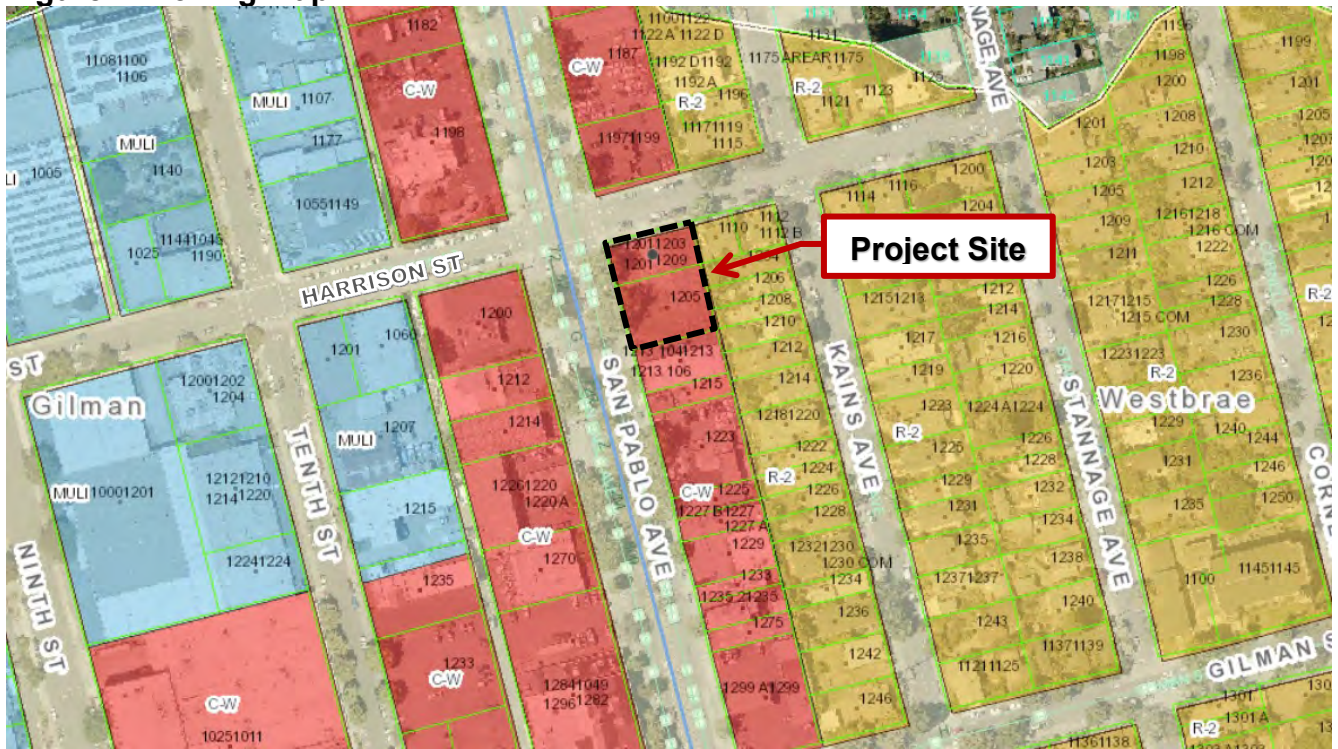
E. Parties Involved:

- Applicant Isaiah Stackhouse, Trachtenberg Architects, 2421 Fourth Street, Berkeley, CA 94710
- Property Owner Lanhai Su, 4500 Great America Parkway, Santa Clara, CA 95054


F. Application Materials, Staff Reports and Correspondence are available on the Internet:

https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/1201-1205_San_Pablo.aspx

Figure 1: Zoning Map



Legend

-  AC Transit Bus Route
- C-W: West Berkeley Commercial District
- MU-LI: Mixed Use-Light Industrial District
- R-2: Restricted Two-Family Residential District

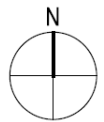


Figure 2: San Pablo Avenue Elevation (West)



Figure 3: Harrison Street Elevation (North)



Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Vacant Land	C-W	AC
Surrounding Adjacent Properties	North	Auto Repair Shop		
	East	Single-Family Residential	R-2	
	South	Multi-family Residential	C-W	
	West	Tattoo Parlor/Art Gallery/ Fast Food Restaurant (vacated) – approved for 104-unit mixed-use building, November, 2020 (ZP2019-0192)		

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee & Affordable Housing Fee for qualifying non-residential projects (Per Resolutions 66,618-N.S. & 66,617-N.S.)	No	These fees apply to projects with more than 7,500 square feet of net new non-residential gross floor area. The project includes 1,680 square feet of net new non-residential gross floor area. Therefore, the project would not be subject to these fees.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	Yes	The project would include five or more market rate dwelling units and is therefore subject to the affordable housing provisions of BMC 22.20.065.
Alcohol Sales/Service	No	The project is not proposing alcohol sales or service with this permit.
Coast Live Oaks	No	There are no oak trees on the project site.
Creeks	No	The project site is not within a creek buffer.
Density Bonus	Yes	The project would provide five Very Low-Income units, or 10% of the Base Project units, and qualifies for a 32.5% density bonus, or 17 bonus units (16 taken). See Section III.B for discussion.
Green Building Score	No	The project is not located in the C-DMU, Downtown Mixed Use District, and is not subject to this requirement.
Historic Resources	No	The project site is vacant, and does not to contain any known historic resource.

Characteristic	Applies to Project?	Explanation
Housing Accountability Act (Govt. Code 65589.5(j))	Yes	The project is a "housing development project" consisting of a mixed-use building, and requests no modifications to development standards beyond waivers and concessions requested under density bonus law. Therefore, the HAA findings apply to this project, and the project cannot be denied at the density proposed unless the findings for denial can be made. See Section III.C for discussion.
Public Art on Private Projects (BMC Chapter 23C.23)	Yes	The project is subject to the Percentage for Public Art on Private Projects Ordinance. The applicant is electing to pay the fee (0.8% of total building permit valuation) to comply.
Rent Controlled Units	No	The project site is vacant, and there are no rent-controlled units to be demolished.
Residential Preferred Parking	No	The site is not located in an RPP zone.
Seismic Hazards (SHMA)	No	The project site is located in an area susceptible to liquefaction, as defined by the State Seismic Hazards Mapping Act (SHMA). The applicant has submitted a geotechnical report that has been peer reviewed by the City's consultant. Conditions of approval will be included in the permit to ensure oversight by the applicant's geotechnical consultant.
Soil/Groundwater Contamination	Yes	The project site is located within the City's Environmental Management Area. The applicant has submitted a Phase I report. No further investigation is recommended. Standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The project site is served by multiple bus lines (local, rapid, and Transbay) that operate along San Pablo Avenue, and is approximately 1.3 miles from the North Berkeley BART Station.

Table 3: Project Chronology

Date	Action
April 1, 2021	SB 330 Preliminary Application deemed complete
May 11, 2021	SB 330 Use Permit Application submitted
September 22, 2021	Application deemed complete; level of CEQA review determined by staff – Categorically Exempt
November 23, 2021	Public hearing notices mailed/posted
December 9, 2021	ZAB Preview
January 20, 2022	DRC Preliminary Design Review
March 29, 2022	DRC Preliminary Design Review (Cont'd)
April 13, 2022	Public hearing notices mailed/posted

April 28, 2022	ZAB Hearing
June 27, 2022	CEQA Determination Deadline

Table 4: Development Standards

C-W Standards, BMC §23E.64.070-080		Existing	Proposed	Permitted/Required
Lot Area (sq. ft.)		5,500 +7,500 ¹	13,000	n/a
Gross Floor Area (sq. ft.)		n/a	46,996	39,000
Commercial Floor Area (sq. ft.)		n/a	1,680	n/a
FAR		n/a	3.6	3
Dwelling Units		n/a	66	n/a
Building Height	Average	n/a	68'-3"	50' max./ 25' min. (in node)
	Maximum	n/a	68'-3"	n/a
	Stories	n/a	6	4 max. 2 min. (in node)
Building Setbacks	Front (Harrison)	n/a	0'-0" (1'-6" overhang into ROW)	0' min.
	Rear	n/a	0'-0"	0' min.
	Left Side	n/a	5'-0"	5' min.
	Right Side (San Pablo)	n/a	0'-0" (1'-6" overhang into ROW)	0' min.
Lot Coverage (%)		n/a	93	n/a
Usable Open Space (sq. ft.)		n/a	2,514	2,640 min. (40 s.f./d.u.)
Parking	Commercial (1,720 sq. ft.)	n/a	4	4 min. (2 spaces/1,000 sq.ft.)
	Residential	n/a	13 to 24 ²	0 min./33 max. (0.5 spaces/du max.)
	Total	n/a	17 to 28	4 min./37 max.
Bicycle Parking	Commercial - Short Term (1,720 sq. ft.)	n/a	2	2 (1 space/2,000 s.f. commercial)
	Residential - Long Term	n/a	64	26 (1 space/3 bedrooms)
	Residential - Short Term	n/a	6	2 (1 space/40 bedrooms, or 2)
	Total	n/a	64/8 (long term/short term)	26/4 (long term/short term)
<p>■ = Waiver or Concession requested to modify the district standard.</p> <p>¹ Merger of two lots</p> <p>² The applicant would determine the final amount of parking spaces/parking lifts prior to the application for building permits, based upon financial considerations. The amount proposed falls within the range of minimum and maximum parking requirements.</p>				

II. Project Setting

- A. Neighborhood/Area Description:** The project site is located on the southeast corner of the intersection of San Pablo Avenue and Harrison Street, along the San Pablo Commercial Corridor, within the Gilman and San Pablo Node of the West Berkeley Area Plan. Adjacent parcels to the east are occupied by single- and multi-family residential developments in the R-2, Restricted Two-Family Residential District. Further north and south along San Pablo Avenue, in the C-W, West Berkeley Commercial District are mostly one-story commercial buildings, excepting the two parcels just south of the project site, which are occupied by a two-story apartment building and a one-story, single-family dwelling, respectively. Parcels directly west of the site, across San Pablo Avenue, are currently occupied by one-story commercial buildings. Entitlements for a six-story, 104-unit, mixed-use building were obtained for these three parcels in November, 2020 (ZP2019-0192). San Pablo Avenue is served by multiple bus lines (local, rapid, and Transbay). The site is approximately 1.3 miles from the North Berkeley BART Station (to the northeast). (See Figure 1: Zoning Map.)
- B. Site Conditions/Background:** The project site is composed of two rectangular parcels – 1200/1209, and 1205 San Pablo Avenue – which have a combined total area of 13,000 square feet, a combined frontage along San Pablo Avenue measuring 130 feet, and a combined frontage along Harrison Street measuring 100 feet. The parcels are vacant. Entitlements were obtained for the project site in 2006 to construct a five-story, 27-unit, mixed-use building, and an application for a building permit (B2019-05125) to construct the approved project was submitted in 2019, but never issued.

III. Project Description

- A.** The proposed project would involve the merging of two lots into one, and the construction of a mixed-use building with the following main components:
- Six stories, 68 feet, 3 inches in height
 - 66 dwelling units – 22 studios, 34 one-bedroom, and 10 two-bedroom
 - 76 bedrooms total
 - Five Very Low Income (VLI) units
 - 1,680 square feet of ground-floor commercial space
 - 2,514 square feet of usable open space – second-floor podium courtyard, private patios, and sixth-floor roof deck
 - 17 to 28 vehicle parking spaces in ground-level garage²
 - 64-space bike room

(See Figure 2 and 3: Elevations.)

- B. Base Project and Density Bonus:** By committing to provide five VLI units, the project is eligible for a density bonus under Government Code §65915. Under the City's

² The applicant would determine the final amount of parking spaces/parking lifts prior to the application for building permits, based upon financial considerations.

density bonus procedures, the Base Project was calculated to have 50 units, as the maximum allowable density for the site.³ The Base Project has an average unit size of 657 square feet in a four-story building. Five VLI units, or 10 percent of the Base Project, qualifies the project for a 32.5 percent density bonus or 17 bonus units, of which the project would utilize 16. The resulting Proposed Project would be a six-story building with 66 units, with an average unit size of 664 square feet. (See Table 5: Density Bonus.)

Table 5: Density Bonus – CA Gov’t Code 65915

Base Project Units*	Qualifying Units	Percent Density Bonus	Number of Density Bonus Units*	Proposed Project Units
50	5 VLI (10% of BP)	32.5%	16 (17 max.) (32.5%x50)	66
*Per Gov’t Code 65915(q), all unit calculations are rounded up to the nearest whole number.				

C. Housing Accountability Act: The Housing Accountability Act (HAA), California Government Code §65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

- 1) The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and
- 2) There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

The Base Project complies with applicable, objective general plan and zoning standards. Further, §65589.5(j)(3) provides that a request for a density bonus “shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.” Therefore, the City may not deny the Base Project or density bonus request or reduced the density with respect to those units without basing its decision on the written findings under §65589.5(j), above. Staff is aware of no specific adverse impacts that could occur with the construction of the Base Project or the density bonus units. Therefore, §65589.5(j) **does apply** to the Proposed Project. All findings discussed below are subject to the requirements of Government Code §65589.5.

³ Per the City’s Density Bonus Procedures (DBP), the Base Project is the largest project allowed on the site that is fully compliant with district development standards (i.e. height, setbacks, usable open space, parking, etc.), or, the *maximum allowable density* for the site. The City uses the DBP to calculate the maximum allowable density for a site where there is no density standard in the zoning district, and to determine the number of units in the Proposed Project, which is the number of Base Project units plus the number of density bonus units that can be added according to the percentage of BMR units proposed, per Government Code, §65915(f).

IV. Community Discussion

A. Neighbor/Community Concerns: After receiving the application on May 11, 2021, the City mailed a Notice of Received Application to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations.⁴ Staff received one email from a neighbor on Stannage Avenue describing concerns over excessive building height, excessive density, and inadequate parking (17 spaces) provided in the project, which would contribute to congestion in the neighborhood.

On December 9 2021, a ZAB Preview for the project was held. Neighbor comments included concerns over not enough parking; increased traffic and impact to pedestrian safety; increased crime and refuse; impact to privacy; and impact to light. ZAB comments included concerns for more attention to the building interface with residential neighborhood, more parking needed, impact to solar panels on adjacent dwellings , breaking up building massing, and more attention to the appearance from the City of Albany approach to Berkeley.

On January 18, 2022 and January 20, 2022 staff received a total of five letters from neighbors expressing concerns regarding impact to sunlight and views; building design and aesthetics; building massing; impact to privacy; construction noise; inadequate parking; theft and vandalism to vehicles; increased traffic; a lack of green space; and the addition of another commercial spaces on San Pablo that may stay empty.

On April 5, 2022, staff received a letter from a neighbor expressing concerns regarding the building's incompatibility with the neighborhood and impact from project construction.

On April 13, 2022, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations.

Staff received twelve neighbor comment letters between April 18 and April 20, 2022 – see Attachment #4. The letters expressed concerns over:

- Not enough parking
- Loss of natural light (and impact on solar panels) and privacy
- Increased noise (especially during construction)
- Increased traffic in neighborhood
- Incompatible building design
- Density bonus Base Project is too large
- Not enough affordable housing in the project
- Increased density in the neighborhood

⁴ The Pre-Application Yellow Poster and Neighborhood Outreach components of the land use application submittal requirements were temporarily suspended at the time of the application submittal due to City emergency health orders. The suspension was lifted on July 1, 2021.

- Impact to pedestrian safety

No further communications regarding the project were received as of the writing of this staff report.

- B. Landmarks Preservation Commission:** This application is not subject to review by the Landmarks Preservation Commission.
- C. Design Review Committee:** The Design Review Committee held two Preliminary Design Review on December 16, 2021 and on March 29, 2022, and forwarded a favorable recommendation to the ZAB with the following direction for Final Design Review (FDR) [MOTION: (Kahn, Finacom) VOTE (5-0-0-2) Gaffney, Pink – absent]:

Condition

- At FDR, present an alternate design with open railings for the parapet on the eastern edge of the 5th floor.

Recommendation

- Consider reducing the unit floor plans to only studios on the eastern edge of the project on the highest floor to allow more sunlight on the adjacent residential parcels.

V. Issues and Analysis

- A. SB 330 – Housing Crisis Act of 2019:** The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development projects. A “housing development project” means a use that is: all residential; mixed use with at least two-thirds of the square footage as residential; or transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code §65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, then the city shall not conduct more than five hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act [Chapter 4.5 (commencing with §65920)].

The April 28, 2022 ZAB Hearing represents the fourth public hearing for the proposed project since the project was deemed complete. The City can hold one additional public hearing on this project, if needed. That hearing must be reserved for a potential appeal to the City Council.

2. Government Code §65913.10(a) requires that the City determine whether the proposed development project site is an historic site at the time the application for the housing development project is deemed complete. The determination as to whether the parcel is an historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

The site is vacant, and there is no known cultural resource associated with the site. Therefore, it was determined that the site is not an historic resource. Standard conditions of approval have been included to halt work if any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code §65950(a)(5) requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the California Environmental Quality Act. The project was deemed complete on September 22, 2021. Staff also determined on this date that the level of CEQA review was to be: "Categorically Exempt". The ZAB must determine whether the application is categorically exempt from CEQA before June 27, 2022.
4. Government Code §66300(d) prohibits the demolition of residential dwelling units unless the project will create at least as many residential units as will be demolished. The project does not propose the demolition of housing units. Therefore, this section does not apply to the project.

B. Density Bonus Waivers and Concessions: The project is entitled to two concessions (or incentives), under Government Code §65915(d) for providing at least 10 percent of total units to very low-income households, and an unlimited number of waivers, under §65915(e).

Concession. A concession or incentive is a modification of a zoning code requirement that results in identifiable and actual cost reductions to provide for affordable housing costs.⁵ The applicant is requesting one concession to reduce the Usable Open Space requirement from 2,640 to 2,514 square feet, to eliminate the cost of providing an additional occupiable roof deck.

The City may only deny the concessions if it finds that the concessions would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact⁶ without rendering the development unaffordable to low income, very low income, and

⁵ Because of revisions to Government Code, Section 65915 (Density Bonus) pertaining to incentives and concessions that became effective in January 2017, applicants cannot be required to submit a pro forma financial statement to support concession requests.

⁶ A "specific, adverse impact" means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."

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moderate-income households, or if the concession would be contrary to State or Federal law. Staff has identified no basis for making such a finding.

Waiver. A waiver is a modification of a development standard that would otherwise physically preclude the construction of the project with the permitted density bonus and concessions. Waivers for FAR and height (maximum height and number of stories) are requested because they are necessary to physically accommodate the full density bonus project on the site.

The City may only deny the waivers if it finds that the waivers would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low income, very low income, and moderate income households, or if the waiver would be contrary to State or Federal law. Staff has not identified any evidence that would support such a finding.

VI. Other Considerations

The following analyses of conformance with district purposes, use permit findings for non-detriment, and the 2002 General Plan goals and policies are provided for informational purposes only, to provide context; they are not required because the proposed project is HAA-compliant.

A. Findings for Use Permits in C-W District: Pursuant to BMC §23E.64.090.B, in order to approve any Use Permit in the district, the Board must make the following findings. The proposed use or structure must:

1. Be consistent with the purposes of the District. The project is consistent with the following district purposes:
 - Implement the West Berkeley Plan's designation of a Commercial District;
 - Provide locations for commercial services which primarily serve area residents and/or businesses;
 - Support the retention and attraction of a balance of both smaller and larger stores and restaurants;
 - Provide appropriate locations, consistent with West Berkeley Plan policies, for commercial services which serve a citywide or broader clientele;
 - To provide a relatively compact, clearly bounded set of commercial areas in West Berkeley, so as to both improve the quality of West Berkeley shopping environments and to prevent commercial overspill into industrial areas;
 - Increase the opportunities for development of housing in commercial areas to support local retailing and use of transit lines and opportunities for mixed use projects combining pedestrian-oriented neighborhood-serving uses with mixed income housing in locations abutting residential districts;
 - Encourage appropriately intense development in underutilized portions of commercial streets; and

- Promote development compatible with adjacent commercial, residential and industrial areas;
2. Be compatible with surrounding uses and buildings;
 3. Be consistent with the adopted West Berkeley Plan;
 4. Be supportive of an increase in the continuity of retail and service facilities at the ground level to the degree feasible and does not substantially degrade the existing urban fabric of the street and area;
 5. Be, for projects which include construction of new floor area, providing an intensity of development which does not underutilize the property;
 6. Be capable of meeting any applicable performance standards for off-site impacts; and
 7. Not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.

The proposed mixed-use building at this location would be an appropriate utilization of the currently vacant and underutilized site that would bring 66 new residential units (including five below-market-rate units) and 1,680 square feet of commercial space to the district and the neighborhood. The project would further the purposes of the district by increasing the neighborhood population with new residents of mixed income who would patronize the local businesses, and help to engage the adjacent residential neighborhood (R-2) to the east of the site to contribute to the livability and character of this underutilized portion of the San Pablo Avenue commercial corridor. New residents and business patrons from the project and surrounding neighborhood would increase street-level activity near this intersection of San Pablo Avenue and Harrison Street, and would extend the existing ground-level activation near the Tokyo Fish Market (1220 San Pablo) on the west side of San Pablo Avenue to the east side of the avenue. The project's corner commercial space and primary building orientation toward San Pablo Avenue, along with a similar configuration at the approved mixed-use building to be constructed across the street at 1200-1214 San Pablo, would serve to engage both the southwest and southeast corners of this intersection, and would contribute to the continuity of ground-level activation in the Gilman node of the West Berkeley Plan area.

At six stories tall, the proposed project would be taller than the existing one- and two-story residential and commercial buildings in the vicinity. The building design mitigates this height differential by stepping down toward the dwellings to the east of the site at the sixth floor, and again at the fifth floor. There is also a 43-foot-wide, 47-foot-deep podium level (second floor) garden, and a ten-foot setback along the length of the east property line at the ground level, to soften the transition to the residential neighborhood to the east.

The project would help realize the development potential in the C-W district along San Pablo Avenue in the West Berkeley Area Plan, which allows up to four stories by right (for mixed-use buildings), and would add to the trend of taller, mixed-use development along San Pablo Avenue, north of University Avenue, which includes projects such as: 1406 San Pablo – a three-story, mixed-use building, approved in 2004 and built soon after; 1500 San Pablo – a five-story, mixed use building approved in 2016, which

completed construction in 2021; 1800 San Pablo – a four-story, mixed-use building, approved in 2004 and built in 2006; and 1200-1214 San Pablo (across the street from the subject site) – a six-story, mixed-use building, approved in November, 2020, and currently obtaining building permits.

Finally, the project would be an appropriate intensity of use that would not exceed local traffic and parking capacities. The use permit for a similar, but denser (104 units), mixed-use building at 1200-1214 San Pablo (#ZP2019-0192) was approved in November, 2020 by the City with both a parking waiver and a parking reduction pursuant to State density bonus provisions. In addition, the City's parking reform ordinance (effective March, 2021) eliminated the residential parking requirement and established parking maximums for this district. The proposed 17 to 28 parking spaces falls within the minimum and maximum requirements.

- B. Findings for Use Permits in C-W District Node:** Pursuant to BMC §23E.64.090.C, in order to approve any Use Permit in a District Node, the Board must find that the use supports the development of a strong retail commercial, pedestrian oriented environment at the node. Factors the Board should consider shall include, but are not limited to, the placement of store entrances relative to the street and parking lots and the size and prominence of display windows and areas facing the sidewalk.

Though the specific use and tenant has not yet been determined, the commercial space has floor-to-ceiling windows all along the ground level, with its longer, entry side (west) oriented toward San Pablo Avenue, to activate both the Harrison Street and San Pablo Avenue sidewalks. Floor-to-ceiling windows continue along the ground floor, west side of the building at the residential lobby – which has a residents' lounge behind the windows – through the bike room. Together, floor-to-ceiling windows along the commercial space, lobby, and bike room line approximately 90 percent of the project's San Pablo elevation with active spaces behind transparent glazing.

The project's strong orientation toward the San Pablo Avenue streetscape would add to the pedestrian activity and interest on this portion of the Avenue that already draws visitors daily. The Tokyo Fish Market, across San Pablo and west of the project site, is a food market that has occupied its site for several decades, and is a popular lunchtime destination. The project would contribute to the existing pedestrian activity near this business by bringing new residents to the area, and by helping to draw in local visitors – potentially, those from beyond the immediate neighborhood.

- C. General Non-Detriment Finding:** BMC §23B.32.040.A states that before the ZAB approves an application for a Use Permit, it must find that the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the 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.

Shadows: According to the shadow studies submitted for the project (See Attachment 1, Project Plans – Sheets A.0.4A through A.0.4E). New shadows would affect the existing residences to the east of the site and the existing apartment building to the south, casting new shadows in the winter and summer months in the hours before sunset. Shadows would be cast onto the approved mixed-use building to the west (when constructed) at 1200 San Pablo, in the hours after sunrise in the summer months.

Shadow impact on adjacent dwellings are to be expected, because the subject site is located in the C-W district, which allows heights of up to 50 feet and four stories for mixed-use buildings, by right. The proposal would include a waiver for additional height beyond the district height limits to accommodate the density bonus units (see section V.B for a discussion of waivers) and allow a 68-foot, 3-inch-tall, six-story building. The additional height above the district limits would cast shadows in the affected directions further than if the project were limited to the base district height standards. Staff believes that shadow impacts from the project would be reasonable and not detrimental.

Non-Detriment: The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not 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.

D. General Plan Consistency: The following is an analysis of conformance with the 2002 General Plan goals and policies, provided for informational purposes only:

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy LU-23–Transit-Oriented Development: Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley.
4. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
5. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

6. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

As discussed in section VI.A through VI.C, the project would improve the utilization of the site with development that is of appropriate intensity, that is compatible with the existing surrounding development, and that would further improve the neighborhood character and quality of life by increasing existing street-level activity, and bringing in new residents and new business patrons to an intersection in a designated node along a major commercial and transit corridor. The project site is served by multiple bus lines, including local, rapid, and Transbay lines, that operate along San Pablo Avenue, and a nearby BART Station.

7. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.
8. Policy H-19–Regional Housing Needs: Encourage housing production adequate to meet the housing production goals established by ABAG’s Regional Housing Needs Determination for Berkeley.
9. Policy EM-5–“Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)

The project would help Berkeley meet its regional housing needs by adding 66 net new housing units, including five VLI units. The project would be subject to standard conditions of approval that promote sustainable building design, including conditions for solar PV systems, electric vehicle charging, water efficient landscaping, and natural gas prohibitions.

VI. Recommendation

Because of the project’s consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit #ZP2021-0070, pursuant to BMC §23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received March 23, 2022
3. Notice of Public Hearing
4. Neighbor Letters, received April 18 - 20, 2022

Staff Planner: Sharon Gong, sgong@cityofberkeley.info, (510) 981-7429

Draft Memorandum

Date: July 2, 2021
To: Lani Su
From: Sam Tabibnia, Fehr & Peers
Subject: 1201 San Pablo Avenue – Transportation Assessment

OK21-0423

Fehr & Peers conducted a transportation assessment for the proposed development, consisting of 66 multi-family residential units and 1,720 square feet of ground-level retail space at 1201 San Pablo Avenue in Berkeley, California (the Project). This memorandum summarizes the Project description, trip generation, vehicle miles traveled (VMT) screening, and access and circulation for the Project. Based on our analysis:

1. The Project would generate approximately 290 daily, 17 AM peak hour, and 25 PM peak hour automobile trips. The peak hour trips generated by the Project would not be noticeable nor change traffic operations.
2. Since the proposed Project would satisfy two of the City of Berkeley's VMT screening criterion, it is presumed to have a less than significant impact on VMT.
3. The Project would satisfy the City of Berkeley's Municipal Code requirements for automobile and bicycle parking. However, the site plan does not show the number of parking spaces with electric vehicle charging equipment as required by the City Code.
4. the Project would provide adequate access and circulation for pedestrians, cyclists, and motor vehicles.

Considering the low automobile vehicle trips generated by the Project, a detailed off-site assessment is likely not required, although the final determination will be made by City of Berkeley staff.

The remainder of this memorandum provides more detail on our analysis assumptions, methodology, and findings.



1. Project Description

The Project is located on the southeast corner of the San Pablo Avenue/Harrison Street intersection in Berkeley. The Project site is currently vacant, and the Project would consist of a six-level building providing 66 multi-family residential units (mix of studios, one-bedroom, and two-bedroom units for a total of 76 bedrooms), and about 1,720 square feet of ground-level commercial space. The Project would also include a ground-level garage with a full-access driveway on Harrison Street. The garage would provide either 17 non-lift standard parking spaces or up to 28 parking spaces (consisting of five non-lift standard spaces and 23 spaces accommodated with double-lifts). The Project would also provide a bicycle room that would accommodate long-term parking for 64 bicycles on the ground level. **Attachment A** shows the Project site plan.

2. Project Trip Generation

Trip generation is the process of estimating the number of vehicles that would likely access the Project on a typical day. **Table 1** summarizes the trip generation for the proposed Project. Trip generation data published by the Institute of Transportation Engineers (ITE) in the *Trip Generation Manual (10th Edition)* was used as a starting point to estimate the vehicle trip generation.

ITE's *Trip Generation Manual* is primarily based on data collected at single-use suburban sites where the automobile is often the only travel mode. However, the Project site is in a mixed-use urban environment adjacent to high-frequency transit corridor where many trips are walk, bike, or transit trips. According to the 2019 Five-Year Estimates of the American Community Survey (ACS), the Project census tract (4219) has an automobile mode share of 57 percent, compared to 87 percent for the US as a whole. Therefore, this analysis reduces the ITE based trip generation by 37 percent to account for the non-automobile trips (**Attachment B** provides the Census data and the derivation of the adjustment factors).

As summarized in Table 1, the proposed Project is estimated to generate about 290 daily, 17 AM, and 25 PM net new automobile peak hour trips. In order to present a more conservative analysis, the trip generation does not account for the following:

- The trip generation for the retail component of the Project is not adjusted to account for non-automobile trips.
- The trip generation for the retail component of the Project is not adjusted to account for pass-by trips, which are trips attracted to the site from adjacent roadways as an interim stop on the way to their ultimate destination. Pass-by trips consist of vehicles that would be on the roadway network regardless of the project; therefore, these trips result in changed travel patterns but do not add new vehicle trips to the roadway network.

**Table 1: Automobile Trip Generation**

Land Use	Size ¹	Daily ²	AM Peak Hour			PM Peak Hour		
			In	Out	Total	In	Out	Total
Apartments ³	66 DU	360	6	18	24	18	11	29
Non-Auto Reductions (-37%) ⁴		-130	-2	-7	-9	-7	-4	-11
<i>Adjusted Apartment Trips</i>		230	4	11	15	11	7	18
Commercial ⁵	1.72 KSF	60	1	1	2	3	4	7
Total Net New Automobile Trips		290	5	12	17	14	11	25

Notes:

1. DU = dwelling unit; KSF = 1,000 square feet
2. All daily trip generation numbers rounded to nearest 10.
3. ITE Trip Generation Manual (10th Edition) land use category 221 (Multi-Family Housing [Mid-Rise]) in general urban/suburban setting:
Daily = 4.44 trips per DU
AM Peak Hour Average Rate = 0.36 trips per DU (26% in, 74% out)
PM Peak Hour Average Rate = 0.44 trips per DU (61% in, 39% out)
4. Reduction based on mode share estimates (Table B08006) as compiled in the American Community Survey 2019 five-year estimate for Project census tract (4219) compared to national data (See attachment B for details).
5. ITE Trip Generation (10th Edition) land use category 820 (Shopping Center) in general urban/suburban setting:
Daily = 37.75 trips per KSF
AM Peak Hour Average Rate = 0.94 trips per KSF (62% in, 38% out)
PM Peak Hour Average Rate = 3.81 trips per KSF (48% in, 52% out)

Source: Fehr & Peers, 2021.

The Project is estimated to generate 25 or fewer peak hour automobile trips. Typically, peak hour traffic volumes have a five to ten percent fluctuation on a day-to-day basis. Thus, the peak hour trips generated by the Project would not be noticeable nor change traffic operations.

In addition, the San Pablo Avenue/Harrison Street intersection, which is adjacent to the Project site and most likely to be affected by Project-generated traffic, is currently side-street stop-controlled with stop signs on the eastbound and westbound Harrison Street approaches. Based on traffic data collected in December 2017 for the *1200 San Pablo Avenue Mixed Use Project Transportation Impact Analysis Report* (dated July 2018), the peak hour volume on the westbound Harrison Street approach is about 53 vehicles during the AM peak hour. Assuming that all outbound vehicle trips generated by the Project would use the westbound Harrison Street approach, the Project would add about 12 peak hour trips to this approach, which would result in a total of 65 vehicles per hour on the westbound Harrison Street approach at the intersection. This is below the minimum threshold of 100 peak hour vehicles on a stop-controlled approach that would meet the peak hour signal warrant in the *California Manual on Uniform Traffic Control Devices* (MUTCD). The Project would also add fewer than ten peak hour vehicles to the other approaches at this intersection and, therefore, would not meet the City's criteria for implementing mitigations at unsignalized intersections.



Since the San Pablo Avenue/Harrison Street intersection would be the most affected intersection by the Project and the Project would not trigger any mitigations at this intersection, it is not expected that the Project would affect other intersections in the area. Therefore, no intersection level of service analysis is recommended for this Project.

Multi-modal Trip Generation

Table 2 summarizes the total trip generation by different travel modes. The travel modes include automobile transit, bike, and walk. The Project is estimated to generate a total of 470 daily, 28 AM, and 41 PM peak hour trips.

Table 2: Trip Generation by Travel Mode

Mode	Mode Share Adjustment Factors ¹	Daily	AM Peak Hour	PM Peak Hour
Automobile	63%	290	17	25
Transit	22%	100	6	9
Bike	12%	50	3	5
Walk	6%	30	2	2
Total Trips		470	28	41

Notes:

1. Based on mode share estimates (Table B08006) as compiled in the American Community Survey 2019 five-year estimate for Project census tract (4219). See Attachment B for details.

Source: Fehr & Peers, 2021.

3. Vehicle Miles Traveled

In November 2020, the City of Berkeley adopted guidelines, thresholds of significance, and screening criteria for evaluating VMT in CEQA documents, as required by the State for all CEQA documents published after July 1, 2020. This section assesses impacts of the proposed development on VMT, in accordance with the adopted *City of Berkeley VMT Criteria and Thresholds*.

California Senate Bill 743

On September 27, 2013, California Governor Jerry Brown signed Senate Bill (SB) 743 into law and started a process that changed the way transportation impact analysis is conducted as part of CEQA compliance. These changes include elimination of automobile delay, LOS, and other similar measures of vehicular capacity or traffic congestion as a basis for determining significant impacts under CEQA. According to SB 743, these changes are intended to “more appropriately balance the needs of congestion management with statewide goals related to infill development, promotion of public health through active transportation, and reduction of greenhouse gas emissions.”



In December 2018, the State Office of Planning and Research (OPR) completed an update to the CEQA Guidelines to implement the requirements of SB 743. The Guidelines state that VMT must be the metric used to determine significant transportation impacts. The Guidelines require all lead agencies in California to use VMT-based thresholds of significance in CEQA documents published after July 2020.

The OPR Guidelines recommend developing screening criteria for development projects that meet certain criteria that can readily lead to the conclusion that they would not cause a significant impact on VMT. The OPR Guidelines also recommend evaluating VMT impacts using an efficiency-based version of the metric, such as VMT per resident for residential developments and/or VMT per worker for office or other employment-based developments.

VMT Screening

Some land use development projects have characteristics that are highly likely to meet thresholds for a less-than-significant impact on VMT, and the OPR guidance suggests the use of screening criteria to assess whether a project impacts on VMT can be presumed to be less-than-significant.

The adopted *City of Berkeley VMT Criteria and Thresholds* includes the following screening criteria applicable to the proposed development. VMT impacts could be presumed to be less than significant if one or more of the screening criteria outlined below are met:

- **Transit Priority Areas (TPAs):** The project is located within a 0.5-mile walkshed of a major transit stop¹ or within a 0.25-mile walkshed of a stop along a high-quality transit corridor² and does not have any of the following characteristics:
 - Has a Floor Area Ratio (FAR) of less than 0.75 for office uses
 - Includes more than 200,000 square feet of office or commercial space
 - Includes more parking supply than the project's estimated demand
 - Is inconsistent with the City's *General Plan*, an applicable Specific Plan, or an applicable Sustainable Communities Strategy (as determined by the City, with input from MTC)
 - Replaces affordable residential units with market-rate residential units
 - Has project-specific or location-specific information that indicates that the project will generate significant levels of VMT
- **Projects in Low VMT Areas:** Projects that are located in low-VMT areas and that have characteristics similar to other uses already located in those areas can be presumed to generate VMT at similar rates. The low-VMT areas in Berkeley for residential uses are defined as areas where the household VMT per capita in 2020 was at least 15 percent below

¹ Major transit stop is defined as an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods (Pub. Resources Code, § 21064.3).

² High-quality transit corridor is defined as a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours (Pub. Resources Code, § R21155).



the Bay Area regional average based on the results of the Alameda County Transportation Commission (CTC) model and mapped.

The Project would meet both screening criteria as described below:

- **TPA:** The proposed development is located on San Pablo Avenue, adjacent to bus stops in both directions served by AC Transit Line 52 which operates at 20-minute headways and Line 72/72M which operates at 10-to-15-minute headways during the weekday peak commute periods. The Project is also within 0.17 miles of bus stops on both directions of San Pablo Avenue at Gilman Street served by Line 72R which operate at 13-minute headways. Thus, the Project is within 0.25-mile walkshed of one or more bus stop along a high-quality transit corridor. The proposed development would satisfy the TPA criterion because it would also meet the following six conditions:
 - The proposed development would have a FAR of 3.6, which is greater than 0.75.
 - The proposed development would include less than 200,000 square feet of office or commercial space.
 - The Project would provide up to 28 parking spaces for 66 residential units, corresponding to about 0.42 parking spaces. According to the 2019 Five-Year Estimates of the American Community Survey (ACS), renter occupied household in the Project census tract have an average automobile ownership of 1.3 vehicles per household.³ Thus, the Project would not include more parking supply than the Project's estimated demand.
 - The proposed Project is consistent with the City of Berkeley General Plan.
 - There are no existing uses at the Project site; thus, the Project would not replace affordable residential units with market-rate residential units.
 - The Project does not have other project-specific or location-specific attributes that would indicate that the Project would generate significant levels of VMT.
- **Projects in Low-VMT Areas** – Based on the maps provided in the *City of Berkeley VMT Criteria and Thresholds*, and shown on **Figure 1**, the Project is located in a low-VMT area. Since the proposed Project is expected to be similar to current developments in the Project vicinity, it can be presumed that the Project would have similar VMT as the existing residential uses in the Project vicinity. Therefore, the Project would meet the Projects in Low-VMT Areas screening threshold.

VMT Evaluation Conclusion

The Project satisfies the TPA and Projects in Low-VMT Areas screening thresholds. Therefore, it is presumed to have a less-than-significant impact on VMT.

³ Average vehicle ownership for renters in Census Tract 4219 from the 2019 American Community Survey (Table B25044).

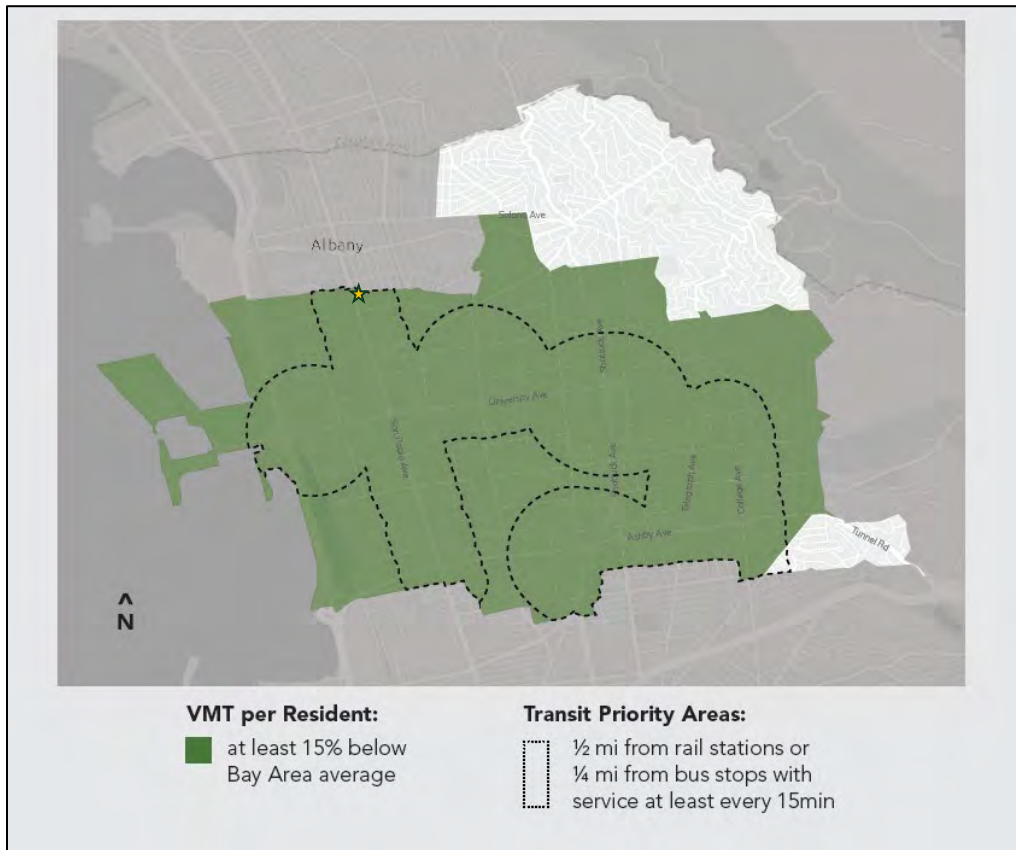


Figure 1 - City of Berkeley Low VMT Areas for Residential Uses
 (Source: City of Berkeley VMT Criteria and Thresholds, June 2020)

4. Project Access and Circulation

This section evaluates access and circulation for pedestrians, cyclists, and motor vehicles, as well as parking requirements for bicycles and motor vehicles based on a Project site plan dated July 2, 2021, and included in Attachment A.

Pedestrian Access and Circulation

All streets in the Project vicinity have sidewalks on both sides of the street. With the completion of the Project, San Pablo Avenue would continue to provide a 12.5-foot sidewalk, with tree wells, signposts, and parking meters adjacent to the street narrowing the sidewalk to a minimum of 8.5 feet. Harrison Street would continue to provide an 11.5-foot sidewalk along the Project frontage, with a planting strip narrowing the sidewalk to a minimum of 7.5 feet. The San Pablo Avenue/Harrison Street intersection is side-street stop-controlled with stop signs on the Harrison Street approaches, marked high-visibility crosswalks with advanced yield markings across both sides of San Pablo Avenue, regular crosswalks across both sides of Harrison Street, and one diagonal curb ramps with truncated domes at all four corners.



The primary pedestrian access for the residential component of the Project would be through a main lobby along the San Pablo Avenue frontage and the commercial component of the building would be at the northwest corner of the building with access on both San Pablo Avenue and Harrison Street.

Bicycle Access and Parking

The Project would provide long-term bicycle parking in a secure bicycle room in the southwest corner of the ground-level of the building. The bicycle room would accommodate 64 bicycles with access through the building lobby and garage. Short-term bicycle parking would be provided through bicycle racks accommodating six bicycles on the sidewalk along the Project frontages on San Pablo Avenue and Harrison Street

The City of Berkeley Municipal Code (23E.64.080) does not have any bicycle parking requirements for residential uses in the C-W zone and requires one space per 2,000 square feet of commercial space. The Code would require the Project to provide one bicycle parking spaces. The 64 long-term bicycle parking spaces and the six short-term bicycle parking spaces provided by the Project would exceed Municipal code requirements for bicycle parking.

The *City of Berkeley Bicycle Plan* (approved in May 2017) provides recommendations on the amount of bicycle parking for development Projects. **Table 3** summarizes the bicycle parking recommended per the *Bicycle Plan*. The 64 long-term bicycle parking spaces and the six short-term bicycle parking spaces provided by the Project would exceed the long-term and short-term spaces recommended by the *City of Berkeley Bicycle Plan*.

Table 3: Bicycle Parking Recommendations

Use	Size ¹	Long-Term		Short-Term	
		Ratio ²	Spaces	Ratio ²	Spaces
Residential Units	76 BD	1 space per 3 BD	25	1 space per 40 BD ³	2
Commercial	1.72 KSF	1 space per 10.0 KSF ³	2	1 space per 2.0 KSF ³	2
Total Bicycle Parking Recommended			27		4
Total Bicycle Parking Supply			64		6
Bicycle Parking Surplus			+37		+2

Notes:

1. BD= Bedroom; KSF = 1,000 square-feet
2. *City of Berkeley Bicycle Plan*, Appendix F
3. The *Bicycle Plan* recommends a minimum of two spaces per use

Source: Fehr & Peers, 2021.



Automobile Access and Circulation

The Project would include a garage on the east side of the building with a full-access driveway on Harrison Street. The garage would provide either 17 non-lift standard parking spaces or up to 28 parking spaces consisting of five non-lift standard spaces along the west side of the drive aisle and 23 spaces accommodated with double-lifts along the east side of the drive aisle. The parking garage would provide adequate space for vehicles to maneuver into and out of the standard surface parking spaces or to wait and maneuver into and out of the parking lifts if lifts are provided.

The Project driveway would provide adequate sight distance between vehicles exiting the garage and pedestrians on both sides of the driveway, where adequate sight distance is defined as a clear line-of-sight between a motorist ten feet back from the sidewalk and a pedestrian ten feet away on each side of the driveway.

The Project driveway would eliminate one on-street parking on Harrison Street at the driveway. Harrison Street along the Project frontage would accommodate parallel on-street parking for two vehicles between the driveway and San Pablo Avenue, and for one vehicle west of the Project driveway. Along the Project frontage on San Pablo Avenue, the Project would eliminate one metered parking space just south of the existing crosswalk to accommodate a 25-foot loading zone and would maintain four existing metered parking spaces.

Automobile Parking Requirements

Table 4 summarizes the off-street automobile parking requirement for the Project, based on the City of Berkeley Municipal Code (23E.64.080). The Code requires no off-street parking spaces for residential uses in the C-W zone and requires two spaces per 1,000 square feet of commercial space. Thus, the Project would need to provide three parking spaces to meet Code requirements. The 17 to 28 parking spaces provided by the Project would exceed City's Code requirement.

The garage would include two accessible parking spaces, including one van accessible parking space, which would meet the minimum requirements for garages providing 25 to 50 parking spaces.

The City of Berkeley Municipal Code (Section 19.37.040) requires parking facilities for new multi-family developments to have 20 percent of the parking spaces provide Level 2 electric vehicle (EV) charging stations, and 80 percent of the parking spaces be supplied with raceways.

Recommendation 1: Ensure the Project that at least 20 percent of the parking spaces provide Level 2 EV charging stations and 80 percent of the parking spaces are supplied with raceways.

**Table 4: Automobile Parking Requirements**

Use	Size ¹	Ratio ²	Required Parking
Residential Units	66 DU	None	0
Commercial	1.72 KSF	2 spaces per 1.0 KSF	3
Total Automobile Parking Required			3
Total Automobile Parking Supply			17-28
Meet Code Parking Requirements?			Yes

Notes:

1. DU = Dwelling Unit; KSF = 1,000 square-feet
2. City of Berkeley Municipal Code 23E.64.080

Source: Fehr & Peers, 2021

5. Conclusions

This concludes our transportation assessment for the 1201 San Pablo Avenue Project. Considering the relatively low trips generated by the Project, a detailed off-site assessment is likely not required, however, the final determination will be made by City of Berkeley staff. Since the proposed Project would satisfy the City's VMT screening criterion for Transit Priority Areas and Projects in Low-VMT Areas, it is presumed to have a less-than-significant impact on VMT. Based on the Project site plan dated July 2, 2021, the Project would provide adequate access and circulation for pedestrians, cyclists, and motor vehicles.

Please contact Sam Tabibnia (stabibnia@fehrandpeers.com or 510-835-1943) with questions or comments.

Attachments

Attachment A – Project Site Plan
Attachment B – US Census Data Summary

Attachment A – Project Site Plan

2421 Fourth Street
Berkeley, California 94710
510.649.1414
www.TrachtenbergArch.com



1201 SAN PABLO MIXED-USE

Berkeley, CA 94706

- 03.11.2021 SB-330 PRE-APPLICATION
- 04.29.2021 ZONING APPLICATION
- 07.02.2021 ZONING COMPLETENESS

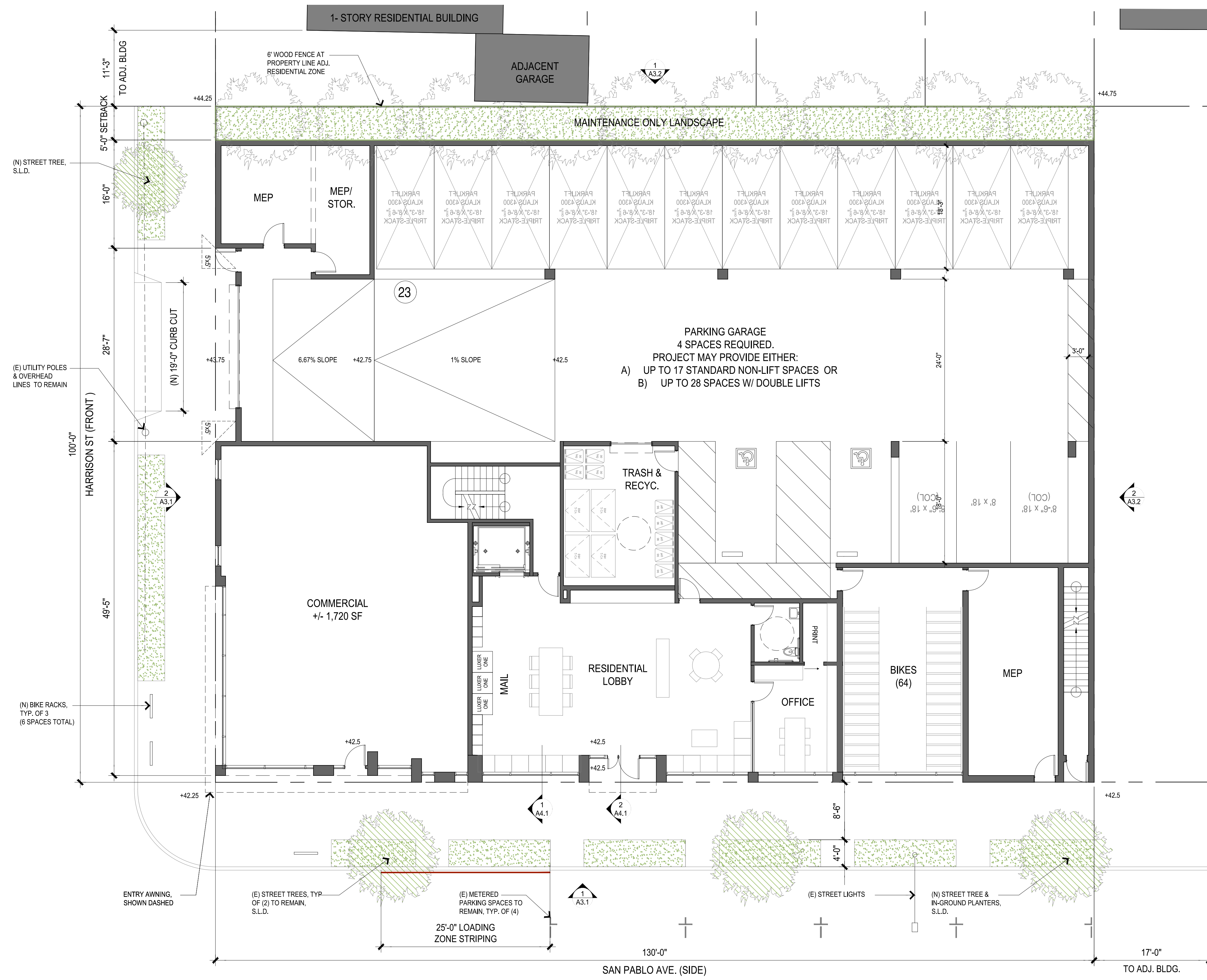
ALL DRAWINGS AND WRITTEN MATERIAL APPEARING HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED WORK OF THE ARCHITECT AND MAY NOT BE DUPLICATED, USED OR DISCLOSED WITHOUT WRITTEN CONSENT OF TRACHTENBERG ARCHITECTS.

JOB: 1928

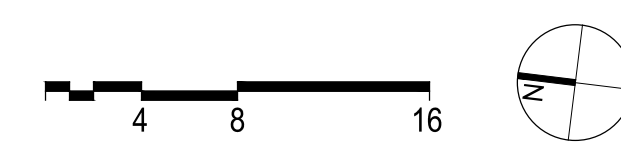
SHEET:

PLAN AT GROUND LEVEL/
SITE PLAN

A2.1



1 SITE PLAN / GROUND LEVEL PLAN
1/16" = 1'-0" @ 11X17 1/8" = 1'-0" @ 24X36




Attachment B – US Census Data Summary

Mode Adjustment Factors		
<p>The mode adjustment factors developed by comparing the mode share for the project census tract to the country as a whole and assuming that the US motor vehicle mode share corresponds to 100 percent of the ITE Trip Generation Manual trips.</p>		
ACS (2014-2019), Mode Shares (Table B08006)	Census Tract 4219	United States
Motor Vehicle	54.7%	86.8%
Transit	19.3%	5.0%
Bike	10.2%	0.6%
Walk	5.3%	2.7%
Work at Home	10.5%	4.9%
Total	100.0%	100.0%
Adjustment Factors		
Motor Vehicle	63.0%	100.0%
Transit	22.2%	5.8%
Bike	11.8%	0.7%
Walk	6.1%	3.1%
Work at Home	12.1%	5.7%
Total	115.3%	115.3%

Non-Auto Reductions

-37%



Index &
Administrative Record
ZAB Appeal:
1201-1205
San Pablo Avenue

These attachments are on file and available for review upon request from the City Clerk Department, or can be accessed from the City Council Website.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley, City Council's Web site:
<https://berkeleyca.gov/your-government/city-council/city-council-agendas>

**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

ZAB APPEAL: 1201-1205 SAN PABLO AVENUE, USE PERMIT #ZP2021-0070

Notice is hereby given by the City Council of the City of Berkeley that on **THURSDAY, SEPTEMBER 29, 2022 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of the decision by the Zoning Adjustments Board to APPROVE Zoning Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units (including five Very-Low-Income units), 1,680 square feet of commercial space, 2,514 square feet of usable open space, and 17 to 28 ground-level parking spaces.

The hearing will be held via videoconference pursuant to Government Code Section 54953(e) and the state declared emergency.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **SEPTEMBER 15, 2022**. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.

For further information, please contact Sharon Gong, Project Planner, (510) 981-7429 or SGong@cityofberkeley.info. 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.

Mark Numainville, City Clerk

Mailed: **SEPTEMBER 15, 2022**

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed 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 to approve or deny a Zoning Adjustments Board 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.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available by request from the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.



Office of the City Manager

INFORMATION CALENDAR

September 29, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police

Subject: Audit Recommendation Status - Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities

CURRENT SITUATION AND ITS EFFECTS

The City Auditor's report included 12 recommendations. One of the recommendations has been implemented and 6 of the recommendations have been started. The next status update report will be in 6 months.

BACKGROUND

On March 3, 2022, the City Auditor's Office issued its audit, *Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities*.¹ This audit report included 12 recommendations. The purpose of this report is to update the City Council on the Police Department's progress on implementing the City Auditor's recommendations. This is the first status report for this audit.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

FISCAL IMPLICATIONS

Costs are not yet known and will depend on yet to be determined contracts and other factors including staff time.

¹ City Auditor's Office Overtime Audit (3/3/2022)

<https://berkeleyca.gov/sites/default/files/2022-04/Berkeley%20Police%20-%20Improvements%20Needed%20to%20Manage%20Overtime%20and%20Security%20Work%20for%20Outside%20Entities.pdf>

CONTACT PERSON

Captain Kevin Schofield, Police Department, (510) 981-5815

Attachments:

1: Table of Audit Recommendations and Progress

Audit Title: Berkeley Police: Improvements Needed to Manage Overtime and Security Work for Outside Entities					
Finding	Recommendation		Lead Department	Expected or Actual Implementation Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
Overtime is used to maintain minimum patrol staffing set by BPD.	1.1	Collect and monitor data on how often compensatory time leads to additional backfill overtime and develop a plan to monitor it.	Police	September 2023	<u>Not Started:</u> Proposed Implementation Plan: BPD is currently working to implement an electronic staffing solution. The Department will assess the ability to monitor and track this information in electronic staffing in order to understand the expense and impacts of compensatory time. BPD will explore the possibility of developing a report through existing payroll and finance programs to understand the impact of compensatory time usage and practices.
Overtime is used to maintain minimum patrol staffing set by BPD.	1.2	Fill vacancies deemed necessary and/or reallocate staff pending the reimagining process and a determination of appropriate staffing levels.	Police	Ongoing	<u>Not Started:</u> Proposed Implementation Plan: BPD understands the impact that reduced staffing has on overtime costs and always strives to fill vacancies and operate within our budget. Challenges in retention of existing officers, difficulty hiring new officers and many imminent retirements make it difficult to apply a timeline on implementation of this recommendation. Recruitment efforts, prioritization of hiring and related processes and budget authority to hire will be instrumental to the department's success.

Minimum staffing levels in BPD's Patrol Unit could cause unnecessary overtime if not regularly updated.	2.1	Establish a procedure to regularly assess minimum staffing and overall staffing needs of the department. This process should document and incorporate criteria to assess staffing levels, such as calls for service, other workload, community input, and other relevant factors. As BPD prepares for the rollout of a new software system, BPD should consider how to best align the program's capabilities with this assessment process.	Police	September 2023 - March 2024	<p><u>Not Started:</u> Proposed Implementation Plan: Internal evaluations will be completed annually to address constantly changing conditions, call volume, crime data and other external factors. The reimagining public safety efforts may also necessitate changing focus and deployment strategies. BPD will explore engaging outside consultants every ten years to evaluate patrol staffing levels so as to have a useful body of data for evaluation (for example; tying staffing evaluations to census reports).</p>
Minimum staffing levels in BPD's Patrol Unit could cause unnecessary overtime if not regularly updated.	2.2	Document and define the Patrol Unit's minimum staffing levels in a publicly assessable format.	Police	August 23, 2022	<p><u>Implemented:</u> This information has been placed on the BPD webpage. The button "current officer shift assignments" links to a timesheet with officer assignments. Information can be viewed at https://berkeleyca.gov/safety-health/police/community-liaisons. The public-facing CoB website additionally includes the following language; "Note: The timesheet and minimum staffing levels are a starting point for each shift assessed every six months and commanders have a number of options to consider regularly. There are often daily assessments, as well. Overtime to backfill officers is typically triggered when a patrol team's staffing drops below 9 or 10, depending on which Patrol team, or as other needs may dictate (crimes, emergencies, protests, etc.). These numbers are always subject to change."</p>

Minimum staffing levels in BPD's Patrol Unit could cause unnecessary overtime if not regularly updated.	2.3	Document the results of staffing assessments along with the assessment criteria. Incorporate results into staffing projections for budgetary decision making, including establishing a sufficient and appropriate overtime budget.	Police	September 2023 - March 2024	<u>Not Started:</u> Proposed Implementation Plan: Internal evaluations will be completed annually to address constantly changing conditions, call volume, crime data and other external factors. BPD will explore engaging outside consultants every ten years to also evaluate this item.
Officers work excessive overtime, increasing health and safety risks.	3.1	Update the department overtime policy to address the fact that there currently is no limit to the number of consecutive days worked and determine the appropriate limit for overtime that is enforceable with the goal of avoiding officer fatigue. The department may examine other jurisdictions' overtime limits as possible criteria.	Police	March 2024	<u>Not Started:</u> Proposed Implementation Plan: BPD will review existing policy and ensure that any policy updates or clarification are completed. BPD will conduct research to review fatigue mitigation programs and contact other agencies to learn what they are using successfully. A byproduct of reduced staffing can be increased or excessive overtime where minimum staffing levels or public safety needs necessitate police response. The Department will explore options to develop data collection and monitoring within the electronic staffing solution to be able to regularly assess if there is an issue.

<p>Officers work excessive overtime, increasing health and safety risks.</p>	<p>3.2</p>	<p>Work to implement a staffing software solution that integrates overtime management and scheduling software. Develop management reports that provide timely, accurate, and complete information on overtime usage. Develop a process for filling overtime shifts on a voluntary and mandatory basis, including supervisor approval. Build in warnings for when an individual is approaching overtime limits and an approval process for allowing individuals to exceed limits when deemed necessary according to the policy.</p>	<p>Police</p>	<p>March 2024</p>	<p><u>Started:</u> Following the RFP process, a vendor has been selected and City Council has approved the contract. Care Ware Systems, Inc. is the vendor. This new service will be used to track daily attendance, gather shift and vacation bidding, shift trades and representations, overtime signups and more. The initial meetings with the vendor have recently occurred with internal stakeholders to start the implementation process.</p>
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<p>BPD has no contracts for overtime security with outside entities.</p>	<p>4.1</p>	<p>Update A.R. 2.10 and other department policies to explicitly include guidance around department agreements for work for outside entities, which is paid for by reimbursements to the City from the outside entities. Internal procedures should include appropriate criteria to identify and document the benefit to the City gained by work for outside entity agreements, and to allocate resources in a way that does not negatively impact City operations. Additionally, BPD should document their criteria for when officers are not available or eligible for work for outside entities.</p>	<p>Police</p>	<p>September 29, 2022</p>	<p><u>Started:</u> Lexipol Policy #1020 regarding Outside Employment is currently being updated to incorporate BPD practices when engaging in reimbursable service contracts. These updates will include the overall process for handling service contracts with private entities, in addition to the finalization and adaptation of an appropriate contract. Final policy edits are expected to be ready for the September 29, 2022 Council Meeting. Implementation is currently underway for the webpage providing up to date information explaining the process and documents required for requesting BPD services. This page cannot go live until policy and application documents are through final approval stages.</p>
<p>BPD has no contracts for overtime security with outside entities.</p>	<p>4.2</p>	<p>In consultation with the City Attorney, create contracts with outside entities in compliance with City policies and applicable laws.</p>	<p>Police</p>	<p>September 29, 2022</p>	<p><u>Started:</u> BPD has been working with the City Attorney's Office to draft/develop a contract template for future implementation. The draft policy update and contracts are in the final stages of document review.</p>

BPD has no contracts for overtime security with outside entities.	4.3	Develop an application for BPD's services that is publicly available and accessible online to any interested party. Set pay uniformly according to rank and hourly rate and include a reasonable fee that covers the expenses of administering work for outside entities including workers compensation, fuel, use of equipment, and any other actual or potential costs to the City.	Police	September 29, 2022	<u>Started:</u> A formal application for seeking BPD's services is currently being finalized. Final edits are expected to be ready for the September 29, 2022 Council Meeting. Once completed, there will be a direct link on the Department's website with information explaining the process for requesting services. This will include a point of contact to discuss criteria and evaluation of service requests, including staffing impacts.
BPD has no contracts for overtime security with outside entities.	4.4	BPD should reconcile invoices with the amounts received for work with outside entities at regular intervals. BPD should also implement procedures to check invoices for errors prior to billing outside entities.	Police	March 2023	<u>Started:</u> BPD gave a verbal instruction to staff to review invoices prior to submitting them to the customer for payment. Staff were also instructed to reconcile invoices billed with payments received to ensure potential variations are addressed as soon as possible. BPD is working on developing documentation for this policy.
BPD has no contracts for overtime security with outside entities.	4.5	Explore ways to clearly account for different funds to track revenues and expenses.	Police	March 2023	<u>Started:</u> BPD will discuss potential solutions with Finance and Budget Office Staff. The implementation of the new ERP system is in the middle of several new modules which potentially impact the efforts of lining up revenues and expenses. While BPD agrees that revenues and expenses should occur within the same fund, Finance has the ultimate responsibility for determining methodologies which comply with GAAP and with reporting to federal, state, and auditing standards. This may require a significant amount of review and analysis on the part of other subject matter experts within the City of Berkeley.



BERKELEY CITY AUDITOR



INFORMATION CALENDAR
September 29, 2022

To: Honorable Mayor and Members of the City Council
 From: Jenny Wong, City Auditor *JW*
 Subject: New Audit Recommendation Dashboard

INTRODUCTION

Municipal code section 2.24.100 states that the City Auditor may follow up with audited departments on the status of audit recommendations. Additionally, Administrative Regulation 3.7 requires the City Auditor to monitor the status of outstanding audit recommendations and periodically report to City Council. The City Auditor's Office recently launched an online public dashboard to increase the transparency and accessibility of how we fulfill those responsibilities.

CURRENT SITUATION AND ITS EFFECTS

On September 8, 2022, our office launched an online dashboard¹ to track the status of outstanding audit recommendations. The main purpose of the dashboard is to report on the implementation phase of audit recommendations. The dashboard increases transparency by making it easier for City Council, management, and the community to view data about audit recommendations.

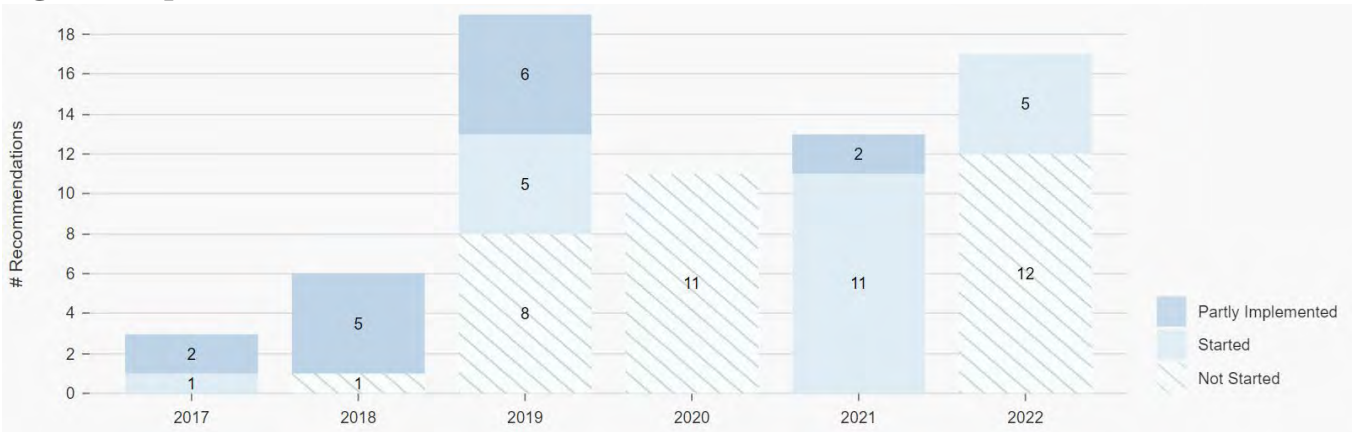
The dashboard includes every audit report issued since 2012 and recommendations that were still open, or not yet implemented, during or after 2012. For each recommendation, the dashboard shows the original audit issue date, department responsible for implementation, most recent status update, current implementation phase, and recommendation type (such as transparency, efficiency, etc.). The dashboard allows users to sort the data and filter by these characteristics. The sections below highlight some of the data available on the dashboard as of September 8, 2022.

¹ The dashboard is available through Missionmark, an online audit management platform:
<https://dashboard.missionmark.com/779a7d0a-a1b8-4c51-bdb1-bf81145bc76e/>

Total Recommendations and Audits Issued

The City Auditor’s office has issued 49 audits with a combined total of 330 recommendations since 2012. Currently there are 69 recommendations from 12 audits that are considered open, or pending implementation (Figure 1).

Figure 1. Open Recommendations



Source: Missionmark dashboard

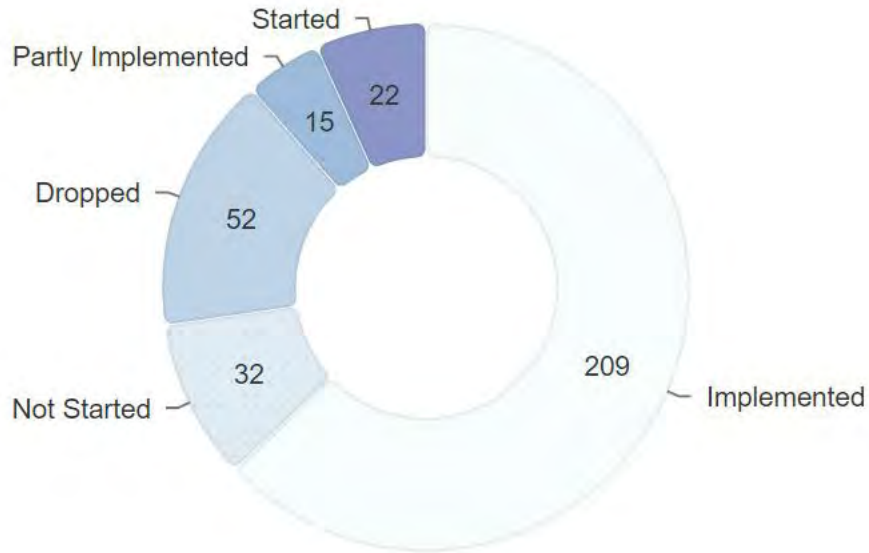
Implementation Phase

The dashboard groups recommendations by implementation phase:

- **Implemented:** The audited department has addressed the audit risk by completely implemented the recommendation.
- **Partly implemented:** The audited department has implemented 50 percent or more of the recommendation.
- **Started:** The audited department has started to address the recommendation but has not reached the 50 percent threshold.
- **Not started:** The audited department has not yet taken action to implement the recommendation.
- **Dropped:** The audited department has accepted the risk to the city that the recommendation is meant to address and is unable or unwilling to implement the recommendation. This status is assigned for recommendations not implemented by five years after the audit release date.

Of the 330 total recommendations, 209 (63 percent) have been fully implemented as of September 8, 2022.

Figure 1. Recommendations by Implementation Phase



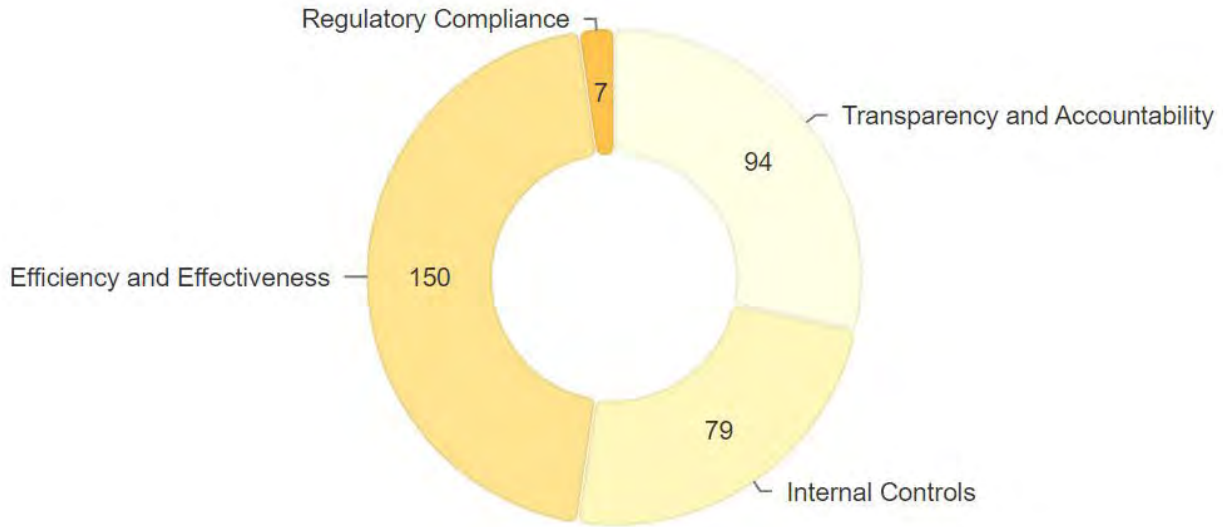
Source: Missionmark dashboard

Recommendations by Type

All recommendations are categorized as one of four categories: regulatory compliance, transparency and accountability, efficiency and effectiveness, and internal controls. These categories help summarize the primary issue that the recommendation is intended to help mitigate and the nature of the risk to the City if it is not implemented.

The largest group (45 percent) of recommendations are related to efficiency and effectiveness. The second largest group (28 percent) are related to transparency and accountability.

Figure 2. Recommendations by Type

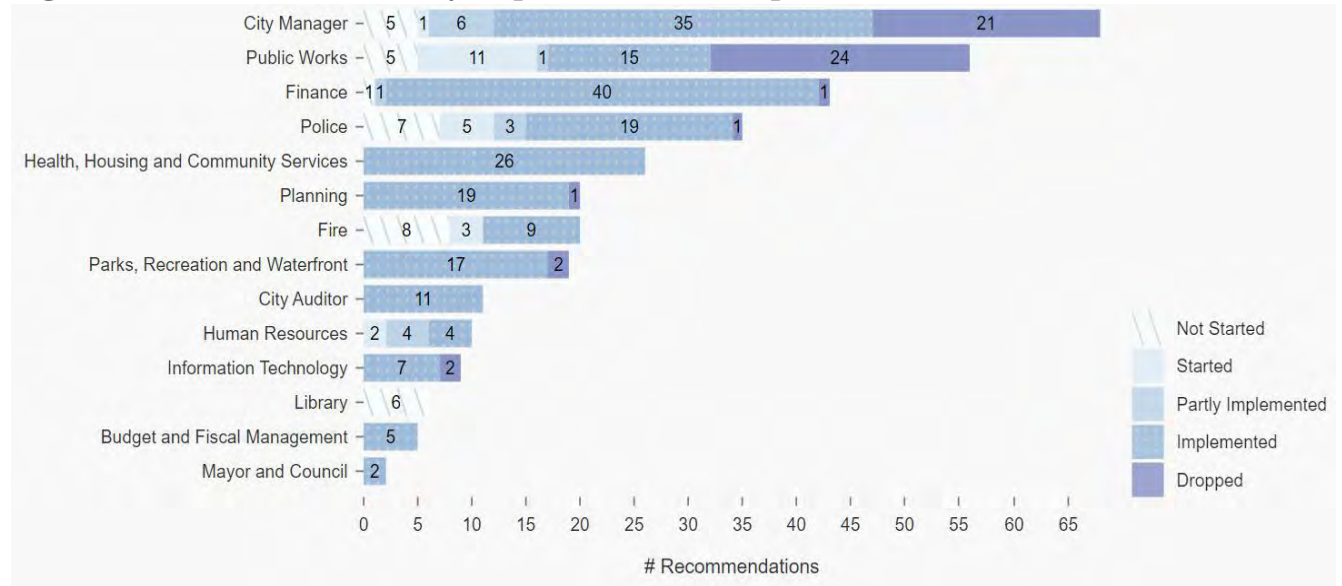


Source: Missionmark dashboard

Recommendations by Department

The dashboard lists recommendations by responsible department and implementation phase. The City Manager has the most recommendations, followed by Public Works and Finance.

Figure 3. Recommendation by Department and Implementation Phase



Source: Missionmark dashboard

Dashboard Updates

To ensure that the dashboard data is accurate, our office will manually update the dashboard after verifying documentation from departments that support their proposed updates to the implementation phase. Consequently, the dashboard will reflect accurate information as of the most recent update.

BACKGROUND

Following up on audit recommendations is an important part of the audit process that helps hold departments accountable for implementing agreed-upon audit recommendations. The City Auditor's office paused this process in March 2020 to allow departments to prioritize responding to the COVID-19 pandemic. In April 2022, we resumed the follow up process and worked with departments to update the status of open audit recommendations in the newly-implemented Missionmark recommendation management system.

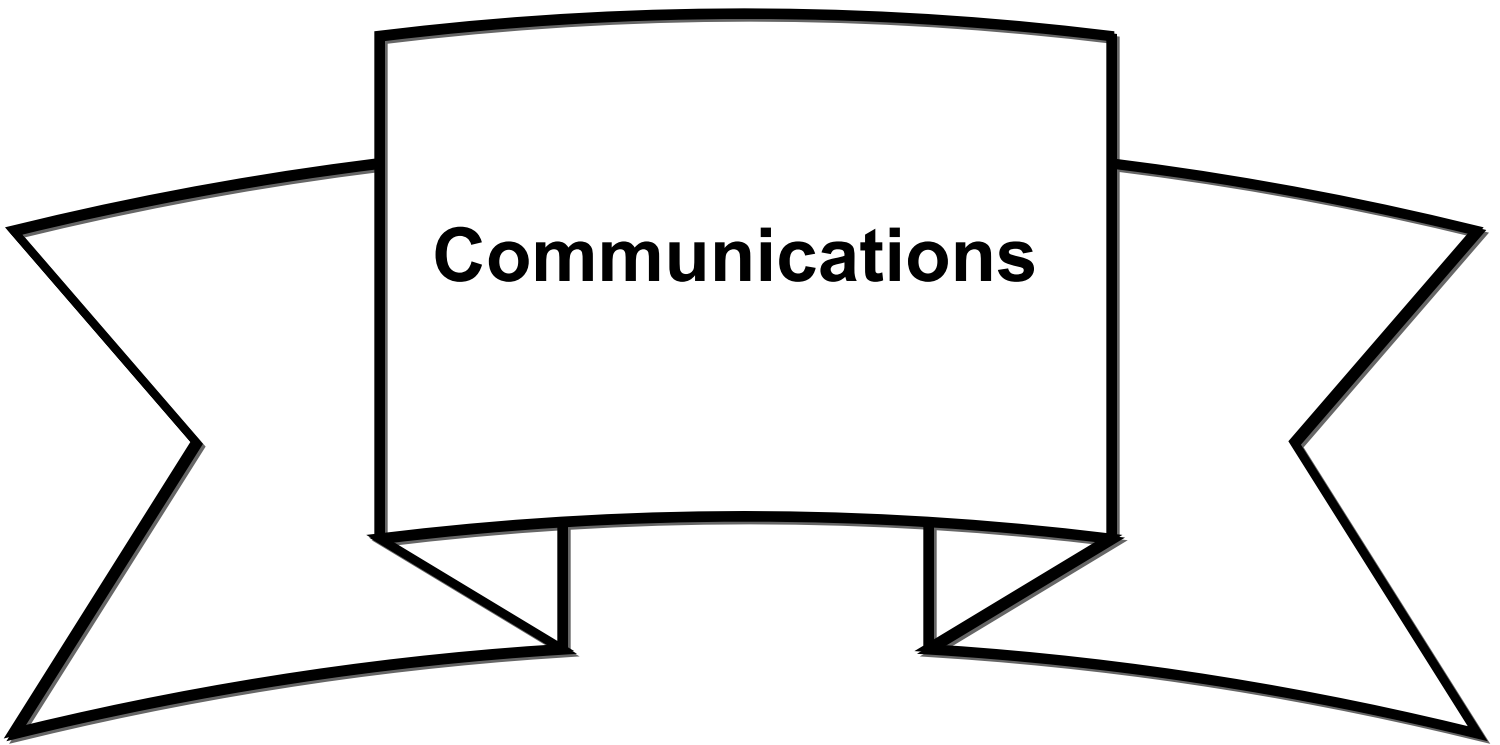
The audit follow-up process begins when the audit is issued. When the City Auditor's Office issues audit reports, we ask Council to direct auditees to report back on the implementation of audit recommendations. The first audit recommendations report is generally due to the Council six months after we issue the audit report and every six months after for two years or agreed-upon timeline. Our expectation is that auditees implement our recommendations within two years of audit issuance. If recommendations cannot be implemented within this timeline due to constraints beyond the auditee's control (e.g., new software implementation, a lack of sufficient funds, or union agreement restrictions), we take those into consideration. Generally, we follow up on recommendations for up to five years after they are issued.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

While there may be environmental impacts associated with some audit recommendations, there are no identifiable environmental effects or opportunities associated with the recommendations dashboard report.

CONTACT PERSON

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All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

City Clerk Department

2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

Records Online

<https://records.cityofberkeley.info/>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF